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

From Andrew Percival

Date 18 March 2013

Subject Dumping & Subsidy Investigation - Galvanised Steel

Dear Ms Reid,

Non-Confidential

We refer to the Report prepared for Wuhan Iron and Steel Company Limited (**WISCO**) and associated dumping margin calculations and make the following submissions in relation to them.

1. Constructed normal value calculation

We submit that the formula used in the normal value calculation is flawed and wrongly artificially inflates the constructed normal value.

[Confidential information regarding normal value calculations deleted]

Finally, we note that the profit margin used in the constructed normal value was based on an ordinary course of trade (OCOT) test in accordance with reg. 181A(2) of the Customs Regulations. We are still reviewing this calculation but note that there is a difference between those sales at a loss that are not recoverable within 12 months and those that are. We assume that the latter, that is, sales at a loss that are recoverable within 12 months, have not been excluded from the profit calculation but, if they, have, they should not have been and we request that the profit calculation be redone to include such sales. Would you please confirm that sales at a loss that are recoverable have been included in the profit margin calculation.

[Confidential information on normal value calculation deleted]

We, therefore, request that the constructed normal value be correctly calculated with increases be applied [REDACTED] for each model in accordance with the above formula and not to calculate the constructed normal value through progressive uplifts [REDACTED] for each model.

3. Normal value

At section 9 of the Report for WISCO the following statements are made:-

"Customs and Border Protection has observed that some of the cooperating integrated exporters of galvanised steel also sell HRC to some of the non-integrated producers. Because this selling price is said not to reflect a competitive

*market cost to the purchaser, and has been substituted by a benchmark, this leads to an **inference** that the HRC manufacture costs of the integrated producers also do not reflect competitive market costs. In the absence of:*

- *sufficient information to establish a benchmark for each raw material inputs to HRC; and*
- *sufficiently detailed cost records from the cooperating exporters in their questionnaire responses to make adjustments at this level,*

it is considered reasonable to make the substitution at the HRC level for integrated producers.” (emphasis added)

These statements contain flawed logic, errors of law and breaches of the WTO Anti-Dumping Agreement. As you would be aware it is a fundamental tenement of the WTO Anti-Dumping Agreement that decisions be based upon objective, probative evidence. Similarly, administrative law in Australia requires decisions to be based on evidence. Failure to do so constitutes an error of law and vitiates any decision of an administrative nature that is made without evidence.

In the above statements Customs has acknowledged that it has drawn an “inference” that the HRC manufacture costs of the integrated producers are not competitive market costs. That is, Customs effectively has acknowledged that it has no evidence that the HRC costs of integrated producers are not “competitive market costs”, whatever that may mean.

We note that our client fully, completely and accurately responded to the exporter questionnaire prepared and provided to it by Customs. Further, Customs is satisfied that WISCO has cooperated in this investigation and that the response it provided was complete and accurate. No request has been made of WISCO to provide the information set out above in the second dot point and we would query its relevance.

In the absence of any evidence that WISCO’s cost to make HRC do not reflect competitive market costs, it is not “reasonable” to substitute some other cost and we query on what basis Customs has the power to do so in such circumstances. Accordingly, Customs should calculate a normal value based on WISCO’s actual costs as disclosed in the response to the exporter questionnaire.

If Customs has a “suspicion” that the HRC manufacture costs of the integrated producers are not competitive market costs, then that is matter Customs should investigate and obtain evidence one way or the other. Unless and until it does so, it must, in accordance with WTO rules and Australia’s anti-dumping legislation, accept and use the information provided by our client in its response to the exporter questionnaire in the calculation of a normal value.

3. **Domestic sales**

At section 6.1 of the Report, an analysis of WISCO’s domestic sales found that prices in sales to related parties were lower than sales to unrelated parties [REDACTED]. [Amount of difference deleted]

We note that no request has been made by Customs as to why there are such differences and, in particular, whether the relationship between WISCO and its related party customers influenced prices. Rather, it appears that Customs has simply assumed that the relationship influenced prices.

The relationship between WISCO and its related party customers, we are instructed, did not influence prices. Rather, the difference in prices to unrelated customers and to related party customers reflects differences in the quantities being purchased and some purchases by related companies are spot purchases from existing stock and, consequently, command lower prices. If you require further information in this regard, please let us know.

4. Particular market situation exists

We note that, at section 9 of the Report, it is stated that it has been preliminary determined that a "market situation exists in relation to sales of galvanised steel in China".

This preliminary determination has been the subject of a number of submissions. We reiterate our view and the view of others that there is no "particular market situation" in relation to galvanised steel. Further, in another investigation the Trade Measures Review Officer determined that such findings were not supported by evidence and Customs is now re-investigating its findings in this regard.

In such circumstances and in the absence of evidence to support a finding that a "particular market situation" exists, Customs should calculate the normal value for WISCO using the information it provided in its response to the exporter questionnaire unless and until Customs actually obtains information to support any finding of a "particular market situation".

For the abovementioned reasons, we request that the dumping margin for our client be re-calculated using a formula that is not flawed and using the information provided by our client in its response to the exporter questionnaire.

If you have any queries, please contact me.

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