

Mr Justin Wickes  
National Manager  
International Trade Remedies Branch  
Australian Customs and Border Protection  
Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

18 January 2012  
Matter 81990149

Dear Mr Wickes

## **Trade Measures Inquiry No. 176 – Structural Timber exported from Austria, Canada, the Czech Republic, Estonia, Germany, Lithuania, Sweden and the USA**

We act for Building Supplies Group Holding Pty Ltd (after this referred to as **CHH Woodproducts**). CHH Woodproducts, along with other members of the domestic industry, has made an application for anti-dumping measures in respect of certain exports of structural timber from Austria, Canada, the Czech Republic, Estonia, Germany, Lithuania, Sweden and the USA.

The investigation was formally commenced on 9 September 2011 (refer ACDN No. 2011/41). By ACDN No. 2011/63, Customs and Border Protection advised that the Minister had extended the date by which a Statement of Essential Facts must be made to 12 March 2012.

We are advised that:

- the Australian Customs and Border Protection Service (**Customs and Border Protection**) has completed verification visits with co-operating exporters in each of the nominated countries; and
- Customs and Border Protection is currently in the process of providing co-operative exporters with draft reports detailing the findings of the visits.

As outlined below, CHH Woodproducts has two related concerns regarding the production of the draft reports. It considers that a failure to address these concerns may lead to an incorrect and reviewable decision.

### **Failure to consult industry expert**

The determination of like goods and dumping margins in the structural timber market is a complex exercise. CHH Woodproducts considers that retaining an industry expert is necessary in order to make a correct determination. Customs and Border Protection has recently highlighted the importance of industry expert input.

*It is not feasible for any organisation the size of the Branch to have both the depth and breadth of expertise required by the diversity of investigations. Instead the Branch will bring in independent experts to supplement existing staff knowledge in complex cases and to provide advice on key issues. This might include issues such as determinations of like goods, production processes and*

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*costs, accounting arrangements, statistical analysis, economic modelling and economic impact studies.*

Our client understands that Customs and Border Protection proposes to calculate normal values on the basis of the exporter's production costs, plus appropriate amounts for selling and general administrative expenses, and an amount for profit (under s.269TAC(2)(c) of the Customs Act). A normal value determined on this basis is reliant upon the exporter's guidance as to the relevant costs of production for the goods under consideration (GUC).

The verification of sawmill timber production economics is complex. The following points highlight the difficulties associated with identifying relevant costs and the need for a qualified industry expert to determine whether the visit reports accurately reflect industry practice and capability. For instance:

- **Review of both site and manufacturing yields** to confirm that they are technically achievable. Timber plants are commonly physically integrated with other manufacturing processes that may or may not rely on supply of feedstock from the timber mill. Depending on the activity on site, whole of site and manufacturing yields for finished timber are commonly different with the latter being lower, especially when producing structural products such as the GUC.

Having integrated assets raises issues of reasonable cost allocations, e.g. whether generic allocation of costs potentially leads to the under-allocation of actual costs, thereby resulting in Customs and Border Protection calculations based on possibly undervalued GUC;

- **The absence in and across manufacturing sites of harmonized units of measure and measurement techniques** limits the ability to aggregate and roll-up data. This, in turn, creates difficulties in comparing sites without a clear understanding of the collection and reporting techniques initially used. This issue applies in respect of both European and North American origin goods;
- **The treatment of residue credits** to ensure they are both (a) consistent with market prices; and (b) not inflated sums based on the inclusion of unrelated processes to the GUC, e.g. where the chipping of whole logs may overstate the input credits applied to finished timber costs.
- **Capture of unique product specific costs** associated with the GUC when producing for non-home country market. For example, where a high percentage of manufactured finished timber goods other than the GUC are subject to planing, this will commonly lead to an understatement of cost for the GUC and suitable allowance should be made when pursuing a constructed price (should this mechanism ultimately be used);
- **Repairs and maintenance provisions** – Expert review is required to ensure that the classification of costs included in repairs and maintenance to capital and the subsequent amortization is consistent with the ongoing industry maintenance requirements of large complex capital assets being allocated to the finished product and also consistently applied across all exporters.

These issues are precisely the types of matters in respect of which expert guidance is required.

Our instructions are that Customs and Border Protection indicated that it would appoint a timber industry expert to evaluate the cost information provided by exporters. Our client understands that no such expert has been appointed.

A failure to appoint an appropriate expert, despite prior indications that it would do so, and that the appointment of such an expert was appropriate, is likely to result in an inadequate understanding of the information provided by exporters. It increases the

<sup>1</sup> Customs and Border Protection, *Streamlining Australia's anti-dumping system – An effective anti-dumping and countervailing system for Australia*, June 2011, at 3.1.

likelihood that Customs and Border Protection will not take into account all relevant considerations, and increases the risk of error.

In these circumstances, our client considers that Customs and Border Protection should:

- Appoint an industry expert to assess whether the information relied upon for normal value purposes is relevant and accurate; and
- Withhold and postpone the finalization of the exporter visit reports (including the release of public file versions of exporter visit reports) until the industry expert completes their review.

Our client had assumed an industry expert would be appointed and has, accordingly, not raised this issue until now. It notes that Customs and Border Protection has extended the date by which a Statement of Essential Facts is to be made. It considers that an expert could be appointed without prejudice to the existing timeline.

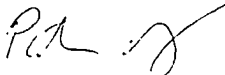
**Like goods**

Our instructions are that the exporters assert that there are no like goods in their respective home markets. We understand, however, that structural timber is produced in each of the exporting countries and sold to relevant domestic standards. While there may be minor differences in specifications, our client considers that these products nevertheless constitute "like goods". Therefore, utilising the constructed method to calculate normal value is not appropriate.

In particular, we understand that Customs and Border Protection has not considered whether a "specification" adjustment to the relevant exporter's domestic selling price(s) is appropriate for normal value purposes. Our client considers that Customs and Border Protection must, in consultation with its industry expert, reconsider any conclusions regarding the absence of like goods.

Given our client's understanding that exporter visit reports may shortly be in a form suitable for release to the public file, your urgent attention to the matters raised in this letter would be appreciated. My clients are happy to make themselves available to discuss the contents of the letter with you.

Yours sincerely



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