

17 August 2015

Director, Operations 2
Anti-Dumping Commission
Level 35, 55 Collins Street
MELBOURNE VICTORIA 3000

Dear Sir/Madam

Statement of Essential Facts No. 285 – Hollow Structural Sections Exported from the People’s Republic of China by Dalian Steelforce Hi-Tech Co., Ltd

Summary

I refer to Statement of Essential Facts No. 285 (“SEF 285”) published on 28 July 2015 in respect of the review of variable factors applicable to exports of Hollow Structural Sections (“HSS”) from the People’s Republic of China (“China”) by Dalian Steelforce Hi-Tech Co., Ltd (“Dalian Steelforce”).

The review of the variable factors applicable to the Chinese exporter Dalian Steelforce is of significance to Austube Mills Pty Ltd (“ATM”). ATM has reviewed SEF 285 and submits that:

- the revised variable factors examined in SEF 285 apply equally to exports of “alloyed” HSS by Dalian Steelforce to Australia;
- the determination of Dalian Steelforce’s normal value must include appropriate selling and general administrative costs;
- the determination of Dalian Steelforce’s normal value must include a level of profit;
- the inclusion of reasonable SG&A costs and a level of profit will result in dumping margins for Dalian Steelforce above negligible levels in the review investigation period; and
- the Commission has correctly assessed that raw material hot rolled coil (“HRC”) suppliers in China are public bodies and that Dalian Steelforce has benefited from HRC at less than adequate remuneration during the review period.
- In the absence of a verification visit to establish non-payment of a benefit under Program 5, the Commission cannot conclude that no benefit has been received.

ATM supports the Commission’s use of a “reputable independent source in reference to domestic hot rolled coil prices in Korea and Taiwan”¹ as the benchmark to reference the movements in Dalian’s HRC coil purchase costs. This is consistent with the Commission’s approach as set out in REP 267.

Goods coverage

Dalian Steelforce produces and exports non-alloy HSS and alloyed HSS to Australia. ATM notes that Dalian Steelforce has acknowledged this to be the case (refer Dalian Steelforce Exporter Questionnaire Response, Investigation No. 291). ATM further notes that the Commission’s discussion at Section 5.5.2.3 of SEF 285 refers to alloy HSS being “like goods”.

¹ SEF 285 Hollow Structural Sections – China P.19

The Commission is familiar with ATM's views that exports of alloyed HSS by Dalian Steelforce (and other exporters from countries the subject of the measures) are like goods to the non-alloyed HSS. The addition of boron to qualify the goods as "alloyed" is a strategic decision to avoid the anti-dumping measures.

ATM re-asserts its long-standing position that the alloyed HSS exported to Australia by Dalian Steelforce is the subject of the measures. As such, the review of the variable factors must take account of the domestic and export sales by Dalian Steelforce of alloyed HSS and be reflected in the revised variable factors (that will also apply to alloyed HSS exported to Australia by Dalian Steelforce).

Selling and general administrative costs

In determining Dalian Steelforce's SG&A costs under s.269TAC(2)(c) of the *Customs Act*, the Commission has stated that "Dalian Steelforce's domestic sales of like goods are not in the ordinary course of trade and therefore do not reasonably reflect the SG&A costs associated with the sale of like goods in China²". Further, the Commission concluded that Dalian Steelforce's "SG&A costs associated with those sales unsuitable for the purpose of constructing a normal value".

On the basis that the Commission has ruled out using Dalian Steelforce's SG&A costs for using in constructing a s.269TAC(2)(c) normal value for the exporter, ATM submits that similarly, Dalian Steelforce's conversion costs (i.e. HRC to HSS) similarly must be considered "unsuitable".

Notwithstanding this oversight, ATM does not consider that the use of Dalian Steelforce's SG&A in accordance with the "any other reasonable method" provision in subsection 44(3) of the *Regulations* is reasonable or appropriate. Dalian Steelforce's SG&A for export sales is considered to be understated when contrasted with the domestic SG&A of other Chinese HSS producers and does not reflect competitive costs incurred for domestic sales. The Regulation requires the SG&A to be based upon domestic sales information (subsections 44(3)(a) and (b)). The best available and relevant information requirement is implicit that the costs must be domestically incurred.

ATM does not consider that subsection 44 of the Regulations restricts the Commission from using the SG&A costs for domestic HSS of the other Chinese exporter the subject of review (Investigation No. 267). Subsection 44(3) refers to the "weighted average of the actual amounts of administrative, selling and general costs incurred by other exporters" in producing the like goods. The Commission does have access to the SG&A costs of the Chinese HSS producer/exporter Tianjin Youfa (Investigation No. 267) and these costs are *relevant* and *suitable* to be used as surrogate SG&A costs for Dalian Steelforce (as opposed to the understated *export* SG&A cost of Dalian Steelforce). The Tianjin Youfa SG&A costs are considered reasonable and relevant as they reflect actual SG&A costs for a domestic HSS producer in China for a similar period.

Level of profit

ATM submits that the Commission has erred by not including a level of profit in the Dalian Steelforce constructed normal value. Subsection 269TAC(5B) requires an amount of profit to be determined in accordance with subsection 45 of the *Regulations*. The Commission has in accordance with the regulations considered the requirements of Subsections 45(2) and (3). ATM disagrees with the the Commission's conclusion that it cannot work out an amount of profit for Dalian Steelforce as it is claimed that the only domestic sales of like goods in the ordinary course of trade are for "sub-prime or downgrade" goods. It is not clear from SEF 285 how the Commission was satisfied that the referred domestic sales that were confirmed as sub-prime or downgrade were not either a "like good" or a good of the "same general category" when subprime product whilst not suitable for sale to Australian standards may have been suitable sale to Chinese standards.

² Refer Statement of Essential Facts No. 285, P.20.

“ As highlighted and explained in Dalian Steelforce’s exporter questionnaire response, all sales of HSS on the Chinese market are exceptional sales, taken from stockpiles of non-prime products which failed to comply with strict quality control measures based on Australian Standards.³”

ATM contends that these sales – that are alike and considered as such by the Commission – can be used for determining a level of profit to be applied in Dalian Steelforce’s s.269TAC(2)(c) constructed normal value. The provisions do not permit the Minister to exclude the profit on sales of like goods that are described as “non-prime” goods by Dalian Steelforce. The non-prime goods are alike to the exported goods and the level of profit included in those domestic sales must be used on the basis of subsection 45(3) by “having regard to all relevant information”.

Without detracting from ATM’s views as to the profit on the domestic sales of Dalian Steelforce’s sales of non-prime HSS, where it is deemed that these sales are unsuitable, the Commission can avail itself of the profit on domestic sales by the other Chinese HSS producer, Tianjin Youfa (from Investigation No. 267). Subsection 45(3)(b) of the *Regulations* does not limit the Minister from applying the level of profit to Dalian Steelforce’s constructed normal value where only one additional Chinese exporter’s profit is available.

It is ATM’s position that there is sufficient “relevant information” upon which to calculate an amount of profit to be applied to Dalian Steelforce’s constructed normal value and that either of the proposed options is considered “reasonable”.

SEF 285 indicates that the dumping margin determined for Dalian Steelforce (based upon export prices during the review investigation period and the constructed normal values) was “negligible”. ATM submits that the inclusion of a relevant SG&A expense for domestic sales and a reasonable level of profit will result in the dumping margin for Dalian Steelforce being above negligible levels.

Subsidies

In Report No. 177 the then ACBPS determined that Dalian Steelforce had received benefits under two programs, namely:

- (i) Program 5 – Matching Funds for International Market Development for SMEs; and
- (ii) Program 20 – Hot rolled steel provided by government at less than fair market value.

The Commission has determined for this review that it *“has identified no evidence to suggest that any matching funds for international market development for small and medium enterprises were paid to Dalian Steelforce, therefore program 5 will not be considered for the purposes of this review”*.

It is noted by ATM that Dalian Steelforce is not contending that the Government of China (“GOC”) has not ceased providing funds to eligible companies under this program. Rather, the Commission has declared that it has “no evidence” to suggest that Dalian Steelforce has received a benefit under this program. In light of the Commission’s decision not to visit Dalian Steelforce and verify the information included in its EQR this outcome of “no evidence” is not surprising. ATM is disappointed with the Commission’s readiness to robustly test:

- (i) the ongoing validity of Program 5; and
- (ii) independently test whether Dalian Steelforce has received a benefit under Program 5.

³ Page 24 Dalian SteelForce Exporter Questionnaire

Where the Commission elects not to undertake a verification visit with a cooperative exporter, it is insufficient and unacceptable for the Commission to state that it has “identified no evidence” as to the receipt of any benefit by the exporter under a Program that has previously found to have received a countervailable benefit.

In respect of Program 20, the Commission determined in Report No. 177 that Dalian Steelforce’s exports over the 2010/11 investigation period were dumped with margins of 13.4 per cent. The Dalian Steelforce Exporter Visit Report confirmed prior to the publication of SEF No. 177 that Dalian Steelforce’s exports were not dumped with a margin of -3.4 percent. The change in the determined dumping margin for Dalian Steelforce (from -3.4 per cent to 13.4 per cent) followed the ACBPS’ finding that Chinese HSS producers benefited from HRC purchases at less than adequate remuneration.

In this review inquiry the Commission has found that Dalian Steelforce has received a benefit under Program 20 that translates to a subsidy margin of 3.8 per cent (based upon the Commission’s assessment there being no benefit received under Program 5). It has been established by the Commission that Dalian Steelforce has received a benefit for its purchases of HRC at less than adequate remuneration (as reflected in the determined subsidy margin). The Commission has indicated that it is satisfied that HRC suppliers in China (including for the provision of HRC to Dalian Steelforce) are public bodies, and thereby acting as an extension of government in supplying raw material HRC at less than adequate remuneration.

Dalian Steelforce has argued that its raw material suppliers cannot be considered “public bodies” and thereby Program 20 can be considered not to exist. ATM rejects Dalian Steelforce’s claims. The Commission established that HRC purchased by Dalian Steelforce was from suppliers that “were either SIEs or sold HRC produced by an SIE”. The Commission further established that all but one of Dalian Steelforce’s HRC suppliers was owned by the state-owned assets supervision and administration authority (“SASAC”) and subject to the Interim Regulation on Supervision and Management of State-Owned Assets of Enterprises that evidenced more than just ‘mere ownership’ of the suppliers and extended to evidencing “meaningful control” over the suppliers.

The Commission has correctly concluded that Dalian Steelforce’s suppliers of HRC are the subject of control by the GOC via the state-owned SASAC that is involved in the administration and control of the SIEs.

Conclusions

ATM is firmly of the view that exports of alloy HSS by Dalian Steelforce are the subject of the measures applied by the Minister on HSS exported from China in 2012. As such, the review of the variable factors in this inquiry extends to Dalian Steelforce’s exports of alloy HSS. ATM has demonstrated that the correct SG&A cost (to apply to Dalian Steelforce’s constructed cost normal value) that is reasonably available to the Commission in accordance with subsection 44(3) of the *Regulations*, is that identified for another Chinese producer of HSS the subject of review inquiry No. 267. ATM further submits that a level of profit should be included in Dalian Steelforce’s constructed normal value, sourced from the profit achieved for another domestic HSS producer in China (i.e. as per Inquiry No. 267). The revised normal value for Dalian Steelforce will result in a revision of the dumping margin applicable for the review period which it is anticipated will exceed negligible levels.

ATM contends that the Commission cannot be reasonably satisfied as to the absence of information in respect of Program 5 and any benefit received by Dalian Steelforce. No information has been furnished to indicate that the program has ceased to operate. In the absence of a verification visit to establish non-payment of a benefit under Program 5, the Commission cannot conclude that no benefit has been received. ATM concurs with the Commission that Dalian Steelforce’s HRC suppliers are SIEs that are the subject of meaningful control by the GOC. As a consequence, Dalian Steelforce continues to receive benefits under Program 20 in respect of locally sourced HRC, and that a countervailable benefit has been received by the exporter.

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If you have any further questions concerning this letter please do not hesitate to contact me on (07) 3909 6130 or ATM's representative John O'Connor on (07) 3342 1921.

Yours sincerely

A handwritten signature in black ink, appearing to read "B Willcox", with a long, sweeping horizontal stroke extending to the right.

Brett Willcox
Manager – Operations and Support Services