

STAUGHTONS

Independent trade advisory group on anti-dumping & customs issue solutions

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February 26, 2013

Mr John Bracic
Director, OPS 1
International Trade Remedies Branch
Australian Customs & Border Protection
Canberra ACT 2601

CC: Ms Lydia Cooke

Dear Mr Bracic

**Re: ACDN NO. 2013/07
CERTAIN HOLLOW SECTIONS
REINVESTIGATION**

I am writing on behalf of the Australian importer Stemcor Australia Pty Ltd (Stemcor) being in relation to the abovementioned re-investigation and on the basis that the following claims be taken into consideration by the re-investigation team.

DETAILS

Case	ACDN No 2013/07 Investigation No. 177
Goods	Certain HSS imports by Stemcor from its various suppliers from:- <ul style="list-style-type: none">• China
Company	Stemcor Australia Pty Ltd
Person	M J Howard Representative for Stemcor
Contact Details	jack@itada.com.au ph: 0459 212 702
Role	Stemcor is an Australian importer of the subject goods and was investigated pursuant to Investigation No. 177.
Introduction	The TMRO Report contained references to Stemcor, inter alia, at paras 170 to 178.

This submission is in relation to the following findings that the CEO has been directed to reinvestigate, namely:-

- (1) The finding that there was a particular market situation in the Chinese iron and steel market such that sales in that market were not suitable for use in determining a Normal Value under s 269 TAC(1) of the 'Act'.
- (2) The calculation of the benchmark used to construct a Normal Value for Chinese HSS producers under s 269 TAC (2)(c) of the 'Act'.
- (3) The calculation of the Dumping Margin for 'selected non-cooperating exporters'.

Specifically the following Stemcor suppliers of China produced HSS are affected by the TMRO's findings and recommendations: -

1. Re the Particular Market Situation (PMS), etc., the exporter **Qingdao Xiangxing Steel Pipe Co Ltd (Qingdao)**, was investigated pursuant to the Investigation No. 177.
2. Re the benchmark for steel feed prices, **Qingdao** had a 14.6% uplift imposed on its constructed cost to make.
3. Stemcor imported from the following "selected non-cooperating exporters" :-
 - Shandong Fubo Group Co Ltd
 - Zibo Litong Steel Pipe Co Ltd
 - Zibo Fubo Steel Pipes Factory

PMS

We clearly support the TMRO's findings and recommendation pertaining to Customs' assumptions resulting in a suspicion that a PMS existed in the China HSS market.

Our understanding and relevant past experience on these matters is that Customs' treatment of exporters is consistent with the WTO Agreement and that its findings and conclusions are based on the "facts of each individual case".

Investigation No. 177 Customs has relied on s 269 TAC (2)(a)(ii) of the ‘Act’ because it was concluded that a PMS applied in the China market for HSS and steel generally.

Our understanding is that the ‘Act’ does not specifically provide for this circumstance other than vide s 269 TAC (d) which on our interpretation, the CEO has not relied on in his recommendations to the Minister.

In essence, however, our reading of the TMRO Report is that Customs did not have the necessary information to conclude that a PMS existed, and since no new information can now be obtained for Customs to conclude that PMS definitively existed, the finding that a PMS existed was made without either the requisite findings of fact or relevant authority.

Our further understanding is that if it had been concluded as a matter of fact that a PMS applied, Customs should have relied on s 269 TAC (d) or, if in accordance with Article 2.4, relied on: -

- (a) Third country exports; or
- (b) Cost of local production plus SGA, etc.

Conclusion Qingdao It is our opinion that Customs’ use of surrogate costings in the case of Qingdao, resulting in an uplift of 14.6%, on the basis that a PMS existed should now be reconsidered and on this PMS issue generally, our proposal is that the findings of Investigation No. 177 relating to a PMS must now be considered void and if necessary, a new investigation be undertaken as any reliance on a PMS is now invalid.

Our Submission is that Qingdao’s Normal Value based on the constructed surrogate costs be reviewed on the basis of the TMRO’s findings.

Other China Exporters Based on the findings and recommendation of the TMRO – Reference Para 201 – the Stemcor suppliers treated as being “selected non-cooperating exports” can only “legally” be treated as being residual exporters.

Accordingly the respective Dumping Duty Margins of Stemcor’s other China suppliers need to be determined as provided for in s 269 T6 (3B) of the ‘Act’.

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General Comment It would appear that Customs' suspicion of there being a PMS in respect of the China HSS market is because of apparent GOC passed through subsidies resulting in lower than "acceptable" costs and domestic pricing.

If that is the cause of Dumping Margins then the added imposition of countervailing duties can only be viewed as applying a "double whammy" – no subsidies, no dumping.

Conclusion We respectfully request that the re-investigation give consideration to the matters outlined in this Submission pertaining to Stemcor's Chinese exporters of HSS.

Please contact the writer for any clarification relating to this Submission.



M J Howard