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June 4, 2013

BY E-MAIL

**International Trade Remedies Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra act 2601
Australia
Attention: Director Operations 2**

Re: Subsidy Investigations on Galvanized Steel (INV No. 193a) and Aluminium Zinc Coated Steel (INV No. 193b) from the People's Republic of China

Dear Sir or Madam:

On behalf of Yieh Phui (China) Technomaterial Co., Ltd. ("Yieh Phui China"), a producer/exporter of the goods under consideration originating in China, we hereby submit our comments to the Preliminary Affirmative Determination released by the Customs and Border Protection on May 15, 2013 for the above-captioned proceedings (PAD 193) and the accompanying Statement of Essential Facts Number 193 (SEF 193).

I. The Customs and Border Protection's Treatment To Hot Rolled Coils Purchased by Yieh Phui China In Both Anti-dumping And Subsidy Investigations Constitutes Double Remedies and Violates Article 19.3 of the WTO SCM Agreement

Article 19.3 of the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement") of the World Trade Organization (WTO) requires the WTO members

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to levy countervailing duties “in the appropriate amounts in each case”. The WTO Appellate Body in *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*¹ has ruled that this obligation prohibits members from imposing “double remedies.”²

“Double remedies” may arise when both countervailing duties and anti-dumping duties are imposed on the same imported products. However, the term “double remedies”, does not refer simply to the fact that both an anti-dumping and a countervailing duty are imposed on the same product. Rather, as explained by the Appellate Body, “double remedies” (also referred to as “double counting”), “refers to circumstances in which the simultaneous application of anti-dumping and countervailing duties on the same imported products results, at least to some extent, in the offsetting of the subsidization twice.”³

The Appellate Body emphasized that under Article 19.3 of the SCM Agreement, “the appropriateness of the amount of countervailing duties cannot be determined without having regard to anti-dumping duties imposed on the same product to offset the same subsidization. The amount of a countervailing duty cannot be ‘appropriate’ in situations where that duty represents the full amount of the subsidy and where anti-dumping duties, calculated at least to some extent on the basis of the same subsidization, are imposed

¹ Appellate Body Report, *United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 11 March 2011 (“*US — Anti-Dumping and Countervailing Duties (China)*”).

² Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 599. As the Appellate Body put it, “as a legal matter, this provision prohibits double remedies.”

³ Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 541.

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concurrently to remove the same injury to the domestic industry.”⁴ This means, to comply with Article 19.3, Customs and Border Protection in applying antidumping and countervailing duties concurrently on the same imports (i.e., galvanized steel and aluminium zinc coated steel) from China must evaluate whether anti-dumping margins are influenced by government subsidies and, if so, must reduce any related countervailing duties accordingly.

As explained below, Customs and Border Protection’s treatment to the HRCs purchased by Yieh Phui China concurrently in the above-captioned subsidy investigations and the dumping investigations of the same products constitutes “double remedies” and violates Article 19.3 of the SCM Agreement.

Customs and Border Protection in the subsidy investigations of galvanized steel and zinc coated steel originating from China has preliminarily found that the hot rolled steel coils (HRCs) purchased by Yieh Phui China from Chinese state invested enterprises (SIEs) are at less than adequate remuneration and that such benefit conferred through the purchase of HRC is a specific and countervailable subsidy.⁵ In calculating the subsidy margin for Yieh Phui China in PAD193, Customs and Border Protection has included this subsidy program and determined the amount of subsidy based on the “difference between adequate remuneration (as established) and the actual purchase price paid for HRC incurred by the selected non-integrated cooperating exporters in purchasing these goods from SIEs.”⁶

⁴ Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 582.

⁵ SEF 193, pages 47-51.

⁶ SEF 193, page 50.

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Customs and Border Protection has apparently violated the mandate of Article 19.3 of the SCM Agreement by determining the amount of subsidy for Yieh Phui China “without having regard to anti-dumping duties imposed on the same product to offset the same subsidization.”

Specifically, in the dumping investigations of galvanized steel and aluminium zinc coated steel exported from China (Investigation No. 190a and 190b), Customs and Border Protection found that there is a particular market situation in relation to the galvanized steel and aluminium zinc coated steel in the Chinese market which renders the domestic selling prices unsuitable to be used as the normal value in the dumping margin calculation. As a result, the normal values used in the dumping margin calculation for Yieh Phui China were constructed based on Yieh Phui China’s respective cost of production and profit.⁷ In calculating the constructed normal values, the actual purchase costs of hot rolled coils were not used and instead, the prices obtained from external benchmarks were used to replace Yieh Phui China’s actual purchase costs, because Customs and Border Protection found that the Chinese government influences distorted the Chinese domestic selling prices of hot rolled coil such that the Chinese domestic hot rolled coil selling prices do not reflect competitive market costs.⁸

It is clear that any injury caused by the subsidization or economic distortion on the HRCs purchases by Yieh Phui China in producing the galvanized steel and aluminium zinc coated steel it exported to Australia had already been “offset” or “remedied” in the dumping

⁷ SEF 190, pages 50-51.

⁸ SEF 190, page 50.

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investigations by using the constructed HRC values rather than Yieh Phui China's actual purchase costs. The inclusion of the same subsidization (or distortion) in the subsidy investigations of the same products thus offsets the same subsidization on HRCs purchased by Yieh Phui China a second time. Such "double remedies" are in violation of Article 19.3 of the SCM Agreement as explained above.

Therefore, to comply with the mandates of Article 19.3, Customs and Border Protection in its final report of subsidy investigations of galvanized steel and aluminium zinc coated steel must exclude the subsidized HRCs purchased by Yieh Phui China to avoid "double remedies" and to reflect the "appropriate amount" of subsidy that Yieh Phui China actually received during the investigation period.

II. Even If Customs and Border Protection Decides to Include the Subsidized HRCs Purchased by Yieh Phui China In the Calculation of the Subsidy Amount For the Final Report of the Subsidy Investigations, Customs and Border Protection Should Recalculate Yieh Phui China's Subsidy Amount With Regard to Its Purchases of HRCs from [REDACTED]

As explained above, Customs and Border Protection's inclusion of subsidized HRCs purchased by Yieh Phui China in the subsidy investigations of galvanized steel and aluminium zinc coated steel constitutes "double remedies" prohibited by WTO rules. Nonetheless, if Customs and Border Protection decides to include the subsidized HRCs purchased by Yieh Phui China in the final report of the subsidy investigations of galvanized steel and aluminium zinc coated steel, Customs and Border Protection should, at a

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minimum, recalculate the subsidy margin for Yieh Phui China on its purchases of HRCs from [REDACTED].

Yieh Phui China reported its HRCs purchases during the investigation period in Exhibit 2 of its response to the initial questionnaire of the subsidy investigations. The data shows that the purchases of HRCs from [REDACTED] during the investigation period accounts for approximately [REDACTED]% of its total purchases of HRCs during the investigation period.

[REDACTED], as a supplier of HRCs to Yieh Phui China, is also a cooperating exporter of the galvanized steel and aluminium zinc coated steel in the above-captioned subsidy investigations. During the course of investigations, Customs and Border Protection gathered and verified information submitted by [REDACTED] and has preliminarily found that the subsidy received by [REDACTED] in relation to the galvanized steel and zinc coated steel it exported to Australia was both negligible. In reaching those findings for [REDACTED] in the subsidy investigations, we believe that Customs and Border Protection must have also gathered sufficient evidence to determine the subsidy amount in relation to [REDACTED] sales of HRCs in the Chinese domestic market. If so, Customs and Border Protection should rely on the level of subsidization on HRCs sold by [REDACTED] in the Chinese domestic market in calculating the subsidy amount on HRCs Yieh Phui China received during the investigation period, instead of calculating the subsidy amount of HRCs purchases by Yieh Phui China from [REDACTED] by using the “difference between

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adequate remuneration (as established) and the actual purchase price paid for HRC incurred by the selected non-integrated cooperating exporters in purchasing these goods from SIEs.”

We note that Customs and Border Protection is subject to an affirmative obligation to ascertain the precise amount of the subsidy under the WTO rules.⁹ This obligation, according to the Appellate Body, “encompasses a requirement to conduct a sufficiently diligent ‘investigation’ into, and solicitation of, relevant facts, and to base its determination on positive evidence in the record.”¹⁰ Thus, if Customs and Border Protection, through the subsidy investigations on [REDACTED], holds sufficient evidence on the record the “precise” amount of subsidy in relation to the HRCs [REDACTED] sold in the Chinese domestic market, it should use that evidence in determining the subsidy Yieh Phui China received on its purchases of HRCs from [REDACTED], instead of using a more general and less specific subsidy amount calculated based on the “difference between adequate remuneration (as established) and the actual purchase price paid for HRC incurred by the selected non-integrated cooperating exporters in purchasing these goods from SIEs.”

III. Conclusion

In light of the foregoing, Yieh Phui China respectfully requests Customs and Border Protection to exclude the subsidized HRCs purchased by Yieh Phui China in the calculation of subsidy margin for Yieh Phui China, so that the “double remedies” concurrently applied to the same subsidization by both anti-dumping and countervailing duties that are

⁹ Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 602.

¹⁰ Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, para. 602.

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prohibited by WTO rules can be avoided. Nonetheless, if Customs and Border Protection decides include the subsidized HRCs purchased by Yieh Phui China in the final report of the subsidy investigations of galvanized steel and aluminium zinc coated steel, Customs and Border Protection should recalculate Yieh Phui China's subsidy amount on its purchases of HRCs from [REDACTED] based on the record evidence of [REDACTED]'s actual amount of subsidy received in relation to its sales of HRCs in the Chinese domestic market.

Please let us know if you have any questions regarding this submission.

Very truly yours,



Jay Nee