STAUGHTONS
Independent trade advisory group on anti-dumping & customs issue solutions

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February 28, 2013

Mr John Bracic
Director, OPS 1
International Trade Remedies Branch
Australian Customs & Border Protection
Canberra ACT 2601

CC: Ms Lydia Cooke

Dear Mr Bracic

Re: ACDN NO. 2013/07
CERTAIN HOLLOW SECTIONS
REINVESTIGATION

ThyssenKrupp Mannex Pty Ltd (Thyssen), an Australian importer of certain HSS produced and exported by Hengshui Jinghua Steel Pipe Co. Ltd of China, requests that the following matters of opinion and claim be taken into consideration in the reinvestigation directed by the Minister .

<u>DETAILS</u>

Case	ACDN No 2013/07 Investigation No. 177
Goods	Certain HSS exports by Hengshui Jinghua Steel Pipe Co. Ltd (Hengshui)
Companies	ThyssenKrupp Mannex Pty Ltd. In relation to its imports from Hengshui Jinghua Steel PIPE Co. (Hengshui)
Person	M J Howard Authorised Representative of ThyssenKrupp Mannex Pty Ltd.
Contact Details	jack@itada.com.au ph: 0459 212 702
Roles	**Hengshui was an investigated cooperating selected Exporter and Thyssen was an investigated Importer.**

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References

Hengshui, and thus the Australian importer of its exported HSS, Thyssen, are affected by the following findings that the Minister has directed the CEO to reinvestigate:-

In relation to the decision to publish a dumping duty notice:

1. The finding that there was a particular market situation in the Chinese iron and steel market such that sales in that market were not suitable for use in determining a normal value under s 269TAC (1);

2. The calculation of the benchmark used to construct a normal value for Chinese HSS producers under s 269TAC (2) (c) of the Customs Act 1901;

   In relation to the decision to publish a countervailing duty notice;

5. The finding that State invested enterprises providing HRC to HSS producers under Program 20 are 'public bodies'; and

6. The finding that Hot Rolled Coil supplied under Program 20 was provided for less than adequate remuneration.

Minister's Decision

Hengshui received a final Dumping Margin of 23.7% and a countervailing duty of 4.6%.

The original Dumping Margin based on the Verification Visit of March 2012 was negative 2.44%

BASIS

Normal Value was subsequently constructed on the basis of an uplift of 32.9% on HRC prices being in accordance with s 269TAC(2) (c) as per ***para 6.7.2 of Report No 177***.

Product subsidy margin of 4.6% was determined in respect of **Program 20** as per ***para 7.4.3 of Report No 177***, being the program relating to HRC producers.

Support

This submission supports the findings and recommendations of the TMRO report in respect to:

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Claims Hengshui Benchmark Pricing HRC Costs

Direction No. 2

CBP (Customs) applied surrogate HRC costs to Hengshui's cost to make HSS resulting in an uplift of 32.9% on the basis it considers the costs incurred by HSS producers in China for HRC and narrow strip used in the investigation period do not reasonably reflect the competitive market costs in terms of ***Reg 180 (2)***.

Refer para 6.4.1 Report No 177

Customs' conclusion was that the HRC prices were artificially low due to Government of China intervention and influence.

However, Customs do not appear to have given any consideration to Hengshui's commercial leverage to buy HRC because of its volume of purchases for its total production of HSS   Customs has, in our opinion, assumed the HRC prices to be artificially low rather than rely on evidenced based data to support the uplift.

Any reasonable assessment of the entire Chinese market could only conclude that it is at least highly competitive and in regard to HRC producers it has, on our understanding, many more integrated steel producers than Taiwan, Korea or Malaysia combined.

Hengshui's purchases of HRC are, on any comparison, considered significant in terms of volume and thus buying power.

Whilst Customs claim they used the obtained HRC prices from Taiwan, Korea, Malaysia because they had been investigated and verified, Customs also applied some unverified price information from a reporting firm Steel Business Briefing (SBB).

Customs was provided with submission based on the Australian HRC producer's, Bluescope, presentation to the Australian Stock Exchange on 22nd August 2011 which stated:

> "SBB prices continue to be a reasonable public benchmark for Bluescope's domestic and Asian HRC prices."
>
> Bluescope's presentation stated that SBB's Asian, CFR (incl.) freight costs etc.) were as follows, US$ tonne:
>
> - July –Dec 2011 –US$ 611
> - Jan-June 2012 – US$ 722

This reference was provided to Customs in a Howard Consulting submission dated November 28, 2011, page 5.

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Relevance

Our opinion is that the Bluescope/SBB referenced HRC prices previously submitted to Customs during the Investigation were a more appropriate source than the weighted averages obtained from three market sectors that, because of the number of local HRC producers/suppliers and respective market sizes are arguably far less competitive than China's HRC market supply.

Comparing the actual prices paid by Hengshui for its HRC during same period, being the investigation period, the uplift of 32.9% cannot be supported even if the Customs utilisation of s 269 TAC (2)(c) is reaffirmed following this reinvestigation.

Particular Market Situation

Direction No.1

Particular Market Situation (PMS)

As the TMRO observed in ***para 102*** of his report, the reality is that Customs, as a result of its investigation of various country exporters, correctly concluded that HRC prices in China were lower than those in Taiwan, Korea and Malaysia.

The TMRO, however, concluded that this observation by Customs does not substitute for evidence of Government intervention that intentionally, or otherwise caused artificially low market prices for HRC and thus "unacceptable" domestic HSS prices.

Customs' policy is to apply its treatment and methodology on "dumping" and "subsidy" consistent with the WTO Agreement, which in the case of any PMS, is relevant to ***Article 2.4*** that provides for the administering authorities to either :

(a) Utilise representative Third country sales, or
(b) Apply the local producer's cost to make and sell the goods in question.

Our interpretation of the TMRO's findings and recommendations on Customs reliance on s 269TAC (2)(c) is that should the CEO maintain this reliance, the CEO needs to consider recommending to the Minister that a direction under s 269TAC(2)(d) is a possibility.

It is our understanding that s 269TAC (2)(d) is based on ***"part (a) of Article 2.4"*** .

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Public Bodies/ Adequate Remuneration

Directions No. 5 and No. 6

“Public Bodies” and Adequate Remuneration

Customs concluded that Hengshui benefitted by way of a Public Body subsidy UNDER Program 20 of 4.6% on the basis that its HRC suppliers were State Invested Enterprises, and thus Public Bodies.

The TMRO, at ***para 250***, concluded that Customs failed to evidence the fact that State invested HRC producers/suppliers are Public Bodies within the meaning and purpose of a countervailing subsidy provided for in s 269T.

The TMRO, at para 276, concluded that in addition to the HRC suppliers not being Public Bodies, there was also no evidence that the HRC suppliers sales prices “led to less than adequate remuneration”

It is also our view that if Customs had evidence of the HRC producers/suppliers being “Public Bodies” that provided a countervailable subsidy under the so termed Program 20, and that there was evidence that this benefit resulted in the HRC producers receiving less than adequate remuneration, then logically this evidence would have been the cause of the HSS domestic prices being considered “unsuitable” for normal value being determined under s 269TAC(1).

It follows therefore that any uplift on HRC prices should only have been on this basis, namely 4.6%. In any event the TMRO has found and recommended that not only did Report No. 177 lack the requisite evidence to support the findings on “Public Bodies” and “Adequate Remuneration”, this whole issue of Customs treating the China market for HSS as a PMS and applying HRC uplifts resulting in an unsubstantiated Dumping Margin of 23.7% is solely based on HRC prices in China being less than those in Taiwan, Korea, Malaysia.

Other Matters

Date of Sale and AEPs

Thyssen also supports the TMRO findings in relation to the contract date being the date of sale and that currency conversions should be applied in accordance with s 269TAF.

Whilst this submission is requesting Hengshui's Dumping Margin and subsidy margin be reconsidered on the basis of the TMRO findings and recommendations resulting in the Minister's directions to the CEO by way of ***Directions 1, 2, 5 and 6***, Thyssen would like to record its support for Ascertained Export Prices (AEPs) being expressed in the currency of the import/export transaction, namely US$ rather than the A$ as is the case in this investigation.

Summary

Based on the TMRO findings and recommendation affecting the calculation of Hengshui's Dumping and countervailing Margins, Thyssen is confident that the reinvestigation, particularly as it relates to the uplift of HRC prices, will result in a lesser Dumping Duty Margin for Hengshui.

Thyssen respectfully requests that the Countervailing Duty of 4.6% has no evidentiary basis and should be removed.

Please contact the writer for any clarification.

M J Howard

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