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Subject: Comments regarding SEF of dumping and subsidization investigation of HSS originating from People's Republic of China dated April 23, 2012 by Jiedong Economic Development Testing Zone Tai Feng Qiao Metal Products Co., Ltd.

Non Confidential
By email

Dear Ms. Andrea Stone,

The SEF finds that a particular market situation (PMS) exists in Chinese HSS section for the investigation period, so that the domestic sales prices of HSS in the Chinese market are not suitable for the determination of "normal value". Further, the Customs and Border Protection in the SEF makes a finding that HSS from China have received countervailable subsidies from the Chinese government. Regarding the foregoing conclusions and other calculation and procedural issues, Jiedong Economic Development Testing Zone Tai Feng Qiao Metal Products Co., Ltd. (hereinafter referred to as "TFQ") has comments as follows:

1. Comments on Dumping Investigation

It is noted that Customs' finding on PMS overturned the method for determining the "normal value", i.e. from using the domestic sale prices to resorting a constructed prices based on an uplifted cost of materials.

- 1.1. However, a discrepancy has been detected with regards the method of determining the “normal value” as stated in the SEF with that in the confidential tables (see Attachment TFQ - OCOT and NVs (Revised - Final)) provided to TFQ on April 24th 2012.

In paragraph 6.4 of SEF (see the 5th paragraph in page 31)¹, Customs states that it uplifted the exporters’ HRC and narrow strip costs, but, in the confidential calculation table titled “TFQ - OCOT and NVs (Revised - Final)”, the uplift covered every aspect of cost of manufacture, i.e. not only the HRC and narrow strip costs, but all other cost components were also uplifted indifferently by [Confidential] %, which is obviously inconsistent with the statement made in the SEF itself.

By conducting such an overall cost uplifting, it seems that the Customs presumes that the prices of other direct costs (i.e. other raw materials, direct labors, energy, etc.) are also different from some benchmark at a percentage of [Confidential]%. Without conducting an objective investigation on bases of positive evidences, we assume this calculation is made by an inadvertent error rather than a purposely decision the Custom intend to make.

[Information of uplifted percentage removed]

The above-referred information of uplifted percentage is not susceptible to a meaningful non-confidential summary as it is commercially sensitive. Since disclosure of such information will harm the Company’s interests, it was provided to the Customs in confidential

- 1.2. It is also out of logic to derive the “reasonable profit” on the non-uplifted cost and then put it onto the uplifted cost to get a “constructed normal value”. If the cost at that time was at such a high level, one cannot expect a profit could have ever been achieved. The basic logic is that profit reflects the mark-up between cost and sale prices. If the cost changed ever while the price stayed stable, the profit would change accordingly.

2. Comments on Subsidy determination

- 2.1. In the SEF, the Customs finds the subsidy margin for TFQ as 8.7% which completely results from the 20th program in the questionnaire named “Hot rolled steel provided by government at less than adequate remuneration”.
- 2.2. TFQ opposes that the Customs treats the steel suppliers as “public bodies” and in fact TFQ cannot understand why the Customs fails to find the existence of functional market in China. For this is a problem involving all the Chinese enterprises as a whole, we understand that GOC will give comments regarding this point, therefore, TFQ will not submit further comments on this issue, but reserves the rights of further commenting.

Similarly, TFQ opposes the usage of “the outside benchmark” but it is understand that GOC will give detailed comments regarding this issue thus TFQ will not submit further comments on this issue.

¹ Page 31 of Statement of Essential Facts No. 177.

However, TFQ would like to point out that the surrogate prices adopted by the Customs are from countries and regionals which are of great difference with China in aspects such as economic development level, market situation of the iron and steel industry and the resources. These make the surrogate approach particularly unreasonable.

In addition, we hope detailed explanation, including the specific data, would be given by the Customs about what adjustments have been made as to tell apart the discrepancy between the steel materials from different countries so that we can make meaningful comments.

- 2.3. TFQ noted that, the Customs, in its SEF and the confidential calculation table titled Exhibit I-4.4 Hot Rolled Steel Raw Material Purchase Prices, presumed that, in the situations where TFQ did not know the suppliers' ownership or where the traders cannot provide the producers of their steel suppliers, these suppliers were presumed as SOEs.

TFQ strongly opposes this presumption. The making of a presumption shall at least be based on some logics, or at least on some experiences or on a statistics; but in the Customs' presumptions, no such basis is evident to us.

TFQ submits that, since the foregoing presumption will very likely cause a higher subsidy margin to the company, the Customs should shoulder more duty of prudent than usual. We wonder if the Customs considers that TFQ did not provide information necessary as required by Article 12.7.2 and then makes the foregoing presumption. If that's the case, TFQ cannot agree. Obviously, TFQ is not in a position to know all the suppliers' ownership situations, or does TFQ have the power to forth the suppliers to provide this information or let the traders tell TFQ who their suppliers are and that whether their suppliers are state-owned or private-owned enterprises. In fact, the traders themselves may not know this kind of information as well.

3. Comments on the procedure issues

- 3.1. Not until the last stage the investigation, the Customs publish its findings regarding the Particular Market Situation and subsidies on April 13 and April 16 of 2012 respectively, yet no specific data relating to the calculation of subsidies was published at that time.

From the view of TFQ, the disclosure of information during the investigation is of same significance as the disclosure in the SEF; and the significance of the disclosure at an earlier stage of the investigation period cannot be ignored just because of the disclosure that will be made in the SEF. The disclosure regarding PMS and subsidy made only at the time approaching the SEF materially impair the rights of interested parties to make their defense; thus it is not in line with the provisions of Article 12.3 in the SCM Agreement about protecting the legal rights of interested parties in the investigations.

² Article 12.7 of Subsidies and Countervailing Measures, In cases in which any interested Member or interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.


We noted that Customs has made its preliminary findings on dumping (without the PMS and subsidy findings) as early as last December, and has disclosed the detailed information for its preliminary dumping margin calculation soon afterward, we presume that to make the PMS and subsidy findings available at an earlier stage is not impossible.

Due to PMS ruling, the basis for the dumping margin calculation overturned, which makes the numerals discussions already made between TFQ and the Customs meaningless. TFQ need to, only if they can, make any comment on the calculating of dumping margin after the change of the calculating basis for TFQ within only 20 days.

- 3.2. TFQ noted that, in Page 70 of SEF, the Customs states that it will avoid any overlap or double-counting that may arise from the circumstances of this case, however, until now, the SEF and the confidential spreadsheets sent by the Customs all have not disclosed any measures it will adopt to avoid the double-counting. We hope that the Customs will make sure that double-counting will arise in any measure it may propose to the ministry and make necessary disclosure thereof.

We appreciate your kind consideration of the above comments, and we are more than happy to answer any question you may have.

Yours sincerely



Liu Jianwei