

15 February 2013

Ms Christie Sawczuk
Manager, Operations 2
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
Canberra
Australian Capital Territory 2601



commercial-international

By email

Dear Ms Sawczuk

Union Steel China
Investigation concerning aluminium zinc coated steel from China
Preliminary affirmative decision and ACDN No 2013/11

We acknowledge receipt of your email concerning the above subject matter, and the copy of the ACDN which accompanied it.

The preliminary affirmative determination (“PAD”) decision in this matter has no legal basis.¹

A key element of the PAD is the finding that there is a “particular market situation” (“PMS”) in each of the domestic markets for galvanised steel and aluminium zinc coated steel in China.²

To make a preliminary affirmative determination in relation to the publication of a dumping duty notice, the CEO (in this case, the CEO’s delegate) must be satisfied that there appear to be sufficient grounds for the publication of such a notice. Accordingly, the findings which lead to such a “satisfaction” must also be supported by sufficient grounds, and by evidence in support of those grounds.

There are no grounds and no evidence for the “particular market situation” (“PMS”) finding in

¹ As a separate matter, Union Steel China notes that it was not provided with any margin calculations for comment before the PAD was made. Union Steel China does not accept that it was not possible for Customs to communicate with Union Steel China concerning its draft margin calculations before then. Union Steel China lodged its Exporter Questionnaire response on 16 November 2012, which is almost three months ago. It provided full cooperation to Customs during its four-day verification in Jiangyin, China. No indication of a preliminary margin calculation was provided to Union Steel China either before or after the verification. Union Steel China asked *in writing* to see draft margin calculations - before any PAD was made - as long ago as in December. Furthermore, Union Steel China is aware that other exporters were provided with their margin calculations beforehand, some of whom were verified, some of whom were not. Union Steel China was treated completely differently, and unfairly.

² Noting, however, that Customs continues to think that the “iron and steel” industry constitutes a “market” for the purposes of a PMS finding. That view, and Customs’ outlandish views on the regulation of the Chinese economy, are legally and factually warped. Union Steel China entirely rejects those views.

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the PAD. The entire basis of the PMS finding is declared by the PAD report to be the following:

Based on these facts and the findings in REP 177, Customs and Border Protection considers it reasonable at this stage of the investigation to consider that the GOC influences in the iron and steel industry identified in REP 177 continue to exist in the Chinese domestic market such that HRC selling prices do not reflect competitive market costs.

The period of investigation for the purposes of Report 177 was from 1 July 2010 to 30 June 2011. The period of investigation in these investigations is from 1 July 2011 to 30 June 2012. The time period in these investigations is therefore different – but Customs did not consider evidence in the different time period for these investigations for the purposes of making the PMS finding.

Whether or not one agrees with the PMS finding in Report 177, the assertion that a state of affairs continues to exist because it was once found to exist – without relying on any evidence that it still exists - is artificial and specious.³ The statement that a conclusion for the coated steel investigations was based on a conclusion from a different, previous investigation is not a finding based on evidence in the current investigations.

Our position would be no different if this was another hollow structural steel investigation. But – to compound the problem with the PAD – the current investigation is not about hollow structural sections. The goods under consideration in one of these investigations are aluminium zinc coated steel. In the other investigation the goods under consideration are galvanised steel. The markets to be considered in these investigations are therefore different – but Customs obviously did not consider evidence of these different markets for the purposes of making the PAD.

Thus, the facts of these investigations are different. There are different products, and different time periods, but Customs has had no reference to these differences. The “*these facts*” that are referred to in the extract – that “*galvanised steel and aluminium zinc coated steel producers form part of the iron and steel industry in China and HRC is the main raw material used in the production of those goods*” - are not temporal or relevant at all.

Can the above extract from the PAD be excused, because the evidence which Customs had would have supported the conclusion, and because loose language was used?

Firstly, we note that the language is not loose at all – the record states that no evidence for a PMS finding in the coated steel investigations was derived from the coated steel investigations.

However, even if we explore the evidence on the public record in these investigations, we do not find further support from the applicant or from any other party for the allegation of a PMS in relation to the coated steel markets concerned. We recall that the applicant itself reiterated the findings of Report 177 for the purposes of requesting the initiation of these investigations. What Customs said about that information at the time was this:

Customs and Border Protection therefore considers that there are reasonable grounds,

³ In any event, Union Steel China takes the position that Customs did not articulate a correct test for determining “particular market situation” in its Report 177. Nothing in this letter is intended to detract from that position.

at consideration stage, for claiming that Chinese domestic selling prices for galvanised steel and aluminium zinc coated steel are not suitable to determine normal values under s. 269TAC(1) of the Act. [underlining supplied]

The point of the investigation which follows initiation – to see whether there is sufficient evidence for a PAD and ultimately for the publication of Notices - is to obtain evidence and to form opinions based on that evidence. This has not been done.

We note that Customs requested the Government of China to respond to a Government Questionnaire, part of which deals specifically with the PMS issue. But Customs had not even received a response to that questionnaire – within the extended time allowed by Customs - at the time of the PAD.

Even if Customs did have regard to the evidence that is on the public record on this point, we do not know how it could have concluded that a “PMS” existed. The information that is on the public record – from companies such as Angang Steel Company Ltd/ANSC-TKS Galvanizing Co., Ltd, Jiangyin Zongcheng Steel Co., Ltd, Union Steel China, Wuhan Iron and Steel Co., Limited and Yieh Phui Technomaterial Co., Limited - argues *against* the proposition that there are PMSs.

Lastly, the Trade Measures Review Officer (“TMRO”) has advised the Minister that there was no PMS established on the basis of the evidence in Report 177 – the very evidence that Customs has again relied upon. As a result, the Minister has directed Customs to reinvestigate that issue (and to report back to him by 14 April). The reinvestigation is for the purposes of enabling the CEO to properly consider the matters raised by a public official whose job it is to review such decisions (the TMRO), and by a government functionary whose job it is to make decisions in a proper manner (the Minister).

We are specifically instructed to advise you that the making of these PADs at this time, and on the basis stated therein, indicates to our client that a protectionist policy has overborne the rule of law and the requirement for positive evidence. The PAD tells our client that Customs does not care for the views of the TMRO or the integrity of the review system, and does not take seriously the obligation to think about what it is that it has been asked to reinvestigate.

Our client views the findings which have been made against it in the PAD with the deepest concern and suspicion.

Yours sincerely



Daniel Moulis
Principal