

**APPLICATION FOR COUNTERVAILING DUTIES
AND ANTI-DUMPING DUTIES
ON PLATE STEEL FROM CHINA**

**CONSULTATIONS UNDER ARTICLE 13.1 OF THE
WTO AGREEMENT ON SUBSIDIES AND COUNTERVAILING
MEASURES**

January 9, 2013

**SUPPLEMENTARY POSITION PAPER
OF THE GOVERNMENT OF CHINA**

A INTRODUCTION

- 1 On January 9, 2013, consultations were held between representatives of the Government of China (“GOC”) and the Australian Customs and Border Protection Service (“Australian Customs”) regarding the *Application for Anti-Dumping Duties Plate Steel exported from the People’s Republic of China, Indonesia, Japan, the Republic of Korea and Taiwan*¹ and *Application for Countervailing Duties Plate Steel exported from the People’s Republic of China* (“the Application”).
- 2 In preparation for this consultation, the GOC drafted a position paper (“the Position Paper”), outlining the GOC’s concerns regarding the Application. A copy of the Position Paper was provided to Australian Customs.
- 3 Section E of the Position Paper, entitled *China’s Plate Steel Exports in a Comparative Sense*, made the general submission that, on the basis of the information in the Application, if the lowest normal values of other, more expensive, exporters subject to the Application are compared with China’s export prices, there was no dumping from China over the 12 months ended 30

¹ Under the framework of the WTO, the Region of Taiwan should be addressed as “Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”, or simply as “Chinese Taipei”.

September 2012.

- 4 In the course of a consultation between parties which takes place over the telephone - as was the case with our consultations in this matter on 9 January – it is not clear whether the force and effect of the questions and responses of one party are properly understood by the other party. To be sure that Australian Customs properly grasps what has been put by the GOC in Section E of its Position Paper, the GOC now offers this Supplementary Position Paper, which elaborates upon those submissions. The GOC considers all of the points it made in its Position Paper to be critically important. The GOC’s submissions in Section E, however, do not depend on any differences of opinion between the applicant and the Chinese side as to the ascertainment of the facts, the interpretation of Australian laws, and the application of law to those facts.
- 5 Section E makes two important points. Once they are properly recognised, there can be no initiation of an investigation as requested by the Applicant.

B NO EVIDENCE OF DUMPING, EVEN ON COST SUBSTITUTION METHODOLOGY

- 6 The GOC rejects in total the concept that “surrogate” costs can be used to calculate normal values in respect of its exporters. The GOC’s position regarding this matter has been well documented, most recently in the Position Paper. The GOC will not reiterate its concerns at this time. However, nothing in this Supplementary Position Paper should be read as derogating from that primary position.
- 7 China is a low cost supplier. If a dumping analysis was undertaken on the basis of the actual prices and costs of production of plate steel in China then there would be no evidence of dumping. Whether that is true or not is not relevant here – what is presently relevant is whether the Application contains “*sufficient evidence to justify the initiation of an investigation*”.² The applicant has made no allegation that there is any dumping by Chinese exporters based

² Anti-Dumping Agreement, Article 5.3.

on the prices and costs of our exporters.

- 8 The allegation that has been made is that by “substituting” costs into the financial records of Chinese exporters– of hot-rolled coil, of coking coal and of coke – there is “dumping” evident. *However the Application contradicts that allegation.* The data presented simply does not support the proposition that “substitution” will concoct the result that the applicant desires. Even if Australian Customs was to use the entirety of the normal values presented to it in the Application - from the other, higher cost, “competitive markets” against which the applicant also complains of dumping - there is no dumping demonstrated:

China’s dumping margin based on “lowest” surrogacy - <i>arguendo</i>					
	Oct – Dec 2011	Jan - Mar 2012	Apr - Jun 2012	Jul - Sept 2012	Extended NV and EP
Country normal value	Taiwan	Taiwan	Korea	Korea	
Normal value	903	846	858	833	3,440.00
Chinese export price	923	921	800	867	3,511.00
No dumping margin					-2.02%

China’s dumping margin based on “average” surrogacy - <i>arguendo</i>					
	Oct - Dec 2011	Jan - Mar 2012	Apr - Jun 2012	Jul - Sept 2012	Extended NV and EP
Average normal value	944.5	874.5	897.5	845.75	3,562.25
Chinese export price	923	921	800	867	3,511.00
<i>De minimis</i> margin					+1.46%

Source of quarterly normal value and export price information: Application, page 55.

- 9 As can be seen, using the lowest country normal value for each quarter as alleged by the applicant, there is no dumping by Chinese exporters over the 12 months ended 30 September 2012. Even using the average of all normal values

from all the other “competitive markets” referenced by the applicant, there is no actionable dumping over those 12 months either – the margin is *de minimis*.

- 10 The GOC notes that the for the purposes of the Application, the applicant calculated the “normal values” of Chinese plate steel on the basis of its own “*overall conversion costs to produce plate steel from raw materials*” adjusted variously to reflect the conditions in China.³ The GOC should not need to point out that a normal value based on an applicant’s own domestic market position, which is then subjected in some ambiguous and undisclosed way to adjustments which are said to relate to the exporter’s own market, has no credibility whatsoever.⁴ A normal value pieced together in that way is nothing more than a transparent attempt to contrive a margin for the purposes of an initiation. It is not the “*sufficient evidence*” called for by the Anti-Dumping Agreement. The only “*sufficient evidence*” which we find in the Application - based on Australian Customs skewed “cost substitution” methodology - is that of the other “competitive markets”... ***and that information does not make out a case of dumping against Chinese exporters.***
- 11 We reiterate - the only alternative position that the applicant could adopt, based on Australian Customs’ recommendations to the Minister relating to cost substitution in Report No 177,⁵ is that of substituting “*competitive market costs*” from elsewhere. Our point is that such substitution – even of the entire normal value from those other competitive markets – does not establish that there has been any dumping.

C CONCLUSION

- 12 The applicant has not submitted sufficient evidence to discharge the onus described in Article 5.2 of the Anti-Dumping Agreement. To the contrary, the

³ Application, page 53.

⁴ This so-called “methodology” has never been used by Australian Customs in normal value determination concerning Chinese exporters, excepting cases (we would assume) where there has been non-cooperation by an exporter and where better information was not available to Australian Customs. It is not – and could never be - sufficient evidence on which to initiate a dumping investigation.

⁵ The GOC entirely rejects these recommendations. At the same time, in terms of your own administration, they represent the only alternative basis that you implement. You have no other basis.

evidence available in the Application indicates that Chinese steel plate has not actually been dumped on the Australian market. Australian Customs cannot just investigate because it might be able to find the “dumping” that the applicant has not been able to demonstrate. The Application must be the foundation for the investigation. Presently, it provides no foundation to initiate an anti-dumping investigation against Chinese exporters at all.

13 Lastly, we wish to also point out that:

- (a) the Application cannot be “withdrawn”, nor could “new information” be submitted, to overcome the flaw that we have explained, unless the new Application, or the new information, presented different normal value information for the complained-against countries;
- (b) regarding the allegation that “subsidisation” has caused injury to the Australian industry, we repeat what was said in our original Position Paper:

And if [China] is neither the largest nor the lowest priced exporter, then any alleged subsidies cannot have caused any claimed injury.

14 On the bases that are explained in this Supplementary Position Paper, we again submit that neither a dumping investigation nor a countervailing investigation can be initiated by Australian Customs against exports of plate steel from China.