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Union Steel China Co., Ltd

Alleged dumping of aluminium zinc coated steel

Rectification of certain issues concerning visit report and margin calculation as prepared by Australian Customs

1 USC SG&A

At 6.7.2 of the Report, in relation to extraordinary gains and losses, it is said:

[CONFIDENTIAL TEXT DELETED – details of financial information yet to be finalised]

USC considers that that there might be some confusion in this regard. The statement about the “main reasons” as referred to in the above paragraph is not in relation to Union Steel China. It is in relation to Wuxi. USC understands that Customs already removed that part of the interest expenses in calculating Wuxi’s SG&A.

Accordingly, USC submits that the [CONFIDENTIAL TEXT DELETED – non-operating expenses] should not be removed from the SG&A calculation for USC. For your convenience, we attach a revised SG&A spread sheet from Customs’ dumping calculation spread sheet for USC indicating the correct calculation. Please see **Appendix 1** [CONFIDENTIAL ATTACHMENT]

2 Date of sales

In relation to “date of sale”, USC advised in its EQ response:

All of USC’s exports to Australia were [CONFIDENTIAL TEXT DELETED - sales terms] sales. USC considers the date when [CONFIDENTIAL TEXT DELETED – details of sales arrangement] as being the date of sale for its exports.

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The Visit Report states that the invoice date was used as the “date of sale” in the dumping margin calculation - and that Customs did not use the date of sale as reported by USC - because:

USC reported two dates in the Australian Sales spread sheet. It identified the invoice date and a second date... **[CONFIDENTIAL TEXT DELETED – details of date of sales]**.

USC considers that there might be some misunderstanding regarding this issue. USC would like to clarify that the date of sale it reported – the date that “**[CONFIDENTIAL TEXT DELETED – details of date of sales]**” - is well documented and does correspond to the **[CONFIDENTIAL TEXT DELETED – details of sales arrangement]**. This was presented to Customs during the verification. For example, please see USC’s **[CONFIDENTIAL TEXT DELETED – details of sales arrangement]** record at page 8 of the verification package for USIV00005432 and page 9 of the same document for USIV00005505. For your convenience, please see **Appendices 2 and 3. [CONFIDENTIAL ATTACHMENTS]** The **[CONFIDENTIAL TEXT DELETED – details of sales arrangement]** date is stated at the first column of those records.

During the verification, the verification team asked whether USC regards the **[CONFIDENTIAL TEXT DELETED – details of sales arrangement]** date as the date of sale for its export sales. USC confirmed this was the date of sale **[CONFIDENTIAL TEXT DELETED – details of sales arrangement]**, and presented these sales documents. These were verified and accepted by Customs during the verification.

Further, USC considers that the sales were only concluded when the **[CONFIDENTIAL TEXT DELETED – details of sales arrangement]**. This is evident in both its export sales practice as well as in its domestic sales practices. As USC’s EQ response states, in relation to domestic sales:

[CONFIDENTIAL TEXT DELETED – details of sales process]

Therefore, it is the **[CONFIDENTIAL TEXT DELETED – details of sales arrangement]** date, that is considered by USC as the date that a sale is finally and officially made.

USC does not consider that the commercial invoice date for its Australian sales is the correct date of sale, as the issuance of commercial invoice and the date stated on the invoice is affected by other factors.

For USC’s CIF and CFR sales, its practice is to issue the commercial invoice at **[CONFIDENTIAL TEXT DELETED – details of sales arrangement]**.

For FOB sales – **[CONFIDENTIAL TEXT DELETED – details of sales arrangement]**.

For example, USC notes that during some periods of the second half of 2011, the shipping market was very busy and it was hard to make shipping arrangements from China to Australia. Therefore, [CONFIDENTIAL TEXT DELETED – details of sales arrangement].

Because of this circumstance, [CONFIDENTIAL TEXT DELETED – details of sales arrangement and sales policies]. Accordingly, only the [CONFIDENTIAL TEXT DELETED – details of sales arrangement] date reflects the appropriate date of final sales.

USC provides two sample documents as examples where the [CONFIDENTIAL TEXT DELETED – details of sales arrangement]:

Commercial Invoice	Issuance Date	Quantity (MT)	Invoice Value	Revision Date	Final Quantity	Final Invoice Value (USD)	Invoice Date
[CONFIDENTIAL TEXT DELETED]							

The relevant sales documents for these two examples are at **Appendices 4 and 5**. [CONFIDENTIAL ATTACHMENTS]

Therefore, USC submits that the [CONFIDENTIAL TEXT DELETED – details of sales arrangement] date, as it stated in the “date of sales” column, is the appropriate date of sale for its Australian sales and should be used as such.

3 Application of profit for normal value construction

The following submissions are without prejudice to USC’s rejection of the particular market situation (and cost substitution) approaches that are assumed by the calculations.

The Visit Report states that:

A rate of profit has been added using data related to the production and sale of like goods in the ordinary course of trade

The Report also notes that this is in accordance with Regulation 181A(2) of the *Customs Regulations 1926*.

Regulation 181A provides:

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- (1) *For subsection 269TAC (5B) of the Act, this regulation sets out:*
- (a) *the manner in which the Minister must, for subparagraph 269TAC (2) (c) (ii) or (4) (e) (ii) of the Act, work out an amount (the amount) to be the profit on the sale of goods; and*
 - (b) *factors that the Minister must take account of for that purpose.*
- (2) *For subregulation (1), the Minister must, if reasonably possible, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.*

...

Section 269TAC(2) provides, in part:

...the normal value of the goods for the purposes of this Part is:

- (c) *except where paragraph (d) applies, the sum of:*
- (i) *such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*
 - (ii) *on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and, subject to subsection (13), the profit on that sale; or*

...

Regulation 181A clearly requires that the amount of profit should be worked out “by using data relating to the production and sale of like goods” by USC “of the goods in the ordinary course of trade”. In this regard, we note that Customs had regard to the following data of USC:

- domestic CTMS of the like goods; and
- domestic sales of the like goods.

Customs then used that data to work out the sales which were in the ordinary course of trade, and found that:

- the total net invoice value of the goods sold in ordinary course of trade was RMB[CONFIDENTIAL TEXT DELETED – number];

- the corresponding total CTMS value was RMB[CONFIDENTIAL TEXT DELETED – number].

Accordingly, Customs calculated an amount of profit for USC's domestic sales of like goods in the ordinary course of trade at RMB[CONFIDENTIAL TEXT DELETED – number], being [CONFIDENTIAL TEXT DELETED – number]% of the sales value. However, when working out the amount of profit required for the purpose of constructing this normal value, Customs applied this *rate* of [CONFIDENTIAL TEXT DELETED – number]% to the constructed CTMS, after substituting USC's own cost of HRC with a benchmark cost. The constructed CTMS is a cost determined by the Minister using some data that is *unrelated* to USC (the benchmark uplift amount) and some data that is *related* to USC (everything else). Therefore, the amount worked out based on the constructed CTMS is not an *amount* worked out by *using data relating to the production of like goods* of USC. The profit worked out in this way is an amount worked out by applying a rate derived from USC's own data to data about costs which has not been derived (not entirely derived) from USC's own data.

Accordingly, USC submits that, if the amount of profit is to be worked out using the data relating to USC's production and sale of like goods, the [CONFIDENTIAL TEXT DELETED – number]% profit rate should be applied to USC's own CTMS – being the data relating to the production and sale of like goods of USC.

Accordingly, at Column [A] of the Australian CTMS, the profit amount should be worked out by:

[CONFIDENTIAL TEXT DELETED – formula for working out the amount of profit]

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