

Our reference
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To Ms Joanne Reid, Director, Operations 2 - Australian Customs & Border Protection Service

From Andrew Lumsden, Andrew Percival

Date 15 February 2013

Subject **Anti-dumping investigation - exports of zinc coated (galvanised steel) exported from the People's Republic of China - Preliminary Affirmative Determination**

Non-Confidential

Dear Ms Reid,

As you know we act for, amongst others, Wuhan Iron and Steel Company Limited and International Economic and Trading Corporation, Wugang Group in relation to this investigation.

We refer to the Preliminary Affirmative Determination (**PAD**) made on 6 February 2013.

We note that s. 269TD(1) of the *Customs Act 1901* provides that the CEO of Customs may make a PAD if the CEO is satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice.

We also note that at page 33 of the PAD Report the following statements are made:-

“However, galvanised steel and aluminium 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. 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 Trade Measures Review Officer, in a review of certain findings of Australian Customs & Border Protection Service (**Customs**) including whether a ‘particular market situation’ existed in China in relation to hollow structural sections in Report 177, concluded that:-

“Effectively, Customs’ finding amounts to no more than observation of the fact that HRC prices in China are lower than in other countries. But without any evidence that this result has been caused by government action, that observation by itself cannot in my view justify a ‘market situation’ finding.” (at p. 42)

The Minister accepted the Trade Measures Review Officer’s conclusion that Customs lacked any evidence that the Government of the People’s Republic of China artificially lowered the price of hot rolled coil and has directed Customs to re-investigate that finding.

It is clear from the PAD Report that Customs has not collected any additional evidence that objectively and unequivocally demonstrates that the Government of the People’s Republic of China artificially lowered the price of hot rolled coil. In this regard, we note that the

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Government of the People's Republic of China's response to Customs' questionnaire was not due until after the PAD. Indeed, Customs findings of a 'particular market situation' in making its PAD is based solely on its findings in Report 177 on this issue.

We also note that Customs, in its Report No. 198 concerning an application for a dumping duty notice and countervailing duty notice in relation to hot rolled plate steel from a number of countries including the People's Republic of China, noted the Trade Measures Review Officer's findings in relation to a 'particular market situation' in relation to hollow structural sections and the Minister's acceptance of the Trade Measures Review Officer's conclusion and recommendation in that regard and then stated that:-

"The plate steel investigation will provide an opportunity for Customs and Border Protection to collect further information on government influence on the iron and steel industry in China and on the plate steel sector in particular."

It is evident, therefore, that as at 12 February 2013, being the date on which Customs initiated an investigation into exports of hot rolled plate steel, it had not obtained any objective evidence of any probative value that unequivocally demonstrated that the Government of the People's Republic of China artificially lowered the price of hot rolled coil.

Further, the period of investigation for hollow structural sections for the purposes of Report No. 177 was 1 July 2010 to 30 June 2011. The period of investigation in this investigation is 1 July 2011 to 30 June 2012. These periods are different and what may have existed in one period may no longer exist in a subsequent period. Precisely what is the position in the period of investigation in this investigation is not known because it has as yet not been investigated.

Consequently, Customs had no objective, current, probative evidence at the time of making the PAD that the Government of the People's Republic of China artificially lowered the price of hot rolled coil and that this affected the price at which galvanised steel was sold in the market in the People's Republic of China.

Accordingly, there is no basis upon which Customs could reject calculating a normal value pursuant to s. 269TAC(1) of the *Customs Act 1901* and, instead, calculate a dumping margin using a constructed normal value adopting the methodology set out in section 9.3.3 of the PAD Report.

Until such time as Customs actually obtains objective evidence of any probative value that unequivocally demonstrated that the Government of the People's Republic of China artificially lowered the price of hot rolled coil and that this passed through and artificially lowered the price of galvanised steel, Customs must accept that the price of raw materials such as hot rolled coil are market prices and calculate normal values in accordance with s. 269TAC(1) of the *Customs Act 1901*.

We, therefore, request that Customs revoke the preliminary affirmative determination in relation to our client and re-calculate dumping margins in accordance with s. 269TAC(1) of the *Customs Act 1901*. Until such re-calculation is undertaken, our client reserves its rights in this regard.

Finally, we note the following observation by Customs in Report No. 198:-

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“The TMRO does not discount that a market situation may exist in respect of the HSS market in China but concluded that the available evidence was not adequate to establish such a finding.”

The same observation may be made of any country, including Australia where the Australian industry has been heavily subsidised by the Federal Government.

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