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Mr G Gleeson
Director, Operations 3
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Australian Customs and Border Protection Service
Customs House
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Australian Capital Territory 2601

By email

Dear Geoff

Dalian Steelforce Hi-Tech Co., Ltd.
Correction of methodological and technical errors in spread sheets

We refer to our meeting with you and your colleagues at Customs House on 30 April 2012.

We are now writing to you to record and confirm the submissions we made at that meeting.

A Introduction

On behalf of our client we reiterate its disappointment that consultation on specific issues and methodologies did not take place prior to the publication of the Statement of Essential Facts ("SEF"). The public announcement was a surprise to Steelforce, in that it was not given an opportunity to address Customs on critical aspects of the methodologies and assumptions which generated the subsidy and margin findings announced against Dalian Steelforce in that SEF.

Nonetheless we - the Steelforce representatives and ourselves - welcomed the opportunity to discuss these matters with you, and thank you and your colleagues for scheduling the meeting as quickly as you did

B Qualification

Steelforce does not accept the wider assumptions adopted by Customs – that there is a *"particular market situation"* in the HSS market in China; that the HRC cost recorded in Dalian Steelforce's accounts does not *"reasonably reflect competitive market cost"* and that Dalian Steelforce receives a so-called Program 20 subsidy ("the framework findings").

However as was made clear at the meeting, Steelforce does not intend to traverse those issues at this time. The purpose of the meeting and of this letter is to present Steelforce's position on the key areas of concern it has about the methodologies and calculations applied by Customs in arriving at the margin conclusions in the SEF *within* the framework findings that Customs has set out in the SEF.

C No "particular market situation" in Dalian Steelforce's case

The verification team found as a matter of fact that Dalian Steelforce had insufficient volumes of HSS sales in the domestic market. Therefore the verification team considered that Dalian Steelforce's domestic sales of HSS could not be used for assessing normal value under Section 269TAC(1) of the Act. Accordingly, we submit that Section 269TAC(2)(a)(ii) – ie *"particular market situation"* - is not a valid route to a Section 269TAC(2)(c) normal value for Dalian Steelforce.

This may be a distinction without a difference, given the framework finding that the HRC cost recorded in the accounts of Dalian Steelforce did not reasonably reflect a competitive market cost. Nonetheless we do not accept that Dalian Steelforce's prices could be rejected for normal value purposes for the reason that a *"particular market situation"* existed, given that they had already been rejected – and could not be accepted for normal value purposes - because they were of low volume.

Dalian Steelforce requests that Customs correct its finding in this respect.

D Tax treatment in cost comparison

The normal value constructed by Customs accepts that VAT is a cost. The shorthand way in which Customs has indicated that it accepts this position is to make an (unfavourable) VAT uplift at the end of the analysis.

According to the Dumping and Subsidy Manual, the key elements in constructing a Section 269TAC(2)(c) normal value are:

- *the cost of production of the exported good;*
- *the administrative, selling and general costs are those that would be incurred on the assumption that the exported good is sold on the domestic market;*
- *the profit is that which would be earned on the assumption that the exported good is sold on the domestic market (s. 269TAC(13) of the Act refers) except where the relevant sales in the country of export have been made at a loss.*

Dalian Steelforce accounts for VAT in its profit and loss account as part of the cost of goods sold. VAT on HRC purchased by Dalian Steelforce is therefore part of the cost of HRC. This is not an opinion. Rather, it a fact which was observed and verified in Dalian Steelforce's accounts.

After finding that Dalian Steelforce's accounts did not reasonably reflect a *"competitive market cost"* of HRC, Customs next step was to "substitute" that cost. That task was approached by working out the difference between Dalian Steelforce's HRC cost and the "benchmark" HRC cost. The difference was converted to a percentage, which was then applied to "uplift" Dalian Steelforce's HRC cost by that percentage.

However, it transpires that Customs has not used Dalian Steelforce's full HRC cost as recorded in its accounts in the comparison, because VAT has not been included. In our view, it must be accepted by Customs that the HRC cost to Dalian Steelforce is its total cost. The 17% VAT is recorded as a cost and is part of the cost. Dalian Steelforce does not buy HRC without incurring that cost, and does not pay VAT on HRC unless it buys HRC.

Therefore, it is submitted that the comparator for the purposes of calculating any cost uplift of HRC should be Dalian Steelforce's full cost, which includes its VAT.

We wish to emphasise that the different mechanisms under the Act for working out "normal value" must not be conflated. The (unfavourable) 8% adjustment under Section 269TAC(9) should not confuse the cost analysis under Section 269TAC(2)(c). Dalian Steelforce has no objection to the shorthand use of an 8% unfavourable adjustment on a non-VAT inclusive normal value as compared to the use of a 9% favourable adjustment on a VAT inclusive normal value. However that adjustment is exactly that – an *adjustment* to a normal value ascertained under Section 269TAC(2)(c) for comparison purposes. The issues that need to be dealt with under Section 269TAC(2)(c) and Regulation 180 - namely, what is the cost difference between the two markets, and how that difference is to be taken up - are separate and distinct to the later step of making an adjustment for the comparison of a domestic price to an export price.

E A weighted benchmark is unfair to cooperative exporters

Dalian Steelforce does not understand why Chinese HRC costs – presumably as the "lowest" detected amongst the countries under investigation – should not be substituted with the next lowest HRC costs.

China is a low cost market. It has a lower *per capita* GDP than the other countries from which the HRC cost has been derived. The lowest HRC cost of the other countries is a competitive market cost which *exists*, and has been *verified*.

On that basis, we respectfully maintain that the use of a weighted average cost is flawed. Regrettably, an objective bystander might reasonably conclude that it is a discriminatory approach to adopt, in that the weighted average is not in fact an identifiable cost which exists in any market, and is not the closest comparator to the Chinese market in price terms.

A private market actor, in a non-distorted market, can purchase HRC from another private market actor in that market at a price which is less than the weighted average that has been substituted. But, according to Customs' present calculations, Dalian Steelforce as a private market actor should not have that same price ascribed to it.

Dalian Steelforce has been fully cooperative and sees no basis for it to be unfavourably treated in this regard. Whether or not a weighted average, or some other cost basis, must also be used for non-cooperative exporters is a matter for Customs to consider, and our client makes no comment in that regard.

F The benchmarks themselves appear to be too high and need to be checked

The final benchmark pricing for all of the HRC appears high, particularly for black HRC. Dalian Steelforce does not have the supporting documentation behind these numbers.

[CONFIDENTIAL TEXT DELETED – details of Dalian Steelforce HRC purchases]

The substituted costs – and/or the way in which they have been applied to Dalian Steelforce – do not appear to be correct, and Customs must review their application to Dalian Steelforce as thoroughly as possible. Any comparator used by Customs must reflect a "like to like" comparison.

In this regard we note that we tabled a graph at the meeting which showed:

[CONFIDENTIAL TEXT DELETED – details of Dalian Steelforce HRC purchases]

G Double counting of delivery expenses

For the purposes of the Program 20 benefit and coil uplift calculations, it appears that Customs has assumed that the HRC cost reflected in the Dalian Steelforce CTMS was a delivered price (FIS). As such, Customs has used a substituted cost which includes delivery costs.

The HRC costs reflected in the Dalian Steelforce accounts is ex-works. Into store costs are accounted for separately. The ex-works costs should be used in the Program 20 benefit and coil uplift calculations.

H Profit treatment of Dalian Steelforce product

Steelforce Dalian manufactures HSS to Australian standard AS/NZS 1163:2009 exclusively for sale to the Australian & NZ markets. The assumption required by Section 269TAC(2)(c)(ii) in relation to profit applies to the exported product "as if" it were sold on the domestic market. There is no commercial market in China for HSS manufactured to standard AS/NZS 1163:2009. Accordingly we submit that a profit cannot and should not be added *because the statutory assumption does not permit it.*

As such, we submit that it is inappropriate to assign profit to Steelforce Dalian *"based on the average profit for domestic sales of like goods made in the ordinary course of trade by the other five selected cooperating exporters."*

We believe that it cannot be a correct assumption that Dalian Steelforce would earn a profit on domestic sales where it has no domestic sales for normal value purposes and where there is no market for HSS of the type it manufactures.

The Customs Manual makes it clear that it is not mandatory for profit to be incorporated in all cases other than those in which the domestic sales are unprofitable, stating:

> *In constructing a normal value, an amount for profit <u>may</u> be included. Where all sales are made at a loss, no profit is added. Where sales in the ordinary course of trade are not in sufficient quantities, an amount for profit <u>may</u> be added in constructing the normal value.* (emphasis added)

In some cases, the absence or a "low volume" of domestic sales of an exported product will be unrelated to the question of whether a market exists for the exported product in the exporting country. In such cases it can readily be assumed that the exporter concerned would experience the domestic profit margin that other sellers enjoyed in that market by if it sold the same product in that market. But no such assumption can be made in Dalian Steelforce's circumstances. It is a manufacturer of prime grade HSS which complies to Australian standards There is not a market for this type of product in China.

We submit that it would be incongruous if an exporter that actually does sell at a loss on the domestic market were to be treated more favourably than an exporter, such as Dalian Steelforce, that would be unable to make a profit if it attempted to do so.

Therefore, Steelforce respectfully requests that the CEO of Customs recommend to the Minister that he should determine that, in the circumstances presented by Dalian Steelforce, no profit be included in the assumed sale under Section 269TAC(2)(c), or that any such profit would be zero. Indeed, that was the position that we initially thought Customs had arrived at, as advised to us in our client's visit report.

At the meeting it was indicated that Customs believed that Dalian Steelforce agreed with or accepted the inclusion of a profit in any price construction. To be clear: Dalian Steelforce does not agree with nor accept the inclusion of a profit in any price construction. Although it should not be necessary to explain the background against which Dalian Steelforce's submissions on profit ought to be considered, we do wish to point out these things:

[CONFIDENTIAL TEXT DELETED – information about previous investigations and Dalian Steelforce dumping calculations]

Dalian Steelforce has been fully cooperative and requests a fair reconsideration of Customs' opinion.

I Conclusions and requests

The Steelforce Group has been fully co-operative with Australian Customs, at all levels of the Steelforce business, throughout the current and past dumping investigations. Steelforce has responded to findings from previous investigations by adjusting its internal business processes and procedures to ensure that the business minimises any risk of allegations of dumping HSS into the Australian market. At all times, it has been a "good corporate citizen".

Dalian Steelforce requests:

- that its VAT inclusive HRC cost is the cost which must be compared with a "competitive market cost";
- that the "competitive market" cost ascribed to its HRC purchases be the lowest cost derived from a competitive market as verified by Customs;
- that the competitive market HRC costs used for Dalian Steelforce be double checked and adjusted to ensure they are accurate, and in particular that they are appropriate for Dalian Steelforce's [CONFIDENTIAL TEXT DELETED – circumstances of HRC sourcing]; and
- that into-store costs not be double counted;

Lastly we reiterate Dalian Steelforce's position regarding profit determination. This is a matter which continues to be of great concern. Dalian Steelforce is an Australian owned manufacturing facility selling Australian compliant product into the Australian market to Australian customers.

Dalian Steelforce has no commercial market for its product in China.

The relevant assumption that must be used in determining a "profit" in a constructed normal value, as required by the legislation, is *"that the goods, instead of being exported, had been sold for home consumption"*. The goods are high specification HSS made to exacting Australian standards. Our client simply would not make profitable sales under the assumption that its HSS were to be sold on the Chinese domestic market. The Chinese domestic market is serviced by standard Chinese grade product that meets Chinese regulatory and customer requirements. Dalian Steelforce could not profitably compete with its exported product under those market conditions.

J Way forward

We request that Australian Customs consider these matters as soon as practicable, in order to advise us of its position in relation to each such matter, and to provide us with revised spread sheets which take into account any changes agreed to be made.

Yours sincerely

Daniel Moulis
Principal