

From: Daniel Moulis

Sent: Thursday, 13 June 2013 11:50 PM

To: 'COOKE Lydia'; LOHAN Rachel

Subject: RE: GS Global - preparation for verification, and some additional submissions [SEC=UNCLASSIFIED]

Dear Lydia and Rachel

I understand from Charles that there have been a few additional questions for Dongkuk in relation to its sales reconciliation. I expect this means that once these questions are answered the draft visit reports for Dongkuk Steel and for GS Global will almost be ready to be sent to us.

In the meantime, I wanted to mention that I was pleased to read the language used in a visit report we recently received in respect of another client in relation to determining the party in a transaction that is relevantly the "exporter". That client has indicated to us that the parts of its visit report that I am about to mention are not confidential and will ultimately appear on the public record, thus I am not constrained in mentioning them now. In that report the verification team makes comments which are balanced and helpful for the purpose of reaching an understanding of the party who, in any particular circumstance, should be considered as the exporter.

At 6.11.2, the visit report states:

We are satisfied that whilst [manufacturer] remits all responsibility to the intermediaries for all administration of the export of the goods to Australia after the FOB point, the verification team considers;

- *[name of trading company];*
- *[name of trading company];*
- *[name of trading company];*
- *[name of trading company]; and*
- *[name of trading company];*

operate as third party traders, and are not appropriately characterised as the exporters of the goods.

I think we have made it clear that GS Global obtains "responsibility" in the legal and possessory sense before the FOB point. This is a differentiating factor in the case of GS Global's exports to Australia which is helpful in establishing its position as the exporter. Nonetheless we would also submit that it is only one of a number of factors that need to be considered, and that ultimately the important consideration is the question of who is the principal in the export transaction in a substantive sense. In the scenario that you are presently considering, we believe that it has been clearly established that GS Global is itself the principal in the export transaction.

For example, in terms of the above extract, Dongkuk does not remit all responsibility to GS Global for the administration of the export of the goods to GS Global Australia. This is because Dongkuk does not have any of that responsibility in the first place. We believe that the use of the word "*appropriately*" - in

the context of *“not appropriately characterised as the exporters of the goods”* - reflects the fact that a trading company is not to be automatically considered as an intermediary, because in some situations it is the principal itself and is not an intermediary.

[CONFIDENTIAL TEXT DELETED – private observations about attitudes of other manufacturer-exporters] They gave no thought to the possibility that their sales might not be considered to be their own exports. They considered that they negotiated the prices for those sales to Australia despite the intermediation of a trader. In the case of those manufacturers, the “purchase” by the intermediary and its “resale” to the Australian importer take place so that the trader can handle the administration of the “principal’s” sale. This is not the case where Dongkuk product is sourced and exported by GS Global to Australia. Dongkuk does not consider those sales to be its exports, because it just sells them to GS Global. It is GS Global that makes those sales to Australia, and it is GS Global that is entirely responsible for them.

Regards

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From: COOKE Lydia [<mailto:lydia.cooke@customs.gov.au>]

Sent: Wednesday, 29 May 2013 10:28 AM

To: Daniel Moulis; LOHAN Rachel

Subject: RE: GS Global - preparation for verification, and some additional submissions [SEC=UNCLASSIFIED]

Hi Danny,

Thanks for this clarification and summary. We will take it into consideration.

Regards

From: Daniel Moulis [<mailto:Daniel.Moulis@moulislegal.com>]

Sent: Monday, 27 May 2013 8:27 PM

To: COOKE Lydia; LOHAN Rachel

Subject: RE: GS Global - preparation for verification, and some additional submissions

Dear Lydia and Rachel

Thank you for your attendance at GS Global and for the careful and measured way you approached the verification requirements.

By way of follow up to some of the issues in the below email, and to confirm certain information and matters dealt with today:

- 1 **Exporter** – we again submit that GSG was the principal and the exporter in the transactions to Australia, and that DSM could not be considered to have been the exporter. I recognise that we have made the point before now (in our EQ, and in our previous written submissions, and verbally), however it is of great importance to my client and I am instructed to make sure the point is well made and clearly understood.

Mr Cha's evidence today continued to support these propositions:

- GSG negotiates the sale price to Australia taking into account all the market information available to it;
- GSG **[CONFIDENTIAL TEXT DELETED – information about commerciality of negotiations]** GSGA, and GSGA **[CONFIDENTIAL TEXT DELETED – information about commerciality of negotiations]** prices to its customers in Australia;
- GSG must price in **[CONFIDENTIAL TEXT DELETED – circumstances of sales]**;
- GSG does not **[CONFIDENTIAL TEXT DELETED – information about commercial relationship with DSM]**;
- the contrast with the situation of GSG's sales **[CONFIDENTIAL TEXT DELETED – commercial arrangements with third party]**;
- GSG enters into a contract of sale to GSGA independently and before making a firm bid to DSM for the plate steel supply needed to satisfy the contract;
- all firm bids from GSG in the POI were made by GSG electronically and accepted by DSM electronically **[CONFIDENTIAL TEXT DELETED – commercial arrangements with DSM]**;
- the bid price from GSG is a baseline price **[CONFIDENTIAL TEXT DELETED – commercial arrangements with DSM]**;
- GSG places its order directly into DSM's sales system with the necessary instructions for production and quantity;
- GSG monitors the DSM system and Mr Cha inputs his instructions about GSG's shipment schedule into the system at the appropriate time;
- DSM follows GSG's instructions and makes the goods ready for collection by the carrier Intergis;
- DSM pays its standard freight to Intergis for freight to a nearby DSM port, but GSG's exports do not go to that port - they go to further-away ports;
- GSG considers Intergis to be its carrier and considers that its purchases are ex-factory;
- GSG's freight payments to Intergis and **[CONFIDENTIAL TEXT DELETED – commercial arrangements with DSM]** being charged to GSG by DSM for **[CONFIDENTIAL TEXT DELETED – commercial arrangements with DSM]** being evidence of the ownership of the goods by GSG;
- DSM is able to be paid on GSG's domestic L/C on presenting GSG's certificate of receipt of the goods to GSG's bank;
- the certificate of receipt is a domestic document and there is no export condition attaching to payment; and
- naturally, all of the export activities were carried out by GSG in its own right and not as the instrument of the manufacturer.

I also refer to the supporting evidence of **[CONFIDENTIAL TEXT DELETED – commercial arrangements with third party]** in comparison to the situation where it does not act as the exporter and is only the “instrument” of the manufacturer **[CONFIDENTIAL TEXT DELETED – commercial arrangements with third party]**. In considering this matter please also have reference to the information provided to you when you attended at DSM.

- 2 **Methodology** – an “other seller” normal value is the normal value of an “other seller”. I know this sounds self-evident but it is helpful to reinforce that. The analysis is not to be confused by any concept of goods tracing or of costs tracing. The domestic sales/CV sales of the domestic seller have adjustable features. The same adjustable features of the exporter’s sales are then used as the matching adjustment. As I explained, the calculation is done no differently to the usual case where the domestic seller is the same party as the exporter. Thus, in our case, the following adjustments would be made to the unadjusted NVs of DSM:

- deduct DSM’s domestic credit cost, add GSG’s export credit cost;
- deduct DSM’s domestic inland freight, add GSG’s export inland freight; and
- deduct DSM’s domestic SG&A, add GSG’s export SG&A.

In relation to your question about the freight incurred by DSM in selling to GSG, this is not the exporter’s export inland freight and we submit is not adjustable. It is actually included in GSG’s buy-in price, in the same way as a manufacturer would have to ship in the raw materials for production of its domestic or export sales. Again, it always helps me in thinking this through to remember that there is no relevance to “tracing” either the exported goods or the costs of the exported goods. May I also add that the analysis is not to be confused by any “on the assumption” thinking as may arise under TAC(2)(c)(i) - it is just an “other seller’s” NV, with adjustments to be made in parallel with the exporter’s adjustments.

- 3 **Level of trade** – I reiterate that level of sale adjustments are about different functions and activities. Post-production market assessment, price negotiation and sales activities were carried out:

- in the case of DSM’s domestic sales, by DSM’s domestic sales department; and
- in the case of GSG’s export sales, by GSG’s sales team.

Profit was earned on those activities by DSM on its domestic sales, and by GSG on its export sales, depending on the market conditions and risks in those markets at the time. DSM did not carry out any of those things at the point of the ex-factory sale to GSG. Those sales during the POI simply and routinely arose from **[CONFIDENTIAL TEXT DELETED – commercial arrangements with DSM]** GSG’s firm bids into DSM’s sales and production system. Any suggestion that GSG’s sales to Australia are at a higher level is not correct. We also refer you to the below email in that regard.

- 4 **Wording of any dumping notice** – my client would expect, if a dumping notice were to be published against GSG’s exports on the basis that we have submitted, that it would refer to “*Goods manufactured by Dongkuk Steel Mill and exported by GS Global*” or similar, in order to ensure that implementation would accord with the scope of the decision made in GSG’s case.

I note that there were two follow up items – to provide an English translation of the latest audited report once issued, and to explain the situation pertaining to the exports to Darwin port – and will get back to you regarding these matters as soon as I am informed by my client.

In the meantime if anything further is required in the way of further information or clarification please do not hesitate to contact me.

Regards

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From: Daniel Moulis
Sent: Saturday, 25 May 2013 1:11 AM
To: COOKE Lydia (lydia.cooke@customs.gov.au); LOHAN Rachel (rachel.lohan@customs.gov.au)
Subject: GS Global - preparation for verification, and some additional submissions

Dear Lydia and Rachel

Today I attended at GS Global to ensure that the preparations had been made for the verification and that documents were ready. Everything seems to be in order and I expect that the day will proceed quite smoothly.

There were a few things that came up in discussions with Charles and with my client that I would like to bring to your attention.

- 1 **Exporter status of GS Global** - Charles has of course briefed me on those aspects of the Dongkuk Steel Mill verification which relate to the goods exported to Australia, in particular the determination of the “exporter” and the export price, and adjustments in the situation of GS Global as exporter. On the question of the exporter, you already have the joint submission we provided to you earlier this week, as well as the benefit of having questioned DSM and of reviewing DSM’s evidence on the points made in that submission as they relate to DSM. On Monday you will have the opportunity to undertake the second part of that exercise with GS Global. It is in our view abundantly clear that GS Global is the exporter in the particular circumstances of this case. GS Global is entirely open to your further investigations and requests for clarifications about this.

- 2 **Level of trade** – there is no level difference between DSM's sales on the domestic market and GS Global's sales to Australia. Level of trade is about functions and risks. It is not about changes of ownership. Level of trade needs to be considered in the context of there being any difference in functions performed. DSM performs all sales and marketing activities for its domestic sales, but does not undertake these activities on its sales to GSG. The sales to GS Global are in the nature of an ex-factory transfer, and then GSG dedicates all of the sales and marketing activities on the sales of those goods to Australia. Accordingly, the standard "same level" scenario is presented - domestic sale to distributors/end-users compared to export sale to importers. I have represented this in the below table.

	Activity - production		Activity – sales marketing, market assessment, sales negotiation, sales facilitation (delivery, etc), credit risk, etc		Customer		Customer
Domestic side	DSM factory – product notionally moves from ex-factory point within DSM to the sales activity point	→	DSM domestic sales department	→	Distributors/end-users	→	
Export side	DSM factory – ex-factory acquittal to GS Global, DSM as production platform. No sales activity.	→	GS Global export sales team	→	Importer	→	Distributors/end users*

* NB - some might suggest that the fact that the importer sells to distributors/end-users means that the domestic sale is at a higher level than the sale to the importer and therefore needs to be adjusted downwards. However "looking backwards" in this way is not a correct way of assessing level of trade and GS Global does not claim a downward adjustment to DSM's domestic selling prices.

- 3 **How to adjust for inland freight in other seller scenario** – this is straightforward, in that the "other seller" DSM has freight on its domestic sales, which is to be deducted from its domestic sales prices. Then the export inland freight of the exporter – GS Global – is to be added.
- 4 **Additional adjustment claim** – the SG&A of DSM as other seller incurred in the domestic sales in the POI was [CONFIDENTIAL TEXT DELETED – number]% (see DSM EQ Attachment 18 at cells E149-151). This is domestic SG&A. The SG&A of GSG Global as exporter is [CONFIDENTIAL TEXT DELETED – number]% (see attached worksheet). This is export SG&A. Accordingly GS Global claims this SG&A adjustment in the calculation of the other seller normal value.
- 5 **Disclosure/confidentiality** – as you will have noticed the confidentiality of the different companies' information in an other seller scenario can be quite difficult to handle! However, the procedure we have used in the past with such joint representations, and which simplifies the whole process from Customs' point of view, is as follows. The verification team can write one report covering both verifications, or can write a separate report for each. In either scenario you need not have any concern about what might be confidential so far as one or other company might be concerned. You then give us the report or reports, and we will then be responsible for filtering back to each company only what they are entitled to see or know about.

Then we will prepare redacted versions of the report or reports for the public record in the normal way. The same goes for the margin calculations – you can just go ahead and prepare one set of spread sheets with both companies' information in the spread sheets, and we will act as the filter. In this way you can concentrate on writing the report and doing the calculations in a fairly normal way, without also worrying about what one or other company may or may not be authorised to see or know about.

[CONFIDENTIAL TEXT DELETED – GSG's transport arrangements]

In the meantime if you have any questions or requirements please do not hesitate to get in touch with me.

Regards

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