

8th March 2013

Mr John Bracic
Director, Operations 1
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Mr Bracic

Re Australian Customs Dumping Notice No. 2013/37 – Reinvestigation of certain findings in respect of Certain Hollow Structural Sections exported from the People’s Republic of China, the Republic of Korea, Malaysia and Taiwan

Introduction

I refer to OneSteel ATM’s submission dated 8 February 2013 addressing matters for reinvestigation by Customs and Border Protection concerning the Minister’s decision to impose interim measures on certain hollow structural sections (“HSS”) exported from China, Korea, Malaysia and Taiwan.

OneSteel ATM seeks to highlight with Customs and Border Protection material factors that the Trade Measures Review Officer (the “Review Officer”) – in his assessment of the information before the Chief Executive Officer of the Australian Customs and Border Protection Service – has not relevantly considered in his review of the Minister’s decision.

These factors relate to the issue of a “particular market situation” finding for HSS sold in China.

Chinese government policies for the iron and steel industry

The Review Officer has detailed in his Review Findings the information identified by Customs and Border Protection as the “mandatory” and “aspirational” language of the Government of China (“GOC”) that is relied upon to direct and influence the Chinese iron and steel industry.

This information is detailed in paragraphs 89 to 92 of the Review Officer’s report.

The Review Officer further considered the impact of export tariffs and taxes on raw material inputs (i.e. coke and coking coal), the GOC-directed mergers and acquisitions, prices for HRS to HSS at subsidized prices, evidence that Chinese HRC prices were lower than in other countries, and comments “by some market participants” about GOC policies (Paragraph 96 refers).

The Review Officer considered that the clearest example of government intervention was the impost of the duties on the export of coke and coking coal (Paragraph 97). However, the Review Officer did not consider that Customs and Border Protection had sufficiently quantified the impact of the export duty on the domestic price of coke.

Customs and Border Protection correctly highlighted with the Review Officer the WTO Panel Body Decisions DS394, DS395 and DS 398, and Appellate Body decision AB-2011-

5. The decisions related to the impact of GOC restrictions on exports that suppress domestic selling prices in China for raw material input goods (Paragraph 98). OneSteel ATM is somewhat dismayed that the Review Officer discounted the relevance of the WTO Decisions as they could not “materially assist in my review of the market situation finding”.

The Review Officer has recognized the impost of the tariffs and taxes as best demonstrating government intervention, however, he has chosen to selectively disregard the WTO Panel and Appellate Body findings on the impact of GOC intervention on raw material inputs as not being of material assistance in the review.

Respectfully, OneSteel ATM challenges the legitimacy of the Review Officer’s claims to dismiss the WTO Panel and Appellate Body findings.

OneSteel ATM also respectfully rejects the Review Officer’s statement that the mergers and acquisitions within the Chinese iron and steel industry did not occur as a consequence of “their enforcement by the government”. This opinion is not supported by the evidence that is contained in the National Steel Policy, the Eleventh and Twelfth Five-Year Plans for the iron and steel industry, and under the guidance of the National Development and Reform Commission (“NDRC”).

OneSteel ATM does not consider that the Review Officer has taken full account of the information contained in OneSteel ATM’s application that detailed the grounds for arriving at a conclusion as to the existence of a particular market situation for HSS in China.

Relevantly, OneSteel ATM had outlined the findings of administrations in Canada, the EU and the USA on exports of Chinese welded pipe and tube. In particular, Section B-1.4 of the application addressed the findings of the Canadian investigations including referencing a June 2007 finding by the Canadian Border Services Agency (“CBSA”) that HRC sheet and strip prices in China “are substantially determined by the GOC and there is sufficient reason to believe that they are not substantially the same as they would be if they determined in a competitive market”.

In its findings on carbon steel welded pipe (i.e. HSS) exported from China, CBSA referenced the following influencing factors in support of its findings that prices for carbon steel welded pipe (“CSWP”) were not the same as if they were determined in a competitive market:

- the GOC recognizes the iron and steel industry as a “pillar industry” whereby it maintains control over principal enterprises in the industry, has five year plans for the industry, and maintains substantial ownership of assets in the industry (as evidenced in “Money for Metal” included at Non-Confidential Attachment B-4.1.3 of OneSteel ATM application);
- the level of Communist Party involvement in the decision-making of State-Owned enterprises (now SIEs) in the steel industry;
- the role of the State in the economy through the five-year plans and its ownership in steel industry assets both at the State and provincial levels;
- the implementation of the National Steel Policy plan, that includes:
 - rationalization of steel industry participants under the guidance of NDRC;
 - consolidation of production with top 10 producers accounting for 50 per cent of production by 2010;

- direction to manufacture increased volumes of higher value production by 2010;
- the issuance of “policies, circulars, guidelines, laws and comments” by the GOC that the CBSA determined were used to control the steel industry, included the CWSP sector;
- Recent reviews conducted by CBSA which highlighted that CWSP prices were below the cost of the raw material HRC price. Additionally, CBSA evidenced Chinese welded pipe being sold on export markets at prices below the cost of market-determined prices for HRC;
- CBSA’s earlier findings (i.e. 2005 and 2007) that Chinese HRC and narrow strip prices were not determined on a competitive basis;
- the manipulation of VAT rates on exports to influence domestic supply to create oversupply and force domestic prices down (e.g. steel billet and slab) and that the subsequent impact on prices was not market-driven;
- information contained in NDRC’s “Guiding Catalogue for Industry Restructuring” that provided guidance for investment directions, the administration of investment projects, and to enforce public policy decisions on finance, taxation, etc.

In its assessment of the aforementioned policies the CBSA determined that “*the GOC significantly affects the steel industry, including the welded pipe sector, through means other than market forces to the extent that these prices are substantially determined by the GOC*”¹.

The CBSA was sufficiently satisfied – as was Customs and Border Protection – that the available information supported a finding of significant GOC intervention in the CSWP (i.e. HSS) sector in China.

Findings on GOC intervention

The information relied upon by CBSA (as detailed above) was referenced in OneSteel ATM’s application for anti-dumping and countervailing measures. This information does not appear to have been appropriately considered by the Review Officer during his Review considerations.

OneSteel ATM considers that the available information including the National Steel Policy Plan, the Five Year Plans for the iron and steel industry, the identification of the Chinese steel industry as a “pillar” industry that is strategic to the Chinese economy (through this categorization benefits from a broad range of tax exemptions and benefits and discounted loans, etc.), and the substantial government ownership in the industry (greater than the GOC’s acknowledged 71 per cent), are demonstrative of the GOC’s intervention in the Chinese iron and steel industry.

¹ Certain carbon steel welded pipe originating in or exported from P R China, Statement of Reasons Confirming the making of final determinations in respect to the dumping and subsidizing of, CBSA, 5 August 2008, P.55.

Program 20

The CBSA's finding that hot rolled coil and narrow strip is sold in China at less than adequate remuneration is also consistent with Customs and Border Protection's assessment of the information examined during investigation No. 177. The findings of CBSA and Customs and Border protection are also consistent with the US Department of Commerce findings in Circular Welded Carbon Quality Pipe and Tube and Light Walled Rectangular Pipe and Tube exported from China (2008) where hot rolled steel (i.e. HRC and narrow strip) was evidenced as being sold at less than adequate remuneration.

The CBSA and US Department of Commerce used external benchmark prices (i.e sourced from industry publications such as SteelBenchmarker and SBB) to demonstrate Chinese HRC and narrow strip prices were sold at less than adequate remuneration.

Customs and Border Protection's findings on Program 20 are therefore consistent with the countervailing findings of other jurisdictions (i.e. Canada and the USA).

Conclusions

OneSteel ATM submits that Customs and Border Protection's findings on a particular market situation for HSS in China is an appropriate decision based upon the available information. The findings are consistent with similar investigation conclusions of the CBSA that domestic prices for CSWP (i.e. HSS) are not determined on a competitive basis in China. The information considered by CBSA and as documented in its Statement of Reasons is consistent with the information examined by Customs and Border Protection in Investigation No. 177.

The information detailed in OneSteel ATM's application that outlines the information considered by the CBSA is not referenced in the Review Officer's findings.

It is OneSteel ATM's position that it was open to Customs and Border Protection to make a positive decision as to the existence of a particular market situation for HSS in China based upon the available information. This evaluation of the information is consistent with similar findings on similar goods by agencies in other jurisdictions. It is not considered that Customs and Border Protection has erred in its assessment of the circumstances on a particular market situation for HSS in China.

Further, OneSteel ATM views Customs and Border Protection's findings for Program 20 as consistent with the recent findings of CBSA and the US Department of Commerce on HRS (i.e. HRC and narrow strip) sold at less than adequate remuneration in China.

If you have any questions concerning this submission please do not hesitate to contact me.

Yours sincerely



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