Anti-Dumping Commission
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Ms Joan Fitzhenry
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By e-mail: ADRP@industry.gov.au

Dear Ms Fitzhenry

HOLLOW STRUCTURAL SECTIONS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, REPUBLIC OF KOREA, MALAYSIA AND TAIWAN[1]

I write with regard to the notices under section 269ZZI of the *Customs Act 1901* (the Act) published on 23 August 2017 advising your intention to review the decisions of the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) to publish notices under subsection 269ZHG(1)(b) and 269ZDB(1) of the Act (the reviewable decisions). The reviewable decisions were published on the Anti-Dumping Commission's (the Commission's) website on 26 June 2017, referred to in *Anti-Dumping Notice No. 2017/70* (ADN 2017/70) and *Anti-Dumping Notice No. 2017/71* (ADN 2017/71).

I understand that by 2 September 2017 the Commission had provided you with *Statement of Essential Facts No. 379* (SEF 379), the confidential versions of the submissions made by interested parties, *Final Report No. 379* (REP 379), and all other relevant information (as defined in subsection 269ZZK(6) of the Act) requested of me in your correspondence of 23 August 2017.

I have considered the application for review of the reviewable decisions and have decided to make some comments on the various grounds raised by the applicants in their applications and set out in the notices published on 23 August 2017. Please find my comments at **Attachment A**, which I submit for your consideration.

The Commission remains at your disposal to assist you in this matter, and would be happy to participate in a conference if you consider it appropriate to do so.

Yours sincerely

Paul Sexton
Acting Commissioner
Anti-Dumping Commission
22 September 2017

[1] The Commission's submission is in response to ADRP Reviews 2017/63 and 2017/64.The Commission notes that Continuation 379 and Review of Measures 381 were conducted concurrently by the Commission.

Attachment A

I make the following submissions in response to the grounds set out in the notices published on 23 August 2017. These grounds are with respect to the consideration by the Anti-Dumping Review Panel (ADRP) of the reviewable decisions of the Parliamentary Secretary and reported in REP 379 and REP 381.

1 Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce)

1.1 The Commission erred in determining a deductive export price

The Commission rejects Dalian Steelforce's claims that real bargaining is demonstrated by the related entities when determining price **(see Steelforce – 20170411 – Export Visit Report – Steelforce – Final at 3.6)**.[2] The Commission confirmed the relationship between the Steelforce entities and confirmed sales at a loss during the verification of Steelforce's importer data **(see Verification Report – Steelforce Trading at 3.7 to 3.9).**

The Commission reviewed the verified evidence gathered from the exporter and importer onsite verification. From that evidence the Commission established factors, in addition to the sales at a loss, that indicate the prices between Dalian Steelforce, Steelforce Trading and Steelforce Australia appear to be influenced by their commercial relationship and are not arms length.

The Commission notes Dalian Steelforce's claims that it has incorrectly compared export prices denominated in different currencies. The Commission has reviewed its analysis of Dalian Steelforce's export sale prices to related and unrelated parties. The Commission is satisfied that the sale prices of the related and unrelated parties were converted to [redacted] in order to conduct an appropriate price comparison. **(see Steelforce – GP4 – Exp Sales Analysis)**

1.2 The Commission erred in treating free-trade zone (FTZ) sales as domestic sales for the purposes of calculating profit

The Commission submits that subsection 45(3)(a) of the *Customs (International Obligations) Regulation 2015* (the Regulation) is not restricted to sales made in the ordinary course of trade (OCOT).[3]

The Commission notes that it verified Dalian Steelforce's FTZ sales as sales of like goods and submits that these sales are sales made in the country of export and are domestic sales for the purposes of calculating profit **(see Steelforce – 20170411 – Export Visit Report – Steelforce – Final at 2.2.4 and 5.6.2.4).**

The Commission also notes that the preliminary finding made in *Statement of Essential Facts No. 285* (SEF 285) concerning Dalian Steelforce's domestic sales of the same general category of goods for the purpose of establishing a profit under section 45 of the

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[2] Unless otherwise state, all documents referred to in this submission are documents provided to the ADRP on 2 September 2017 and are as named in the ADC document drop folder.

[redacted]

[3] *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2016] FCA 1309. This Commission notes that Steelforce Trading has appealed this decision to the Full Court of the Federal Court and is currently awaiting a judgement.

Regulation, is different to the final finding made in *Anti-Dumping Commission Report No. 285* (REP 285). REP 285 has not been published because Dalian Steelforce challenged the recommendations made in that report, including in relation to the determination of profit, prior to the Parliamentary Secretary making a decision. Nevertheless, the Federal Court upheld the Commission's approach to determination of profit in REP 285.[4]

1.3 The Commission erred in not treating HSS downgrade domestic sales as like goods and excluding those sales from the calculation of profit

The Commission agrees with Dalian Steelforce that it classified its downgrade HSS into three different categories during the inquiry period examined for REP 379. This classification is different to that applied by Dalian Steelforce during the original investigation period (for Investigation 177), and during the periods examined for the purposes of its previous reviews and duty assessments.

The Commission submits that its assessment and finding of like goods in REP 379 is consistent with its previous like goods assessments and findings involving HSS produced by Dalian Steelforce. The Commission submits further that having found the newly classified 'mixed downgrade' HSS to be analogous to the previous 'downgrade' category and not the same general category of goods, it calculated profit consistent with REP 285, which has been upheld by the Federal Court[5] **(see Steelforce – 20170411 – Export Visit Report – Steelforce – Final at 2.2.1, 2.2.2, 5.6.1.1 and 5.6.1.2).**

1.4 The Commission erred by not determining SG&A costs on the basis of information from the records of the exporter or producer of like goods

The Commission rejects Dalian Steelforce's claims that only the SG&A costs of [redacted] were used in determining the amount of SG&A associated with the sale of like goods.

The Commission constructed normal value under subsection 269TAC(2)(c) of the Act. Subsection 269TAC(2)(c)(ii) requires, in determining an amount for SG&A, an assumption to be made that the goods have been sold for home consumption in OCOT in the country of export. The Commission verified that a large majority of Dalian Steelforce's domestic sales were made to [redacted] and then sold by [redacted] to [redacted] domestic customers. The Commission submits that sales from Dalian Steelforce to [redacted] were not OCOT sales of goods for home consumption and that an adjustment to Dalian Steelforce's SG&A was therefore required[6] to include the SG&A incurred by [redacted] **(see Steelforce – 20170411 – Export Visit Report – Steelforce – Final at 4.1.2.1.1 and 4.1.2.2).**

1.5 The Commission erred by not determining profit on the basis of domestic sales of the same general category of goods by the exporter or producer

The Commission submits that this ground comprises new information, in the sense that Dalian Steelforce did not argue this point during the inquiry. The Commission also notes that it calculated Dalian Steelforce's profit consistent with its approach in REP 285, which

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[4] ibid.

[5] ibid.

[6] In accordance with subsection 269TAC(9).

was accepted by the Federal Court[7] **(see Steelforce – 20170411 – Export Visit Report – Steelforce – Final at 5.6.2).**

Nevertheless, the Commission reiterates that when constructing normal value the Act mandates an assumption that the goods have been sold for home consumption in OCOT in the country of export and the Minister must determine the profit on that sale.[8] The [redacted] of the goods from Dalian Steelforce to [redacted] is not an OCOT sale, it is [redacted] based on the price agreed between [redacted] and it customer **(see Steelforce – GP7 – Dome Sales Analysis at sheet GP7).** Therefore, the profit on the sale of those goods transferred to [redacted] must be the profit on the sale from [redacted] to unrelated customers on the domestic market.

1.6 The Commission erred in not determining costs in the country of export

The Commission rejects Dalian Steelforce's claims that it is not open to the Commission to determine Dalian Steelforce's cost of production by uplifting Dalian Steelforce's recorded cost of production by reference to a benchmark.

The Commission submits that Dalian Steelforce's interpretation of subsection 43(2)(b)(ii) fails to account for the difference between the text of Article 2.2.1.1 and the words of subsection 43(2)(b)(ii). The Commission considers that its assessment is in accordance with the law, and notes that in both *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870 (*Panasia*) and *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885 (*Steelforce* [2015]) Nicholas J held that it was 'open' to the Commissioner to conclude that the cost of an input did not reasonably reflect "competitive market costs" and not just actual costs.

The Commission notes that its finding of a particular market situation in China resulted in a cost construction to determine Dalian Steelforce's normal value **(see REP 379 at 7.4.1).** Consistent with its approach in REP 177, the Commission established a weighted average benchmark of verified actual prices paid by cooperating exporters for hot rolled coil (HRC) from Korea, Malaysia and Taiwan **(see REP 379 at 7.4.3).** The Commission submits that the use of this benchmark to construct Dalian Steelforce's cost of production is supported by the relevant authorities cited above.

2 Ursine Steel Co., Ltd (Ursine)

2.1 The Commission erred in determining normal values on the basis of domestic sales pursuant to subsection 269TAC(1) of the Act

The Commission remains satisfied in its approach of using subsection 269TAC(1) of the Act to determine Ursine's normal value. The Commission considered this issue further in REP 379 at section 7.7.4.3 and found that in response to SEF 379 Ursine provided contradicting evidence about its HRC inputs to the evidence that was gathered and verified during onsite verification.

The Commission agrees with Ursine that grade does affect price comparability. Ursine also confirmed, during the onsite verification, that the price differential [redacted] Ursine stated further that the price premium [redacted] This suggests that Ursine selects different HRC types as inputs for different

[7] *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2016] FCA 1309.

[8] Subsection 269TAC(2)(c)(ii)

grades of HSS **(see Ursine – Verification Programs at EXP GP2 in sheet EXP-Ursine Steel).**

The Commission agrees with Ursine that it made a low volume of domestic sales of [redacted] grade HSS for the purposes of the Act. In accordance with the Dumping and Subsidy Manual[9] the Commission applied model matching criteria that had been discussed at the onsite verification and agreed to by Ursine **(see Ursine – Verification Programs at EXP GP3 in sheet EXP-Ursine Steel).** Applying the model matching criteria the Commission established a surrogate model and made specification adjustments based on the price differential criteria described above **(see Ursine – Appendix 3 – OCOT at sheet Sufficiency and Ursine – Appendix 4 – NV at sheet NV).**

2.2 In determining normal value on the basis of domestic sales of like goods, the Commission erred in excluding certain domestic sales which were also considered to be like goods

As described above, Ursine has provided evidence relating to its HRC inputs, in response to the SEF that contradicts evidence it provided during onsite verification. The Commission remains satisfied that it only excluded domestic sales of [redacted] HSS for comparison because Ursine only exported [redacted] of HSS **(see Ursine – Verification Programs at EXP GP3 in sheet EXP-Ursine Steel and Ursine – Appendix 3 – OCOT**).

3 Croft Steel Traders Pty Ltd (Croft)

3.1 The ADC model selection criteria does not provide fair comparison for due allowance and distorts the suitability of sales for normal value

The Commission submits that the price analysis that it conducted was presented in a spreadsheet that allowed price comparison to be carried out at all levels of trade. The Commission submits that analysis of the price differences for [redacted] is immaterial and supports no further dividing of thickness ranges **(see REP 379 – Confidential Attachment 1.1 – Alpine Pricing at sheet D thickness).** The Commission received a similar submission in response to the SEF and considered the point further in **REP 379 at 7.6.1.4** and concluded that no discernible [redacted] was apparent to support a further dividing of thickness ranges.

The Commission notes that Alpine has provided new information in part b. 'Suitability of Sales' of its application to the ADRP. The Commission's approach to model matching and testing sufficiency is consistent with the Dumping and Subsidy Manual[10] and the Act[11] **(see Alpine – Visit report Alpine at 2.3 and 5.6).** The Commission submits that Alpine has failed to provide any evidentiary basis that demonstrates a material reason for expanding the thickness ranges in the model matching criteria.

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[9] Dumping and Subsidy Manual (April 2017), pp. 33-34.

[10] Ibid.

[11] *Customs Act 1901* (Cth) s. 269TAC(14).

4 Tianjin Youfa Steel Pipe Group Co., Ltd (Youfa)

4.1 The ADC failed to engage in a proper investigation in failing to analyse whether State Invested Enterprises were "public bodies", wrongly concluded that Tianjin Youfa did not respond to information requests, failed to ask proper questions, failed to give timely notice of unanswered questions posed to the Government of China, placed undue reliance on previous investigations and relied inappropriately on its own overly general market research report

4.2 The ADC wrongly concluded that there was a subsidy from a "public body"

The Commission notes that REP 379 reports the findings of an inquiry into an existing countervailing duty notice, which was published after findings made in 2012 that Chinese exporters of HSS had benefited from 28 countervailable subsidy programs. In conducting the inquiry the Commission sent questionnaires to the Government of China (GOC) and cooperating exporters seeking information in relation the programs previously found to be countervailable in relation to HSS, including Program 20, which is the program for which a "public bodies" finding is relevant.

The GOC did not respond to the questionnaire (or provide any submission to the inquiry) and none of the exporters provided information to suggest that state invested enterprises supplying hot rolled steel to HSS producers were no longer public bodies. The GOC did not request consultations under Article 13 of the WTO Agreement on Subsidies and Countervailing Measures. The Commission made its assessment on the information available as outlined in **REP 379 at 8.4.1 and Appendix B.**

4.3 The ADC wrongly concluded that there was a "benefit" by reason of less than adequate remuneration from domestic suppliers of narrow strip and hot rolled coil, in so far as it adopted the wrong geographical benchmark; considered the wrong product and failed to apply the de minimis rule

Consistent with its approach in REP 177, the Commission used the same benchmark to determine the amount of benefit under Program 20 as was calculated for the purposes of establishing normal value under subsection 269TAC(2)(c), being a weighted average benchmark of verified actual prices paid by cooperating exporters for steel hot rolled coil (HRC) from Korea, Malaysia and Taiwan **(see REP 379 at 7.4.3).**

The Commission rejects Youfa's claims that it provided the verification team with detailed information about its use of 'narrow strip'. Youfa's completed response to the exporter questionnaire (REQ) contains no references to narrow strip or skelp. All references in Youfa's REQ to the major input into its manufactured HSS are to HRC **(see Youfa's confidential REQ at Confidential Attachment B).** The Commission is satisfied that Youfa did not raise the issue of narrow strip as the raw material that should be used if any benchmark was to be applied, request any downward adjustment for the use of this input nor provide any evidence as part of its submission that substantiated its use of narrow strip **(see REP 379 at 7.4.4.4).**

The Commission notes that Youfa, as the exporter, does not [redacted] **(see Youfa – Verification Work Program Tianjin Youfa Costs at sheets EXP-HSS Continuation and GP1).** The basis upon which the Commission calculated the purchase prices of HRC was from the detailed list of HRC purchases provided by Youfa and verified by the Commission. The Commission also notes that a review of the list of HRC purchases provided by Youfa for the purposes of calculating a benefit under Program 20 shows Youfa made no mention of narrow strip **(see Youfa – REP 379 – Tianjin Youfa Subsidies (clean) at sheet HRC Purchases).**

Youfa's references to the *de minimis* rule are irrelevant in the context of a continuation inquiry. The purposes of the inquiry is, *inter alia*, to determine the likelihood of dumping continuing or recurring should the measures expire. There is no requirement to terminate an inquiry if a particular exporter is found not to be dumping or dumping by a margin below 2%.

4.4 The ADC wrongly concluded that any benefit was "specific"

The Commission is satisfied that its approach to specificity is consistent with its Dumping and Subsidy Manual and the decision of the Federal Court in *Steelforce* [2015][12] that relevantly indicated the factors to be examined to determine specificity **(see REP 379 at 8.4.2).**

4.5 The calculations applied by the ADC were erroneous, even if a countervailable subsidy otherwise existed, by reason of applying the wrong benchmark country, the wrong product, utilising the wrong income denominator and failing to limit its accounting to the alleged differential between actual prices and the benchmark and instead counting the entire benchmark figure as the benefit

The Commission refers to the conference held with the ADRP on 15 August 2017 in relation to this issue.

4.6 The ADC improperly double counted for the alleged LTAR input materials, adjusting both as to a constructed normal value and as to a countervailable subsidy

The Commission submits that as a result of the findings in REP 379, Youfa is only subject to interim countervailing duty (ICD) and no fixed component of interim dumping duty (IDD). The combined effective duty rate imposed by ADN 2017/70, currently 12%, relates only to ICD and not to a combination of ICD and IDD. There was therefore no potential double count to consider.

4.7 The ADC failed to adequately consider whether there would likely be material injury caused if the measures were revoked

The Commission is satisfied with its conclusions that the expiration of the measures would likely lead to a recurrence of material injury to the Australian industry. REP 379 considers the matter in detail and the Commission only received one submission on this issue, which was considered in **REP 379** at 10.8.

4.8 The ADC wrongly based a number of assessments on an erroneous finding of a market situation in the People's Republic of China.

The Commission is satisfied with its approach to the determination of a particular market situation in China **(see REP 379 at 7.4.1 and Appendix A).** The Commission rejects Youfa's claims that the Commission's determination is erroneous because it only reiterates the finding made in REP 177. The Commission provides context only in its reference to REP 177 and previous reviews of measures.

The Commission submits that its analysis of pricing of HRC in China during the inquiry period, the increase in production of HRC in China during the inquiry period and the GOC influence in Chinese steel markets during the inquiry period has been performed in accordance with the Act and the Dumping and Subsidy Manual.[13]

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[12] *Steelforce* [2015] at [89].
[13] S. 269TAC(2)(a)(ii), see Dumping and Subsidy Manual p. 35 – 37.