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PUBLIC RECORD VERSION

September 26, 2012

Mr John Bracic
Director
International Trade Remedies Branch
Australian Customs & Border
Protection Services (CBP)
Canberra ACT 2601

Via email: John.Bracic@customs.gov.au
Cc: Lydia.Cooke@customs.gov.au

Dear Mr Bracic

- **Shang Chen Steel Co Ltd (SC)**
- **Exporter Visit Report (EVR)**

We write to you in response to the Visit Report (EVR) received in respect to the exporter Shang Chen Steel Co Ltd (SC) and as the representative of all three parties involved with the relevant transactions, namely:

- Shang Chen (SC)



Firstly, it needs to be noted that a public record version of the EVR was forwarded to your branch on Tuesday, 25th September 2012.

The visit to SC concluded on Tuesday 28th August 2012 and we received the EVR on Tuesday 18th September 2012. Given the need for the exporter to have a reasonable opportunity to absorb the report we do not consider it unreasonable that it required one week for a response.

Secondly, we also want to record our appreciation of the Verification Team's production of the EVR on its visit to SC.

M.J. Howard – Mobile: 0459 212 702
Email: mjh@howardconsulting.com.au

We recognize and appreciate that the challenge for companies like SC is that their accounting software and nationally compliant record keeping is not always in accordance with the CBP's mostly prescriptive approach to issues of substantiation for an Investigation Period contrary to the exporter's normal fiscal reporting period.

Nevertheless there can be no valid issue with the exporter SC having been fully cooperative with this Investigation and in our opinion – due consideration and tolerance should be factored into the CBP's findings and conclusions simply because of the burdensome need for reasonably satisfying the CBP's requirements on certain obvious but fully absorbed costs and expenses in the exporter's production, movement and sale of the relevant goods during the CBP's prescribed period.

Thirdly, we write to you in the context of an SEF "needing" to be placed on the public record by the 3rd October 2012 and the 'provisional' dumping duty margin for SC being less than 4% when this Investigation commenced with a presumed dumping margin of 19.95%.

We respectfully submit that this response is reasonably timely for you to properly consider it in respect of the SEF's content and request that as the delegate you fully consider the justification of imposing provisional measures on current shipments of subject goods from SC.

Claims

The EVR states that the volume of SC exports to Australia during the IP comprised 1% of its total sales and concludes that such goods, when analyzed on a month by month basis, resulted in a dumping margin of 3.34%.

These two factors should be sufficient grounds for not imposing any provisional Measures but our immediate concern on the general basis of reasonableness is the CBP's treatment of the Date of Sale consideration.

Date of Sale Consideration

Para 4.2.3 of the EVR refers to this consideration and concluded that the invoice date "to be the Date of Sale for both export and domestic sales".

We do not accept that to be commercially or legally correct and without detracting from the obvious and painstaking efforts in producing the EVR we are obligated to challenge this finding as our analysis based on the date of contract resulted in a "provisional" dumping margin of less than █%.

Basis for Claim

We respectfully submit that the context of para 4.2.3 is about comparing domestic and export sales at the same time which in this case was not considered necessary as the goods for both type of sale were “made to order”.

That consideration is, however, an entirely different one to what commercially and legally constitutes a Date of Sale and we unequivocally state that it is neither the date of invoice nor the date of shipment.

SC has two Australian customers, namely [REDACTED] and [REDACTED] as previously stated.

CBP visited both [REDACTED] and [REDACTED] on the basis of Importer Visit Verifications.

Both [REDACTED] and [REDACTED] advised CBP during those respective visits that their Date of Sale was in fact their Date of Contract with SC.

In our opinion it is not for the exporter SC to determine the relevant Date of Sale for export sales but the Australian importers.

Para 4.7 of the SC EVR concludes:

“Therefore, we are satisfied that Export Prices of direct export sales can be established under s 269 7AB(i)(a) of the Customs Act 1901², being the price paid or payable by the importer less any part of the price that represents a change in respect of transport of the goods or in respect of any other matter arising after exportation”.

s 269 TAB (i)(a) clearly supports what has been historically and universally accepted in the real world of Commerce and Trade in that the date of sale is the contract date and the actual export price is the price paid (or payable) by the importer and not the indigenous amount accounted for in the sales revenue of the exporter.

In this case the importers transacted in US\$ currency which had an A\$ amount paid on the date of contract and not some notional value determined by an exchange rate said to apply some 45 days to two months being “from the contract date to shipment”
– ***para 4.1.1 refers.***

Also in this case the exporter’s sales transactions to [REDACTED] and [REDACTED] listed a contract number for each transaction which incorporated the date of the contract.

Conclusion

As the delegate we urge you to consider our basis for supporting the Date of Sale to be the Contract Date and that this comparison of actual prices paid for the export sale by the importer results in a different Dumping Margin which we submit is provisionally less than █%.

We also reserve the right to submit further challenges on the basis of reasonableness in relation to treatment of other factors such as “bonuses”, “inland cartage”, etc.

Given the importance of “timeliness” in relation to the pending SEF we have confined this response to what we consider to be the most critical issue in terms of the current CBP Dumping Margin for SC.

Thank you for your consideration and please contact M.J. Howard should CBP require any further substantiation of our claim on Date of Sale.

Sincerely,



M.J. Howard