

20 May 2013



GS Global Corporation and Dongkuk Steel Mill Co. Ltd

Alleged dumping of plate steel from Korea

Joint submission regarding export-related issues

A Introduction

GS Global Corporation ("GSG") exported plate steel manufactured by Dongkuk Steel Mill ("DSM") to Australia during the period of this investigation ("POI").

DSM did not export plate steel to Australia during the POI.

This submission is directed towards these propositions. It has been jointly prepared by Daniel Moulis, as solicitor for GSG, and by Charles Zhan, as solicitor for DSM.

There are three versions of this submission. They are:

- CONFIDENTIAL VERSION – CUSTOMS AND GSG, for the confidential use of Customs, and for the confidential use of Customs should it wish to discuss or verify any aspects with GSG;
- CONFIDENTIAL VERSION – CUSTOMS AND DSM, for the confidential use of Customs, and for the confidential use of Customs should it wish to discuss or verify any aspects with DSM; and
- NON-CONFIDENTIAL VERSION, for the public record of this investigation.

NON-CONFIDENTIAL VERSION

In response to question A-3.8 of the Exporter Questionnaire (“EQ”) response submitted by GSG to Customs in this matter, GSG stated:

GSG does not produce or manufacture the GUC. The goods exported by GSG to Australia are manufactured by Dongkuk Steel Mill Co., Ltd (“DSM”). GSG exported the GUC to Australia during the POI.

GSG further stated, at B-9 of its EQ response:

GSG respectfully submits that its position as supplier of the GUC to Australia constitutes it as the exporter in the circumstances of this case.

And:

GSG stands ready to further address these matters as may be required by Customs in its investigation.

In response to question A-3.8 of the EQ response submitted by DSM to Customs in this matter, DSM stated:

GS Global (“GSG”) performs the function of exporting plate steel manufactured by DSM to Australia. This is an important aspect of this investigation. The reason that DSM maintains this position is because it is not involved with the sales to Australia and does not have to consider the price to be charged for Australian sales.

And:

There are a number of facts which are supportive of these propositions, and which DSM will fully elaborate in this EQ response and as may be further required by Customs. DSM expects that GSG will do the same.

In this submission GSG and DSM further address and elaborate these propositions, for the assistance of the Customs verification team.

B Who is the exporter of the goods?

1 Overview of the differentiating factors

DSM does not consider itself to be the exporter of the goods to Australia. GSG is the exporter of those goods. The facts establish that GSG is not a mere trader or intermediary on behalf of DSM, but that it is clearly the principal in the sale and export of the goods to Australia. It arranges and carries out all aspects of the exportation. For its part, all that DSM does is to position the goods in a loading dock for collection by GSG, and then [CONFIDENTIAL TEXT DELETED – commercial arrangements regarding freight indicating DSM not the exporter].

DSM does not handle the exportation of the goods, and GSG does not merely sell documentary title (ie “paper transfer”) to the goods to third parties.

At the outset we wish to emphasise that this is a case that is out of the ordinary. There are marked differences in the role and behaviour of GSG in relation to DSM-manufactured plate steel than those of a standard “trader”. In terms of Customs’ anti-dumping policy, GSG does not argue that all traders are exporters. It simply argues that it is the exporter in the special circumstances of this particular case.

GSG considers that it is the exporter of the goods supplied by DSM which it then sold to the Australian customer. DSM has been a long term source of supply of plate steel for GSG’s sales to Australia, in the sense of being **[CONFIDENTIAL TEXT DELETED – characterisation of DSM as instrument of GSG so far as GSG’s exports to Australia concerned]**. GSG **[CONFIDENTIAL TEXT DELETED – characterisation of DSM as instrument of GSG so far as GSG’s exports to Australia concerned]** in order to make exports of plate steel to Australia.

Information provided by DSM and GSG evidences that:

- GSG is not the “marketing vehicle” or “instrument” of DSM;
- DSM did and does not select or dictate the selection of the Australian market as an outlet for DSM-manufactured plate steel - that was done and is done independently by GSG;
- DSM did not and does not select or dictate the selection of the Australian customer **[CONFIDENTIAL TEXT DELETED – position of DSM in relation to Australian market]** – that was done and is done independently by GSG;
- GSG identifies and negotiates all aspects of the sale with its Australian customer, including the quantities to be purchased, pricing, payment and shipping arrangements;
- GSG and GSGA market themselves as the provider of plate steel for the Australian market, **[CONFIDENTIAL TEXT DELETED – attitude of Australian end users in ordering steel from GSGA]**;
- DSM does not participate in or influence the negotiation between GSG and its Australian customer on any sale aspects in any way whatsoever;

- GSG normally negotiates and enters in to its export sales contract with its Australian customer [CONFIDENTIAL TEXT DELETED – commercial risk position of GSG in relation to export sales to Australia];
- [CONFIDENTIAL TEXT DELETED – ordering conventions between GSG and DSM];
- GSG and DSM [CONFIDENTIAL TEXT DELETED – how price is determined in ordering by GSG];
- [CONFIDENTIAL TEXT DELETED – how price is determined in ordering by GSG] for the purchase of the goods destined for Australian market;
- [CONFIDENTIAL TEXT DELETED – commercial risk position of GSG in relation to export sales to Australia]
- [CONFIDENTIAL TEXT DELETED – how price is determined in ordering by GSG];
- DSM did not and does not ship the plate steel to Australia – [CONFIDENTIAL TEXT DELETED – details of export inland freight arrangements] (a modified FCA arrangement¹);
- GSG always arranges for the goods to be shipped from DSM's factory to GSG nominated ports [CONFIDENTIAL TEXT DELETED – details of export inland freight arrangements] (please refer to copies of freight and handling charge invoices issued individually to DSM and GSG by [CONFIDENTIAL TEXT DELETED – name of freight company] at Attachment A [CONFIDENTIAL ATTACHMENT]);
- [CONFIDENTIAL TEXT DELETED – details of export inland freight arrangements] - DSM is not involved in this process and is not aware of how the goods are ocean-freighted or who freighted them once they leave the factory loading point.

¹ [CONFIDENTIAL TEXT DELETED – details of export inland freight arrangements] All the responsibility goes to GSG at that point. [CONFIDENTIAL TEXT DELETED – details of export inland freight arrangements] This is why we have referred to the actual terms observed by the parties as “modified FCA”. This is further explained in other parts of this submission.

- DSM is paid for the supply of the goods [CONFIDENTIAL TEXT DELETED – details of payment arrangements between DSM and GSG] meaning that payment of DSM is not conditional on export.
- GSG arranges the export clearance of the goods;
- GSG arranges for the goods to be shipped to the Australian port of importation, and in most cases, [CONFIDENTIAL TEXT DELETED – details of GSG's own export freight arrangements];
- DSM carries out no marketing or sales activities, either in its sale to GSG (which is an ex-factory acquittal to GSG, and is quite different to the marketing-supported and price-negotiated sales that DSM makes to domestic distributors and end-users) or in relation to GSG's sales to its Australian customer; and
- [CONFIDENTIAL TEXT DELETED – details of warranty arrangements].

2 Contrast in the differentiating factors

To further demonstrate the different role and behaviours of GSG as exporter of DSM-manufactured plate steel, we wish to present the following table.

As Customs will already know, GSG sold [CONFIDENTIAL TEXT DELETED – other company name] plate steel to Australia during the POI. However GSG does not consider itself to have been the exporter of [CONFIDENTIAL TEXT DELETED – other company name] - manufactured plate steel, because of its different relationship with [CONFIDENTIAL TEXT DELETED – other company name] and the different circumstances of those sales when compared to sales of DSM-manufactured product.

GS Global's activities in relation to sales of plate steel to Australia for [CONFIDENTIAL TEXT DELETED – other company name] compared with its activities in relation to exports of [CONFIDENTIAL TEXT DELETED – other company name] plate steel to Australia		
Activity	GSG's sales of [CONFIDENTIAL TEXT DELETED – other company name] product	GSG's sales of DSM product
Price	GSG receives purchase inquiry from Australian customer and forwards the	GSG receives purchase inquiry from Australian customer (GSGA) and

negotiation	inquiry [CONFIDENTIAL TEXT DELETED – other company name and commercial arrangements with same]	negotiates the price with the Australian customer.
	[CONFIDENTIAL TEXT DELETED – other company name and commercial arrangements with same]	GSG independently undertakes the price negotiation with the Australian customer.
	[CONFIDENTIAL TEXT DELETED – other company name and commercial arrangements with same]	The price of the sale by GSG to Australian customer is determined by GSG, meaning that it takes the risk and allowing it the prospect of [CONFIDENTIAL TEXT DELETED – determination of price]. DSM does not know [CONFIDENTIAL TEXT DELETED – knowledge of DSM]
	The price from [CONFIDENTIAL TEXT DELETED – other company name and commercial arrangements with same].	The price from DSM to GSG [CONFIDENTIAL TEXT DELETED – determination of price].
Sales process	GSG entered into sales contract with [CONFIDENTIAL TEXT DELETED – other company name], on a back-to-back basis with GSG's contract with the Australian customer.	GSG enters into export contract with Australian customer [CONFIDENTIAL TEXT DELETED –commercial arrangements with DSM]. Please see example copies of sales contract between GSG and GSA [CONFIDENTIAL TEXT DELETED –commercial arrangements with GSGA] at Attachment B [CONFIDENTIAL ATTACHMENT].
	[CONFIDENTIAL TEXT DELETED – other company name] then advises GSG when the goods are ready.	GSG monitors the production process by way of direct access to DSM's production system.
	Customers know that they have specifically chosen to buy [CONFIDENTIAL TEXT DELETED – other company name] product.	Customers make purchase inquiries about plate steel directly of GSGA, knowing it is to be sourced by GSG. [CONFIDENTIAL TEXT DELETED – attitude of Australian end users in ordering steel from GSGA]
Profit behaviour	For sales of [CONFIDENTIAL TEXT DELETED – other company name] plate steel, [CONFIDENTIAL TEXT DELETED – commercial issue relating to sales]. Please refer to Attachment C [CONFIDENTIAL ATTACHMENT] for profit analysis on GSG's sales of [CONFIDENTIAL TEXT DELETED –	The amount realised by GSG on sales of [CONFIDENTIAL TEXT DELETED – other company name] plate steel [CONFIDENTIAL TEXT DELETED – commercial issue relating to sales]. . Please refer to Attachment D for profit analysis on GSG's sales of [CONFIDENTIAL TEXT DELETED –

	other company name] product to GSGA. [CONFIDENTIAL TEXT DELETED – commercial issue relating to sales]	other company name]. This is [CONFIDENTIAL TEXT DELETED – other company name].
	[CONFIDENTIAL TEXT DELETED – other company name and commercial issue relating to sales] for the sales facilitation.	GSG is the seller and exporter of the goods it acquires from DSM. [CONFIDENTIAL TEXT DELETED – determination of price]GSG takes full risk and responsibilities in negotiating sales, marketing, setting prices and currency exchange.
	All sales of [CONFIDENTIAL TEXT DELETED – other company name and commercial issue relating to sales]	GSG therefore enjoys the prospect of profit and also bears the risk of loss in the sales.
Currency risk	GSG takes no currency risk. GSG's purchase from [CONFIDENTIAL TEXT DELETED – other company name and commercial issue relating to sales]	GSG assumes currency risk. GSG's purchase from DSM [CONFIDENTIAL TEXT DELETED – other company name and commercial issue relating to sales]

3 GS Global Australia visit report

We refer to 5.11 of the recent importer verification report regarding GS Global Australia (“GSGA visit report”), in relation to the issue of “who is exporter”.

With all due respect, we find the conclusions set out in 5.11, even if said to be conditional, to be incredible in their substance and highly premature in their timing.

It is not and has never been the case that a manufacturer can be considered an “exporter” of goods if it merely knows its goods are going to be exported by a third party. All other factors mentioned in 5.11 contradict the proposition that DSM is the exporter.

We trust that the issue will be fairly considered and determined by Customs when it is appraised of all the facts, and at this time we do not intend to address anything further in relation to 5.11 in the visit report.

C Normal value and export price comparison

On the basis that GSG is the exporter – as we have insisted – GSG’s export prices will then be compared with DSM’s sales to distributors and end users on the domestic market.

Those export prices and domestic sales are at the same “level”. DSM's home market sales to distributor's/end-users incorporate sales and marketing expenses and profit on these activities, in the same way as GSG's sales to Australia incorporate GSG's sales and marketing expenses and profit on these activities.

We reiterate that it cannot be maintained that DSM is the exporter of the goods in the circumstances of this case. If this is not the position arrived at by Customs then without at all detracting from their position, DSM and GSG request that Customs find that:

- the goods have been exported to Australia otherwise than by the importer, but have not been purchased by the importer from the exporter; and
- the price that the Minister should determine as the export price having regard to all the circumstances of the exportation should be the price paid by the importer, being also the price charged by GSG for having the goods exported from Korea.

The circumstances of the exportation – as we believe we have exhaustively established – is that GSG is entirely independent of DSM in relation to Australian sales, and is totally responsible for all arrangements, costs, prices and risks.

Daniel Moulis
Principal

Charles Zhan
Solicitor

Moulis Legal