

Mr Geoff Gleeson
Director
International Trade Measures Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

15 November 2011

Copy: Mr Michael Kenna
Manager ITRB
Australian Customs and Border Protection Service

Our ref 11276/80125566

Dear Mr Gleeson

Investigation into Alleged Dumping - ITRB Report No 176 Certain Structural Timber Exported from Austria, Canada, Czech Republic, Estonia, Germany, Lithuania, Sweden and USA

We act for Stora Enso and refer to your email to Messrs Schrammel, Lehto and Pecka of our client dated 10 November 2011.

We are instructed to respond as follows:

1. Our client does not consent to Customs' proposal to make available the draft Exporter visit report and dumping margin calculation in relation to the Czech Republic until it has completed all its verifications in the other countries. In effect, such delay will mean that the provision of a draft exporter report and dumping margin calculation for the Czech Republic will not be published until some date in early December 2011. Notably, the visit to the Czech Republic took place on about 24 October 2011 such that the delay in the provision of the report will be approaching 2 months.
2. The reason provided by Customs for not providing the exporter report is because it wishes to take the opportunity to compare the data provided with other exporters, namely Stora Enso exporters in other countries, to ensure, it is said, a consistent approach to determining key issues is undertaken. Reference is made in this context to the issue of 'like goods' which is said to be critical to the determination of whether domestic sales should be used for normal value and the question of what (if any profit) margin should be used in constructing a normal value. The reason provided is, with respect, not acceptable. Our client is entitled to know and exercise its rights in respect of the findings relating to its Czech operations without regard to the other exporters.
3. The Statement of Essential Facts (SEF) is to be issued on 28 December 2011. Customs states that at some indeterminate time in December 2011 it will issue *all* the visit reports for all exporters (mostly Stora Enso) from all countries. Evidently, Customs will commence drafting its SEF prior to 28 December 2011. It must follow therefore that the time in which our client will be able to review and respond to the multitude of reports is only a short one before the SEF is published. That puts our client at a serious disadvantage. The prejudice caused to our client cannot be underestimated.
4. As regards the legal aspects of what is proposed we are instructed to point out the following:

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- (a) first, each export country is a separate dumping case with individual export questionnaires, individual verification visits and an individual dumping margin calculation. Indeed for each exporter questionnaire, a date was set by which a response was to be provided otherwise the recipient would be deemed not to have co-operated. In relation to the Czech Republic, our client responded to the exporter questionnaire and Customs conducted an on site verification visit. Our client, whether in the Czech Republic or elsewhere, has fully co-operated and provided all information requested of it to Customs. Customs has been able to verify that information. Customs was able to verify the information contained in the exporter questionnaire response back to the audited accounts. Customs took the opportunity to ask a range of questions in response to a submission by the Australian Industry in relation to the non confidential version of the exporter questionnaire response provided by Stora Enso. Stora Enso was able to satisfy Customs in respect of all questions raised by the applicants at the time of the verification visit.
- (b) second, there is no basis in law for Customs to have regard to information from any other country and not to accept the audited accounts of Stora Enso for the two mills in the Czech Republic. This is so because:
- (i) the Customs' Dumping Manual relevantly states that Customs must accept the audited accounts of the exporter, unless they are shown not to reasonably reflect costs. There is no evidence or any indication by Customs that the audited accounts do not reasonably reflect costs;
 - (ii) Customs cannot have regard to the books of account of any other exporter of structural timber in another country which is subject to the dumping application to determine if the accounts of the Stora Enso entity in the Czech Republic reasonably reflect costs;
 - (iii) Regulation 180 provides that if an exporter keeps records relating to like goods and the records are in accordance with generally accepted accounting principles in the country of export, and reasonably reflect the costs associated with the production or manufacture and the sale of like goods, the Minister must use the information set out in the records (Our emphasis). There is no evidence or any indication by Customs that the audited accounts do not accord with accepted accounting principles in the country of export, namely the Czech Republic.
5. We have already forwarded a submission on the question of profit. That submission reinforces that, on the facts of the case, no profit can be added. Again, Customs' Dumping Manual supports our client's position in relation to constructed normal value when it states:
- "Profit*
- In constructing a normal value, an amount for profit may be included. Where all sales are made at a loss, no profit is added"*¹
6. For the reasons already given in our previous submission on this question and in accordance with Customs practice, no profit can be added in this case. No regard can be had to what may or may not be found in any other country.
7. Customs refers to the need to have consistency on the issue of like goods to be in a position to know if it should use or not use domestic sales. However, there is no real dispute as to what

¹ Dumping Manual at page 32

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the like goods are and nor has Customs suggested there is - certainly no discussion paper been issued. The like goods are those as described in the application. What is at issue is whether what is being produced for sale in the domestic market are like goods to the description provided by the applicant in the application. The question of what the like goods are has to be decided on a fact by fact basis in respect of each country of export.

8. Customs has visited the Czech Republic. In so doing Customs has:

- (a) physically seen the products sold on the domestic market;
- (b) seen the production processes;
- (c) had the testing of the timber explained to it; and
- (d) examined all records it cared to examine,

but says, in effect, it cannot determine the question in relation to the goods sold on the Czech domestic market except by examining the goods in another country.

In the case of the Czech Republic, Customs is in possession of sufficient facts in order to make a determination of whether or not the goods sold on the domestic market are like goods. It is also clear that the goods which are sold on that market are not like goods.

If Customs were to accept the damaged goods to be like goods, then these sales could not be used to determine a normal value as they are sold at a loss. In consequence, they are not sold in the ordinary course of trade, nor are they sold in sufficient quantities as to be used to determine a normal value.

9. It would appear that the reason why Customs is not prepared to provide such a report in a timely manner, as it is required to do, is because the report would demonstrate that there is no dumping. If that is the case, Customs is obliged to terminate the investigation and do so immediately.² That obligation to terminate "promptly" is reinforced by the mandate set out in page 107 of the Dumping Manual.
10. Stora Enso has at all times been fully cooperative and offered all assistance to Customs. It has been put to considerable cost and inconvenience. It is the subject of the dumping application in a large number of countries. Customs has been, we understand, fully satisfied during the verification visit with the information that has been provided in response to the exporter questionnaire(s). Our client has not sought to delay the process. It has at all times claimed that it has not dumped. It provided information which we believe demonstrates that it has not dumped goods into the Australian market.

Conclusion

Termination of an investigation

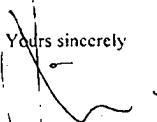
11. For the reasons outlined above, we contend that:

- (a) Customs should be in position as of early next week to finalise its report and provide a copy to us and our client.

² See section 269TDA(1), the CEO must terminate the investigation and Article 5.8 of the Anti-Dumping Agreement which provides that there is to be an immediate termination of the investigation where the dumping margin is de-minimis, which obviously includes positive dumping margins.

- (b) Customs would be in breach of the requirement to immediately terminate the investigation if it has determined that the margin of dumping is de-minimis as required by section 269TDA (1);
- (c) Customs is not obliged to wait until the draft report is vetted and cleared by Stora Enso if, based on the verified information, Customs has established that there is no dumping;
- (d) The relevant decision is to be made by the CEO and does not require the matter to be referred to the Minister and that termination is determined on a country by country basis. In this way, if the Czech Republic has not dumped the matter ought to end.

Yours sincerely



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