

2 October 2012



Chung Hung Steel Corporation

Alleged dumping of hot-rolled coil

Certain issues concerning desk audit report prepared by Australian Customs

1 Credit cost adjustment

At para 7.3 of the Report, it is stated that a downward adjustment is to be made to the normal value for the additional credit costs incurred on CHS's domestic sales. However, it seems to us that in applying this adjustment to then arrive at the "total NV" (column AV/"like goods sales" worksheet/"Normal value" spread sheet), this credit cost was used as an "upwards" adjustment. We believe this to be a mistake.

Further, we note that the credit cost is accounted for as [CONFIDENTIAL TEXT DELETED – details of calculation]. We assume [CONFIDENTIAL TEXT DELETED]% is applied as the average interest rate of the investigation period for calculating the credit cost. However, according to CHS's own borrowing rate (provided to Customs in Attachment 28 of its EQ response) the average interest rate during the period of investigation was [CONFIDENTIAL TEXT DELETED]%.

We submit that Customs should use this figure as the interest rate in calculating the credit term.

NON-CONFIDENTIAL VERSION

2 Normal value

As stated at page 17 of the Report, Customs was able to find sufficient domestic sales of like goods that passed the OCOT test for [CONFIDENTIAL TEXT DELETED] models. This allowed Customs to determine normal value according to section 269TAC(1) of Customs Act.

It is also stated at page 18 of the Report that Customs *"assessed a preliminary dumping margin, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period in accordance with subsection 269TACB(2)(a)."*

However, for those models for which Customs was satisfied that normal value could and should be worked out according to section 269TAC(1) because there was a sufficient volume of domestic sales in the ordinary course of trade during the *whole* of the investigation period, Customs used an additional methodology for *"those monthly periods where no such domestic sales existed"*. It is stated that *"For those months where there were no suitable domestic sales of like goods in the ordinary course of trade, we recommend that the normal values be established under s.269TAC(2)(c) using the cost to make and sell of the exported goods plus a reasonable amount of profit"*.

We submit that it is incorrect to "make up" normal value under section 269TAC(2)(c) where Customs is satisfied that normal value of the same model should be worked out under 269TAC(1).

It is clear that the OCOT test is conducted for the *whole of the investigation period*. Accordingly, a finding that a model has a sufficient volume of domestic sales in the ordinary course of trade, is a finding that such model has sufficient volume of domestic sales in ordinary course of trade for the *whole of the investigation period*. It is also clear that the comparison, for the purpose of determining the dumping margin, is between the normal value of the *whole* of the investigation period and the export prices over the *whole of the investigation period*.

Further, according to section 269TAC, normal value is to be worked out according to section 269TAC(1) unless one of the exceptions under section 269TAC(2)(a) and (b) applies – that is, unless the normal value cannot be worked out according to section 269TAC(1).

Section 269TAC(1) provides that:

...the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods...

Customs found that for [CONFIDENTIAL TEXT DELETED] models, normal value could be worked out under section 269TAC(1) – because the domestic sales for those models were made in the ordinary course, and the volume of those sales was more than 5% of the export volumes of the same model during the *whole of the investigation period*. Such sales, according to section 269TAC(1), are to be used as the normal value of the same models exported to Australia. Therefore, the situation of there being no domestic sales in a certain month within that investigation period, either because no sales were made in that month, or that all the sales made in that month were not sales made in the ordinary course of trade, does not mean there are no, or a low volume, of domestic sales of like goods in the ordinary course of trade. Nor does it give Customs the option to work out normal value for that model, “sometimes” under section 269TAC(1), and “some other times” under section 269TAC(2). We submit that adoption of the approach under section 269TAC(1) precludes the concurrent use of the method under section 269TAC(2).

Clearly, if the lack of OCOT sales in one particular month can be considered as an “absence” of suitable domestic sales for the purpose of determining normal value under 269TAC(1), then such absence should equally be considered under section 269TAC(13) which means any constructed normal value in accordance with section 269TAC(2) must not include any profit.

Further, we are concerned that the approach of making comparison of the export prices to the corresponding normal value on a monthly basis is not consistent with section 269TAC(2A) that, even if the comparison is between a period shorter than the whole investigation period, such shorter period cannot be less than 2 months.

3 Other issue

At page 7 of the Report, in the summary of CHS's sales to Australia by product finish, it is stated that CHS exported [CONFIDENTIAL TEXT DELETED] MT of Pickled and Oiled HRC steel and [CONFIDENTIAL TEXT DELETED] MT of Bare HRC. It should be [CONFIDENTIAL TEXT DELETED] MT for Pickled and Oiled and [CONFIDENTIAL TEXT DELETED] MT for Bare.

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