

Reply to the Attention of: Jonathan O'Hara
Direct Line: 613.691.6176
Email Address: jonathan.ohara@mcmillan.ca
Our File No.: 277275
Date: November 5, 2020

SENT BY EMAIL

Non-Confidential

SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Program
Canada Border Services Agency
11th Floor, 100 Metcalfe Street
Ottawa ON K1A 0L8

Re: ***Certain Gypsum Board – Reply of Georgia-Pacific Canada LP and Georgia-Pacific Gypsum LLC to the Request for a Re-Investigation by CertainTeed Canada, Inc.***

On behalf of Georgia-Pacific Canada LP and Georgia-Pacific Gypsum LLC (collectively, "**GP**"), a U.S. exporter and a Canadian importer of gypsum board, respectively, we write in reply to the request by CertainTeed Canada, Inc. ("**CTG Canada**") that CBSA initiates a re-investigation of normal values and export prices.¹ GP submits that CBSA should not conduct a re-investigation at this time, as the factors set out in CBSA's Memorandum D14-1-8 ("**Re-Investigation Policy**") weigh against a re-investigation for the following reasons:

- The mere passage of 2½ years since the last re-investigation is not a sufficient reason on its own to justify a re-investigation;
- There have been no material increases in the volume of subject imports;
- There have been no significant increases in the U.S. selling price;
- There have been no significant increases in costs;
- Significant exchange rate movements were a temporary anomaly;
- Allegations of circumvention tactics are unsubstantiated;
- No new exporter has emerged since the last re-investigation;

¹ CTG Canada Re-Investigation Request (October 19, 2020)

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- CBSA's limited resources are better spent on other statutory proceedings.

A. The Passage of 2½ Years Since the Last Re-Investigation Is Not A Sufficient Reason On Its Own to Justify A Re-Investigation

CTG Canada asserts that the current normal values, which were issued in July 2018, are "on their face, outdated".² CTG Canada appears to suggest that the passage of 2½ years since the last re-investigation is itself sufficient reason to initiate a re-investigation at this time.

An examination of the anti-dumping measures currently in force reveals many cases for which the last re-investigation of normal values occurred more than 2½ years ago. These include cases involving some of Canada's closest trading partners, like the US and EU countries, and where material volumes continued to be imported. Some examples, among many others, are:

- In *Certain Whole Potatoes*, the last re-investigation determined normal values for U.S. exporters by a ministerial specification in September 2014;³
- In *Certain Refined Sugar*, the last re-investigation revised normal values for two U.S. exporters and determined normal values for other exporters in Denmark, Germany, the Netherlands and the U.K. by ministerial specification in September 2014;⁴
- In *Certain Copper Tube*, the last re-investigation revised normal values for two exporters in Greece and South Korea in January 2015.⁵

GP submits that CBSA should consider evidence for factors of actual market condition changes in determining whether to initiate a re-investigation, as enumerated in CBSA's Re-Investigation Policy.⁶ CBSA should not assume that the passage of time alone is evidence of market condition changes justifying a re-investigation. As we will demonstrate in this submission, there have not been any material market condition changes justifying a re-investigation at this time.

B. There Have Been No Material Increase in the Volume of Subject Imports

CTG Canada provided information to CBSA on a confidential basis that purports to show a material increase in the volume of gypsum board imports into Western Canada since 2018. Publicly available data from Statistics Canada and CBSA do not corroborate this assertion.

² CTG Canada Re-Investigation Request (October 19, 2020) at 1.

³ <https://www.cbsa-asfc.gc.ca/sima-lmsi/ri-re/ad0689/ad0689-ri14-nc-eng.html>

⁴ <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/sug-eng.html>

⁵ <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/ct-eng.html>

⁶ Memorandum D14-1-8, "Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)" at para. 12.

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Statistics Canada data shows that the value of gypsum board imports from the United States into Western Canada was flat between 2017 and 2018 and since fell by approximately 15% between 2018 and 2019.⁷

CBSA enforcement data for subject goods shows that the volume of subject gypsum board imports fell by nearly 90% from 144.1 million kg in 2017 to 15.22 million kg in 2018 and fell by a further 26% to 11.20 million kg in 2019.⁸

CBSA's 2019 and 2020 quarterly self-assessed data shows that the volume of gypsum board imports in 2020 has seen only a minimal increase from 2019. The first two quarters of 2020, for which data is available, saw 6.55 million kg in imports, as compared to 6.31 million kg in the first two quarters of 2019, which is an increase in volume by less than 4%.⁹

CTG Canada states that it "believes that the decrease in 2018 [as compared to 2017] was a direct result of the CBSA's re-investigation and issuance of updated normal values and export prices." The lack of material increase in the volume of gypsum board imports is evidence that CBSA's prior re-investigation and the normal values issued in July 2018 continue to limit gypsum board imports. Under these circumstances, another re-investigation of normal values and export prices at this time is not warranted.

C. There Have Been No Significant Increases in the U.S. Selling Price

CTG Canada asserts that U.S. selling prices have increased substantially since December 2017 and it points to price increase notices issued by several U.S. gypsum board manufacturers as evidence.¹⁰ There are three flaws with this argument.

First and foremost, GP's data shows that the average U.S. net selling prices from its Lovell, WY and Tacoma, WA plants (which together account for []%-[]% of GP's gypsum board sales into Western Canada) have fallen approximately []% from US\$[] per MSF in January 2018 to US\$[] per MSF in October 2020. As can be seen in Confidential Attachment 3, while the magnitude of the price declines varies depending on plant location and product, the pattern of modest price declines between the end of the period of investigation in the last re-investigation and the present time is consistent across plant locations and products. Given that prospective normal values from the last re-investigation were set based on selling prices in November and December 2017, this price decline shows that U.S. prices from plants exporting to Canada have somewhat fallen since the last re-investigation.¹¹

⁷ Non-Confidential Attachment 1, "Statistics Canada Import Data".

⁸ Non-Confidential Attachment 2, "CBSA Import Data".

⁹ Non-Confidential Attachment 2, "CBSA Import Data".

¹⁰ CTG Canada Re-Investigation Request (October 19, 2020) at 4-5.

¹¹ Confidential Attachment 3, "GP U.S. Net Selling Price".

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Second, CTG Canada's reliance on the price increase letters is erroneous and misleading. In the U.S. gypsum board market, price increase letters are usually aspirational and manufacturers rarely achieve the full announced price increase, if any. Rather, the announced price increase becomes a starting point for negotiation with customers. Often price increase letters are used to offset price declines over a period of time and as such are not evidence of market prices actually increasing overall. This is consistent with GP's evidence that, despite the price increase letters, U.S. selling prices (and certainly GP's U.S. selling prices from the most relevant facilities) are declining rather than increasing.

Third, CTG Canada is affiliated with a U.S. exporter, CertainTeed Gypsum USA ("**CTG USA**"). CTG Canada has not provided any CTG USA pricing data, though it would presumably be available. This suggests that like GP's U.S. selling prices, CTG USA prices may also be declining, or at least not increasing to the extent claimed in the price increase letters.

CBSA's Re-Investigation Policy notes that a re-investigation may be justified "where the costs and domestic selling prices of the goods have risen considerably over the past two-year period".¹² This is not the case here.

D. There Have Been No Significant Increases in Costs

CTG Canada further asserts that U.S. gypsum board producers have seen increases in raw material costs and other production costs.¹³ The experience of GP's Lovell and Tacoma plants does not bear this out.

As shown in Confidential Attachment 4, the overall cost pattern is in fact [] over the 2018-2020 period for GP's Lovell and Tacoma. Since the last re-investigation, these plants have seen some small and transient cost movements up and down, and their costs overall have since [].

Again, CBSA's Re-Investigation Policy notes that a re-investigation may be justified "where the costs and domestic selling prices of the goods have risen considerably over the past two-year period".¹⁴ With no material changes to costs, the previously issued normal values are still consistent with the current market conditions and a re-investigation is not justified under such circumstances.

E. Significant Exchange Rate Movements Were A Temporary Anomaly

While the USD/CAD exchange rate has seen some fluctuations in the 2018-2020 period, CTG Canada's own Non-Confidential Attachment 13, which is replicated as Non-Confidential Attachment 5 herein, shows that the USD/CAD exchange rate moved within a narrow band

¹² Memorandum D14-1-8, "Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)" at para. 13.

¹³ CTG Canada Re-Investigation Request (October 19, 2020) at 5.

¹⁴ Memorandum D14-1-8, "Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)" at para. 13.

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between 1.3087 and 1.3459 from December 2018 to February 2020. The elevated level of the USD/CAD exchange rate between March and June 2020 coincided with the market uncertainties brought on by the COVID-19 pandemic. However, this is a temporary phenomenon as the USD/CAD exchange rate has retreated to the prior trading band since July 2020 and is at 1.3301 in October 2020.

Therefore, the USD/CAD exchange rate has now returned to the level that prevailed over much of the pre-COVID-19 period. This temporary rise in the exchange rate between March and June 2020 would have relatively little impact on the re-investigation. This temporary elevation, which has since disappeared, does not justify a re-investigation of normal values and export prices.

F. Allegations of Circumvention Tactics Are Unsubstantiated

CTG Canada makes almost entirely confidential allegations that exporters and importers are engaging in improper tactics to minimize or avoid dumping duty liabilities.¹⁵ Because CTG Canada has designated such "market intelligence" as confidential, GP is not in a position to comment on this assertion.

However, GP submits that such allegations of circumvention tactics are unsubstantiated. With respect to any price declines in Western Canada, this cannot reasonably be attributed to the relatively low volume of subject goods imports into Western Canada. Gypsum board imports to Western Canada have fallen significantly in 2018 and forward compared to 2017.¹⁶

If gypsum board prices in Western Canada are falling, it is because of sales of gypsum board produced in Eastern Canada, such as from CGC Canadian plant in Hagersville, Ontario and possibly from Cabot Gypsum's plant in Nova Scotia. Price effects caused by Canadian produced gypsum do not justify a re-investigation into U.S. produced gypsum board.

G. No New Exporter has Emerged Since the Last Re-Investigation

While CTG Canada did not raise this issue, CBSA's Re-Investigation Policy notes that "the presence of new exporters of the subject goods" is one of the key factors for determining whether to initiate a re-investigation or normal value review.¹⁷

As shown in the Statistics Canada data in Non-Confidential Attachment 1, United States continues to represent at least 98% of gypsum board imports into Western Canada. Based on GP's market intelligence, the main U.S. exporters to Western Canada remain to be United

¹⁵ CTG Canada Re-Investigation Request (October 19, 2020) at 7-8.

¹⁶ Non-Confidential Attachment 2, "CBSA Import Data"

¹⁷ Memorandum D14-1-8, "Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)" at para. 12(d).

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States Gypsum Company, CTG USA, and GP. No material entrant has emerged since the last re-investigation.

H. CBSA's Limited Resources Are Better Spent On Other Statutory Proceedings

CBSA's Re-Investigation Policy states:

Although up-to-date values are important, proceedings legislated by SIMA – i.e. investigations, scope proceedings, anti-circumvention investigations and expiry review investigations – take precedence as statutory deadlines must be respected.¹⁸

CBSA's Re-Investigation Policy further notes that "resources available" is one of the key factors for determining whether to initiate a re-investigation or normal value review.¹⁹

We note that CTG Canada's counsel has argued on behalf of another party in another matter that CBSA's limited resources are better spent on investigating new complaints, which are subject to strict and tight statutory deadlines, as opposed to a discretionary normal value re-investigation.²⁰

GP concurs with CTG Canada's counsel that CBSA should and must prioritize new investigations, whose complexity, scope and statutory deadlines require significant resources on CBSA's part, and are a better use of CBSA's resources than this re-investigation.

I. Conclusion

GP submits that there has not been any material change in the market conditions for gypsum board since the last re-investigation. Accordingly, a re-investigation of normal values and export prices is not warranted at this time.

¹⁸ Memorandum D14-1-8, "Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA) at para. 4.

¹⁹ Memorandum D14-1-8, "Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA) at para. 12(o).

²⁰ Non-Confidential Attachment 5, Letter by Mr. Andrew Lanouette on behalf of Gerdau Ameristeel Corporation in respect of *Certain Concrete Rebar 2* (October 26, 2020).

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Should you have any questions regarding the above information, please do not hesitate to contact us.

Yours truly,

A handwritten signature in blue ink, appearing to be 'Jonathan O'Hara', with a stylized, cursive script.

Jonathan O'Hara

cc: William Wu

Non-Confidential Attachment 1**Statistics Canada Import Data**

Title: Canadian imports
 Products: 680911 Plaster Boards, Sheets Etc. - Faced or Reinforced With Paper or Paperboard - Not Ornamental
 Destination: B.C. and Territories
 Prairies
 Units: Value in Canadian dollars

Import Origin	Destination	2017	2018	2019
United States	B.C. and Territories	\$ 40,313,102	\$ 44,073,835	\$ 33,867,730
	Prairies	\$ 16,080,919	\$ 12,372,333	\$ 13,953,184
	Total Western Canada	\$ 56,394,021	\$ 56,446,168	\$ 47,820,914
All Other Countries	B.C. and Territories	\$ 542,525	\$ 685,858	\$ 132,351
	Prairies	\$ 567,544	\$ 520,781	\$ 97,086
	Total Western Canada	\$ 1,110,069	\$ 1,206,639	\$ 229,437
Total Imports	B.C. and Territories	\$ 40,855,627	\$ 44,759,693	\$ 34,000,081
	Prairies	\$ 16,648,463	\$ 12,893,114	\$ 14,050,270
	Total Western Canada	\$ 57,504,090	\$ 57,652,807	\$ 48,050,351

Source: Statistics Canada, <https://www.ic.gc.ca/eic/site/tdo-dcd.nsf/eng/Home>

Non-Confidential Attachment 2**CBSA Import Data**

Annual Total Amounts

Year	Value for duty subject	Quantity subject (kg)
2019	\$ 30,397,998	11,198,807
2018	\$ 42,304,320	15,224,712
2017	\$ 35,915,948	144,095,089

Quarterly Self-Assessed Amounts

Quarter	Value for duty subject	Quantity subject (kg)
Apr-Jun 2020	\$ 9,582,850	3,221,735
Jan-Mar 2020	\$ 7,073,093	3,331,154
Oct-Dec 2019	\$ 7,127,191	2,526,634
Jul-Sep 2019	\$ 6,403,086	2,291,080
Apr-Jun 2019	\$ 6,649,293	2,923,127
Jan-Mar 2019	\$ 8,602,319	3,387,646

Source: CBSA, <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/mif-mev-stats-eng.html#gb>

Confidential Attachment 3

GP U.S. Net Selling Price

This attachment has been designated confidential as it contains sensitive information, the disclosure of which would reasonably harm the commercial interest of GP. It is therefore not susceptible to public summary.

Confidential Attachment 4

GP Cost Data

This attachment has been designated confidential as it contains sensitive information, the disclosure of which would reasonably harm the commercial interest of GP. It is therefore not susceptible to public summary.

Non-Confidential Attachment 5**Bank of Canada USD/CAD Exchange Rate**

Month	FXMUSDCAD
Dec-2018	1.3432
Jan-2019	1.3301
Feb-2019	1.3206
Mar-2019	1.3368
Apr-2019	1.3378
May-2019	1.3459
Jun-2019	1.3287
Jul-2019	1.3101
Aug-2019	1.3277
Sep-2019	1.3241
Oct-2019	1.319
Nov-2019	1.3239
Dec-2019	1.3172
Jan-2020	1.3087
Feb-2020	1.3286
Mar-2020	1.3953
Apr-2020	1.4058
May-2020	1.397
Jun-2020	1.355
Jul-2020	1.3499
Aug-2020	1.3222
Sep-2020	1.3228
Oct-2020	1.3215

Source: Bank of Canada, <https://www.bankofcanada.ca/rates/exchange/monthly-exchange-rates/>

Non-Confidential Attachment 6

**Letter by Mr. Andrew Lanouette on behalf of Gerdau Ameristeel Corporation in
respect of *Certain Concrete Rebar 2***

See attached.

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SENT VIA E-MAIL

October 26, 2020

Mr. Rand McNally
Manager, Industrial Products Division,
Trade and Anti-dumping Programs Directorate
Canada Border Services Agency
222 Queen Street, 9th Floor
Ottawa, Ontario K1A 0L8

Dear Mr. McNally:

RE: Certain Concrete Reinforcing Bar 2 / Rebar – RB2 / Reply of Gerdau Ameristeel Corporation to the Request for a Normal Value Review by Megasa Group

On behalf of Gerdau Ameristeel Corporation (“Gerdau”), a Canadian producer of rebar, we are replying to the request by Megasa Group (“Megasa”) that the CBSA initiate a normal value review for Megasa’s Portuguese group rebar production facilities.¹ Gerdau submits that the CBSA should not conduct a re-investigation at this time for the reasons set out below.

First, Megasa provided information to the CBSA on a confidential basis that purports to show trends in costs and prices between January 2018 and July 2020.² Based on these data, Megasa claims that there is now a “gap” between the normal values and home market prices in Portugal, with current prices and costs being lower than the issued normal values.³ Megasa states that “{t}he reduction in pricing and costs in Portugal is consistent with the overall steel price/cost reduction seen world wide.”⁴ There are several flaws underpinning Megasa’s claims, including in particular the following:

¹ Megasa Re-Investigation Request (9 September 2020).

² Megasa Re-Investigation Request (9 September 2020) at 2-3. Note that because Megasa has designated the cost and price information as confidential, Gerdau is not in a position to confirm or otherwise comment on the data.

³ Megasa Re-Investigation Request (9 September 2020) at 2-3.

⁴ Megasa Re-Investigation Request (9 September 2020) at 3.

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- Megasa used a time period of January 2018 to July 2020 for purposes of presenting cost and price data to the CBSA. The most recent re-investigation covering subject goods shipped from Portugal, however, had a period of investigation (“POI”) and profitability analysis period (“PAP”) of May 1, 2017 to October 31, 2017.⁵ To the extent that Megasa has normal values arising from this re-investigation, this means that normal values are likely based on costs and prices from September and October 2017 – the most-recent 60-day period of the POI/PAP.⁶ Megasa, however, only provided data from January 2018. Any price and cost analysis should instead have started from the same time period as the normal values in order to properly determine whether those normal values require updating.
- Additionally, the data provided by Megasa only go to July 2020, despite the fact that the submission was submitted in September. Megasa should have provided information through August 2020, at a minimum, in order to present to the CBSA the most up-to-date cost and price data.
- If Megasa had provided cost data through August 2020, those data would have shown that costs are essentially [] compared to levels from October 2017 (again assuming Megasa has normal values arising from the most recent re-investigation). While Gerdau does not have access to scrap costs in Portugal, it does have access to HMS 1&2 scrap as exported from Rotterdam as reported by MetalBulletin. See **Confidential Attachment 2**. Those data show that on average the price of scrap was US\$[] per tonne in October 2017. While the price of scrap was [] percent [] at US\$[] in July 2020, it is only [] percent lower in August 2020 at US\$[]. More importantly, however, when compared to the September 2020 scrap price – US\$[] – the scrap price from October 2017 is [] to current scrap prices. As such, information reasonably available to Gerdau suggest that there has been no material change in costs as between the period upon which the CBSA calculated normal values and present costs.

As Megasa has designated its price information as confidential and as Gerdau does not have access to data for rebar pricing in Portugal, Gerdau cannot comment on changes in prices.

⁵ **Non-Confidential Attachment 1**, “Exporter Request for Information – Dumping (Excerpts)”, RB1&2 2017 RI.

⁶ Gerdau notes that while the CBSA’s “Measures in Force” page indicates that the CBSA last updated Megasa’s normal values in June 2019, Megasa appears to reference two sets of normal values in its submission. See Megasa Re-Investigation Request (9 September 2020) at 3. Gerdau, unfortunately, cannot confirm this fact as the information is designated as confidential.

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Second, the Re-Investigation and Normal Value Review Policy further states that “resources available” is a consideration as to whether to conduct a normal value review or re-investigation.⁷ At present, the CBSA is investigating a new complaint concerning dumped rebar from seven subject countries – Algeria, Egypt, Indonesia, Italy, Malaysia, Singapore, and Vietnam.⁸ Given the scope and complexity of this new investigation, Gerdau submits that CBSA resources are better spent conducting the new investigation – which is subject to strict and tight statutory deadlines – as opposed to a discretionary normal value re-investigation.

Lastly, Megasa does have an alternative way to obtain normal values. To the extent that Megasa has an importer that is interested in purchasing product from Megasa, the importer can file a request for a re-determination in order to obtain normal values for the products.⁹

For the above reasons, therefore, Gerdau submits that the CBSA should reject Megasa’s request and should not initiate a re-investigation.

Should you have any further questions regarding any of the above information, please do not hesitate to contact us.

Sincerely yours,



Andrew Lanouette
Cassidy Levy Kent (Canada) LLP

⁷ Memorandum D14-1-8, “Re-investigation and Normal Value Review Policy” at para 12.

⁸ *Certain Concrete Reinforcing Bar*, “Notice of initiation of investigation”, RB3 2020 IN (CBSA), online: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/rb32020/rb32020-ni-eng.html>.

⁹ Memorandum D14-1-3, “Re-determinations and Appeals Under the Special Import Measures Act” at paras 5-6.

ATTACHMENT 1

Exporter Request for Information – Dumping (Excerpts)”, RB1&2 2017 RI



RB1&2 2017 RI

EXPORTER REQUEST FOR INFORMATION - DUMPING

under the *Special Import Measures Act* concerning

Canada's dumping re-investigation of normal values, export prices and amounts of subsidy of

**CERTAIN CONCRETE REINFORCING BAR ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA AND THE
REPUBLIC OF TURKEY, AND ORIGINATING IN OR EXPORTED FROM THE
REPUBLIC OF BELARUS, CHINESE TAIPEI, THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, JAPAN, THE
PORTUGUESE REPUBLIC AND THE KINGDOM OF SPAIN**

RELEVANT DATES

The Canada Border Services Agency (CBSA) requires sales and costing information on all subject goods imported into Canada during the period of **May 1, 2017 to October 31, 2017**, inclusive (6 months). The CBSA refers to this as the **Period of Investigation (POI)**.

The CBSA also requires domestic sales and costing information for like goods sold during the period of **November 1, 2016 to October 31, 2017**, inclusive. The CBSA refers to this as the **Profitability Analysis Period (PAP)**.

***DUE DATE FOR
RESPONSE***

Your complete response to this Request for Information (RFI) is due by **January 11, 2018**.

***RETURN YOUR
RESPONSE TO***

Canada Border Services Agency
Trade and Anti-dumping Programs Directorate
SIMA Registry and Disclosure Unit
100 Metcalfe Street, 11th Floor
Ottawa, Ontario, Canada
K1A 0L8

***FOR FURTHER
INFORMATION***

Contact one of the following officers as follows:

Wu Ping Wei 613-954-7180
Robert Wright 613-954-1643

IMPORTANT NOTE

Information provided is deemed to be public (non-confidential) unless clearly marked confidential.
Refer to "Confidential and Non-confidential Information" in the Instructions section and Part F.

ATTACHMENT 2

MetalBulletin, Average of Steel scrap HMS 1&2 (80:20 mix), fob Rotterdam

*This Attachment has been designated confidential in its
entirety as it is protected by copyright.*