

August 28, 2015

Mr Tim King
Investigator
Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne Vic 3000

Via email: tim.king@adcommission.gov.au
Cc: candy.cadallero@adcommission.gov.au

Dear Mr King

Re: CASE NO. 264

This Submission is made on behalf of Wei Chih Steel Industrial Co., Ltd. (Wei Chih) of Taiwan and is in response to the case management team's discretionary treatment and methodology applied in determining a preliminary Dumping Duty Margin of 4.7% on Wei Chih exports during the period 1/7/13 – 30/6/14.

Wei Chih respectfully submits that the Commission must base its final recommendations on the best admissible information available and in our opinion the commission also has an absolute positive duty to elicit any such information.

Wei Chih further submits that a number of relevant factuals have been evidenced by way of information verified by the Commission's visit team to Wei Chih in May 2015 and by confidential submissions made post the Verification Visit.

In our opinion, the Commission has a real and clear duty to take all steps to ensure that all of its determinations are not only appropriate but WTO compliant.

Wei Chih strenuously rejects therefore the Commission's preliminary finding of 4.7% Dumping Margin as it is based on two erroneous considerations, namely those relating to a profit margin and the weight adjustment factor.

Profit Element:

1. The Commission has applied a xx% profit margin to the constructed cost to make and sell in accordance with Regulation 45 (2).
2. Wei Chih sold circa xxxxxxxx Tonnes of like goods on the domestic market, of which 99% were to customers at the wholesale level of trade (para 8.1 Visit Report).

3. Sales to all other customers obviously accounted for 1% of domestic sales including sales to end-user customers, such as the one in question to xxx xx.
4. In terms of delivery, sales to the wholesaler customers were all on an ex-works basis and only those minimal sales to end-user customers were delivered to customer's site. – (para 8.2 Visit Report).
5. As has been clearly evidenced by the Commission, the sale on which the xx% profit margin has been based was a sale to an end-user customer comprising xxxx Tonnes, accounting for 0.023% of domestic sales (Confidential Appendix 3).
6. As also evidenced by the Commission – (Confidential Appendix 3, Domestic Sales Summary), being to an end-user customer, that sale was delivered, having incurred a delivery cost of NTD xxxxx and which is clearly in addition to the CTMS value of NTD xxxxxx.
7. On our reckoning the actual cost of this sale therefore was xxxxxx+ xxxxx= NTD xxxxxx
8. The invoiced value of this sale was NTD xxxxxx incurring a sale loss of NTD xxxxx or 5.4%.and in our opinion a 'sale' is defined by the customer order.
9. Para 10.2.2 of the Visit Report concluded that inland transport charges for domestic sales "is an insignificant adjustment and has no material effect on the Dumping Margin calculation".
10. The Commission's selection and treatment of two lines of what was a seven line invoiced sale transaction as being in the ordinary course of trade when all seven lines of that one sale had an allocated cost of delivery that resulted in only one of those seven invoice lines, namely xxx Tonnes of SD xxx, being an actual profit line.

11. Sale details are:

| | |
|-----------------|-----------------|
| Invoice No: | xxxx xxxx 13001 |
| Order No: | xxx xxx |
| Customer: | xxx xx |
| Level of Trade: | End-user |
| Payment Terms: | Deposit + T.T. |
| Delivery: | To site |

11.1 “Profit Lines” – Table No. 1 (NTD)

| Type | # | Tonnes | Invoice Value | CTMS | Delivery | Result |
|---------------|---|--------|---------------|------|----------|----------------|
| SD | 5 | | | | | |
| SD | 8 | | | | | |
| Others | | | | | | - |
| Totals | | | | | | -36,262 |

Source: Confidential Appendix 3

Line x Line details as per Confidential Attachment.

12. Conclusions

12.1 If under any reasonable consideration and interpretation of Reg 45 (3) that the sale of order xxx xxx was (i) in the ordinary course of trade, and (ii) that the sale was in the broader sense, a representative sale, then only the invoice line of xxxx Tonnes which had a solitary positive return on cost of 1.19% or 1.2% rounded, could ‘ever’ be applied to a constructed cost to make and sell under s.269 TAC(2)(e)(a).

12.2 Contrary to para 10.2.2 of the Visit Report, in-land transport is relevant to the imposition of xx % profit margin and thus the preliminary determined Dumping Duty Margin is considered flawed on the basis of Table No. 1.

12.3 The application of any profit margin however is clearly not appropriate as the invoice line of xxxx Tonnes of the only period sale to an end-user could never reasonably be considered a representative sale or in the ordinary course of trade.

12.4 Regulation 45(3)(a) therefore must be applied resulting in a zero profit.

The Commission supports its treatment and imposition of a profit margin because of what it considers to be sales in the ordinary course of trade as outlined in Section 7.2 of the Dumping and Subsidy Manual.

That Section is not legislation and is clearly open to interpretation and discretionary treatment as it reads: -

“Depending on the circumstances profitable sales **may** not be in the ordinary course of trade. These circumstances **may** include sample sales, promotional sales made at special prices, end of season sales, low quality sales **or sales in other unusual circumstances**”.
(emphasis added).

Wei Chi totally rejects the Commission's statement that the circumstances specified in Section 7.2 of the manual "do not apply to the two invoice sales lines in this matter".

Apart from one of those lines not being profitable the one remaining invoice line that was profitable was, in the context of every other invoiced sales lines, anything other than being in the **usual** circumstance.

13. **Weight Factor**

The best information available to the Commission is the verified evidence based on the following documentation: -

- Wei Chih Contract
- Mill Test Certificate
- Wei Chih Commercial Invoice

14. The Verification Visit selected eight export transactions that evidenced export sales were either on a theoretical weight or actual weight basis – Section 6.4 of Visit Report and Conf. Attachment Exp. 1 refer.

15. Details of those selected shipments were: -

Table No. 2

| Invoice No. | Tonnes | |
|---------------|--------|--|
| 13 | | |
| 13 | | |
| 13 | | |
| 13 | | |
| 14 | | |
| 14 | | |
| 14 | | |
| 14 | | |
| Totals | | |

16. The sales contracts for each of those invoiced shipments all stated that Wei Chih supplied the goods in accordance with a mass tolerance of plus/minus 4.5%.

17. Wei Chih submits that the random selection of invoices as per Table No. 2 provided a reasonable representation of the factual reality on the weight adjustment factor.

18. If considered necessary Wei Chih also submits that the Commission had the obligation and opportunity to elicit any further substantiation of the weight adjustment factor if the random selection of Table No. 2 was in any way insufficient.

19. Regardless, the Verification Team did, however, **evidence** the following:

- Invoiced shipments using theoretical weight the calculated weight was x% less than the invoiced quantity.
- Invoiced shipments using actual weights the calculated weight was x% less than the invoiced weight. (Para 10.1.6 of Visit Report).

20. Additional to Table No. 2, and by way of further substantiation, the factual reality of the evidenced findings of the Visit Report, as provided by other copy documentation and including a specific statement that it rolls light to a tolerance of minus x%.

21. Table No. 3

| Actual Tonnes | Theoretical Tonnes | Total Tonnes |
|---------------|--------------------|--------------|
| 39.84% | 60.16% | 100% |

22. Conclusions

22.1 Applying x% tolerance to the actual Tonnes and x% to theoretical Tonnes quantity, the result is as follows:

Table No. 4 (adjusted total)

Actual less x% = tonnes

Theoretical less x% = tonnes

Total adjusted: tonnes

22.2 The weighted average outcome of Table No. 4 is that the total actual Tonnes of all shipments is x% less the invoiced total Tonnes.

22.3 Given that the Commission's basic practice for determining evidenced outcomes is to apply the weighted average methodology, the evidenced reality is that the weight adjustment must be x%.

23. The Commission in para 10.1.6 of the Visit Report has applied the x% adjustment but only to the theoretical invoiced Tonnes on the basis of what it reasoned was for "maintaining consistency".

24. That treatment not only ignores the factual reality as evidenced by Verification, it is simply illogical and must be altered to apply the x% in respect of the total Tonnes.

25. The Commission's statement that there was insufficient data to take into consideration other factors is simply disingenuous as the basic criteria is determining the kg weight per metre and all relevant documentation supported that.

SUMMARY

26. Wei Chih submits that if the Commission is to maintain its preliminary post verification treatments it may be tantamount to engineering what could be considered a confected Dumping Duty Margin when in fact our calculations result in a negligible margin of dumping being less than 2%.

27. Wei Chih's calculations on what is an appropriate ex-works basis is provided as a confidential attachment that results in a Dumping Duty Margin of 1.84%.

28. It is also Wei Chih's position that even if the I.P. exports resulted in a Dumping Duty Margin of 2% or more, the Commission has no basis for determining if future exports from Wei Chih are likely to be at dumped prices of 2% or more.

Wei Chih did not export at dumped prices, being less than 2%, and has not exported to Australia since September 2014. Prices of Scrap, and Billet have decreased significantly since the I.P as evidenced by reporting service Platts.

Please contact the writer for any clarification or further information and we thank you for your consideration.

Regards

A handwritten signature in black ink, appearing to read 'J. Howard', with a stylized, flowing script.

Jack Howard