PUBLIC FILE 26

Non-confidential version of certain emails between Steelforce and Australian Customs for the electronic public record

From: Rod Corkill
Sent: Thursday, 17 May 2012 16:53
To: STONE Andrea; HIGGINS Rebecca
Cc: Daniel Moulis
Subject: RE: STEELFORCE - MEETING WITH CUSTOMS - DISCUSSION POINTS - NON-CONFIDENTIAL VERSION [SEC=UNCLASSIFIED]

Dear Andrea & Rebecca,

Thank you for your email. I have reviewed that attached record of Monday's meeting and believe that comments under item *1. Treatment of VAT in the uplift of HRC costs* do not accurately reflect the key points that that were discussed and documented in the meeting notes provided to Customs. All of us at Steelforce share a continuing and growing frustration at the fact that this real cost issue appears to be misconstrued or misunderstood by Customs. I have attached a very simple and logical CONFIDENTIAL explanation of why the HRC Uplift calculations **MUST** include non-refundable VAT in the Dalian Steelforce HRC costs if Customs is to achieve the desired outcome of substituting Dalian Steelforce HRC costs in the constructed normal value calculations with the benchmark HRC costs *(Simple explanation of why Uplift calc must include Non-Refundable VAT CONFIDENTIAL.PDF)*. The key point that was reiterated throughout discussions on Monday and explained in the attached is that Steelforce believes *"for the purposes of the "HRC Uplift" calculations, all costs (including non-refundable VAT) associated with the cost of HRC should be included in the Steelforce Dalian HRC costs for comparison to the benchmark pricing."*

I have amended the attached record of meeting to reflect what was discussed. Once you have made this amendment, please go ahead and place the record of meeting on the public file.

Further to the request below, I have attached also for your information a confidential version of the meeting notes.

Regards,
Rod Corkill
Chief Executive Officer
Steelforce Australia Limited

From: GLEESON Geoffrey
Sent: Tuesday, 22 May 2012 4:11 PM
To: Rod Corkill; Daniel Moulis
Cc: STONE Andrea; HIGGINS Rebecca
Subject: RE: STEELFORCE - MEETING WITH CUSTOMS - DISCUSSION POINTS - NON-CONFIDENTIAL VERSION [SEC=UNCLASSIFIED]

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Dear Rod,

Thanks for your email and attachment concerning the treatment of VAT in the uplift of HRC costs.

I think it is firstly important to make clear that the constructed normal value calculated for Dalian Steelforce was in fact based on the VAT-exclusive costs in the first instance (i.e. the Dalian Steelforce cost of goods sold figures, which I understand includes the cost of non-refundable VAT, were not used). In a separate step, non-refundable VAT was the basis of an 8% adjustment when determining a normal value that was properly comparable to export price.

It seems that our approach is consistent with your view (from the handout provided at our meeting of 14 May 2012) that "*The HRC uplift calculation is a distinct and very separate exercise to the calculation of the constructed normal values...*". However, these concepts seem to merge in your attachment. Indeed the VAT adjustment of 8% is used in your Scenario 2 to arrive at a constructed normal value of 115. In relation to this amount of 115, your footonote says "*Now the normal value EQUALS the Benchmark HRC rate...*" and it goes on to say that "*This is the intention of Australian Customs...*" I disagree. I do not believe it was our aim, nor should it be our aim, to arrive at a constructed normal value that equates to the benchmark cost of HRC (in saying this, I appreciate the model is simplified to focus on HRC and VAT issues).

The simple intention with respect to replacing HRC costs is to remove the Dalian Steelforce costs of HRC and replace them with that of an appropriate benchmark - both need to be VAT-exclusive to be like-for-like. It is accepted that a non-recoverable amount of VAT is also incurred as a separate cost (in COGS), and this is accounted for by way of an adjustment to constructed normal value. This is considered appropriate given the amount of non-recoverable VAT is a function of FOB export price and the net export VAT liability. I note in this regard that the cost of non-refundable VAT is a result of making export sales of HSS, and that HSS sold domestically does not incur such a cost. This is consistent with the accounting treatment of Dalian Steelforce which is to treat the non-recoverable VAT as a cost of goods sold and not a cost of production. It is therefore difficult to see why such a cost would be attributed directly to the cost of HRC, and why such a cost should be included in an amount representing HRC costs to be compared to a VAT-exclusive benchmark for HRC.

Turning to the mathematics of the examples, I note in Scenario 2 you have included the non-recoverable VAT in the "*actual Steelforce Dalian HRC cost*". However, you are still comparing this to a VAT-exclusive benchmark; a comparison that has now departed from a like-for-like basis. In our view, the Steelforce HRC costs inclusive of non-refundable VAT (noting we do not consider this appropriate for the uplift calculation) would need to be compared with a benchmark that is like - i.e., the Benchmark HRC amount uplifted by 8% non-refundable VAT. This would provide a benchmark, inclusive of non-refundable VAT, of 124. When compared to the "actual" cost of 108, the uplift factor of 15% holds.

Happy to discuss.

Regards
Geoff
Geoff Gleeson
Director Operations 3

NON-CONFIDENTIAL

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FILE
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International Trade Remedies Branch
Australian Customs and Border Protection Service
Canberra
T: 02 6275 6134 | F: 02 6275 6990 | M: 0419 776 415

From: Rod Corkill
Sent: Wednesday, 23 May 2012 8:29 PM
To: GLEESON Geoffrey (geoffrey.gleeson@customs.gov.au)
Cc: STONE Andrea (andrea.stone@customs.gov.au); HIGGINS Rebecca (rebecca.higgins@customs.gov.au); 'Daniel Moulis'; Matt Gerrard
Subject: RE: STEELFORCE - MEETING WITH CUSTOMS - DISCUSSION POINTS - NON-CONFIDENTIAL VERSION [SEC=UNCLASSIFIED]

Dear Geoff,

Thanks for the attached response in relation to the treatment of VAT in the uplift of HRC costs.

We are very clear that Customs approach to calculating the constructed normal value ("CNV") calculations for Dalian Steelforce start with VAT exclusive costs which are subsequently adjusted upwards by 8% to reflect the applicable non-refundable VAT. For Dalian Steelforce, the 8% upward adjustment was applicable to ALL costs to make and sell reflecting that all finished goods are exported from China. We agree in principle with the final values of the CNV calculations and have confirmed this on numerous occasions. This is not the issue.

Our issue, which is well documented and has formed part of previous submissions and discussions, is with Customs approach to calculating the *HRC uplift factor* which is applied to HRC in the CNV calculations.

Your message below states *"The simple intention with respect to replacing HRC costs is to remove the Dalian Steelforce costs of HRC and replace them with that of an appropriate benchmark - both need to be VAT-exclusive to be like-for-like."* We strongly disagree with this approach. Whilst it may be convenient and simple for Customs to simply eliminate all taxes from all jurisdictions this **DOES NOT** result in a like for like comparison for Dalian Steelforce. It has been and remains our view that all costs be included in the Dalian Steelforce HRC. We have also stated in the footnote in the attachment that the benchmark HRC should ***"...include non-refundable VAT in the relevant jurisdiction, if any"***. Therefore, under the approach we proposed in Scenario 2 in the attached we should be calculating benchmark HRC costs (including ALL costs associated with purchasing the HRC in the relevant jurisdictions) and comparing to Dalian Steelforce HRC costs (including ALL costs associated with purchasing the HRC i.e. 8% non refundable VAT). This comparison is a more like-for-like comparison as it is a comparison of price paid by HSS suppliers. It is **ALL** elements of the price paid in **the relevant jurisdictions** that **MUST** be included.

With regard to the mathematics of the examples in the attached, we did not change the benchmark HRC rates from Scenario 1 to Scenario 2 as we are not privy to the make-up of these rates (Customs has refused to release the details behind these rates) and therefore we have no idea whether these rates include all costs associated with procuring the HRC. We did acknowledge in the footnote (and above) that these benchmark rates should include non-refundable VAT if applicable to these jurisdictions.

With regard to your reference to the benchmark uplift, it is inappropriate and completely illogical to uplift the benchmark by 8% simply because we have recognised non-refundable VAT in the Dalian Steelforce HRC. We make this point in a separate footnote in the attached as follows:

"Note: Because the cost-to-cost comparison is a comparison of price paid by HSS suppliers, it is all elements of the price paid in the two places that are to be included. If Customs takes the view that part of the price is non-refundable VAT, as it is clearly doing in its calculation methodology, then it is the full up cost in the two places that is required to be compared. That means that any non-refundable VAT in the respective places is legitimately included in the cost comparison, and NOT the addition of Chinese VAT to a foreign benchmark."

Geoff, we seem to be continuously covering the same issues with regard to the HRC Uplift calculations. Whilst you have made various references to the attached in your message below, certain relevant points (outlined above) appear to have been completely ignored.

Customs **HAS NOT** achieved the stated outcome (outlined below in your message) which was to *"remove the Dalian Steelforce costs of HRC and replace them with that of an appropriate benchmark"*. This was demonstrated in the last submission made by Steelforce (see table below) where the HRC rates used in the Dalian Steelforce CNV differ materially to the benchmark rates. This cannot be disputed and needs to be resolved.

[CONFIDENTIAL DIAGRAM DELETED – COMPARISON OF UPLIFT RATES]

The approach taken by Customs regarding the HRC uplift fact has been simple and convenient for Customs. It **DOES NOT** provide for a like for like comparison. This is a view that is not only held by Dalian Steelforce. The same issue has been raised in submissions made to Customs in the SEF Response by other companies, **all independently of each other** - Huludao *(Section 4 The Subsidy Benefits Calculation in Program 20 or Uplifted Percentage for HRC/Narrow Strips is Normal Value Constructed Should Be Calculated on "Paid" or VAT Loaded Basis, Page 14)* and the SEF Response by Kingland *(Section 4 Errors in The Subsidy Benefits Calculation in Program 20 or Uplifted Percentage for HRC/Narrow Strips in Normal Value Construction, Page 13).*

In light of this issue being raised by Dalian Steelforce and various other mills subject to investigation by Customs, I strongly urge you to seek independent advice on the treatment of VAT in relation to the HRC Uplift calculations. **[CONFIDENTIAL TEXT DELETED]**

Please call if you would like to discuss.

Regards,
Rod Corkill
Chief Executive Officer
Steelforce Australia Limited

From: GLEESON Geoffrey [mailto:geoffrey.gleeson@customs.gov.au]
Sent: Thursday, 24 May 2012 11:01 AM
To: Rod Corkill
Cc: STONE Andrea; HIGGINS Rebecca; Daniel Moulis; Matt Gerrard
Subject: RE: STEELFORCE - MEETING WITH CUSTOMS - DISCUSSION POINTS - NON-CONFIDENTIAL VERSION [SEC=UNCLASSIFIED]

Dear Rod,

Thanks for your email. Given the nature and content of the email chain below, I believe it is appropriate for a non-confidential version of this correspndence to be placed on the public record. Can you please review the email chain and the attachment, and (with attention to the usual processes for formulating a non-confidential version) provide a version that is suitable for the public record.

I can confirm that I consider the content of my email to be non-confidential but I encourage you to review that email as well to ensure nothing is considered confidential by Steelforce.

Thanks and regards,

Geoff Gleeson
Director Operations 3
International Trade Remedies Branch
Australian Customs and Border Protection Service
Canberra
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DALIAN STEELFORCE Hi-TECH CO LTD

NON-CONFIDENTIAL

Inclusion of Non-Refundable VAT in the HRC Uplift Calculation

Scenario #1 - Non-refundable VAT is EXCLUDED from Steelforce Dalian's HRC costs when calculating the HRC Uplift (Currently used by Australian Customs)

HRC UPLIFT CALCULATION

Benchmark HRC	Actual Steelforce Dalian HRC Cost (EXCLUSIVE of VAT)	Coil Uplift Factor
¥115	¥100	15.0%

CONSTRUCTED NORMAL VALUES CALCULATION

Actual Steelforce Dalian HRC Cost (Exclusive of VAT)	Coil Uplift Factor		VAT Adjustment applied to China	Constructed Normal Value[1]
¥100	15.0%	¥115	8.0%	¥124

[1] Resulting Normal Value is higher than Benchmark HRC rate because it is applying CHINESE non-refundable VAT to a FOREIGN Benchmark. **This is NOT a like-for-like comparison.**

Scenario #2 - Non-refundable VAT is INCLUDED in Steelforce Dalian's HRC costs when calculating the HRC Uplift (Proposed by Steelforce)

HRC UPLIFT CALCULATION

Benchmark HRC	Actual Steelforce Dalian HRC Cost (INCLUSIVE of Non-Refundable VAT)	Coil Uplift Factor
¥115	¥108	6.5%

CONSTRUCTED NORMAL VALUES CALCULATION

Actual Steelforce Dalian HRC Cost (Exclusive of VAT)	Coil Uplift Factor		VAT Adjustment applied to China	Constructed Normal Value[2]
¥100	6.5%	¥106	8.0%	¥115

[2] Now the Normal Value EQUALS the Benchmark HRC rate (which should include non-refundable VAT in the relevant jurisdiction, if any). This is the intention of Australian Customs substituting Dalian Steelforce's HRC costs per tonne with the Benchmark costs per tonne.

Note: Because the cost-to-cost comparison is a comparison of price paid by HSS suppliers, it is all elements of the price paid in the two places that are to be included. If Customs takes the view that part of the price is non-refundable VAT, as it is clearly doing in its calculation methodology, then it is the full up cost in the two places that is required to be compared. That means that any non-refundable VAT in the respective places is legitimately included in the cost comparison, and NOT the addition of Chinese VAT to a foreign benchmark.