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By email

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Dear Ms Platt

Union Steel China Co., Ltd – alleged dumping of coated steel products Response to Statement of Essential Facts 190

We refer to the publication of the Statement of Essential Facts No 190 ("SEF 190") in this matter on 18 March 2013.

In its letter to Customs dated 15 February 2013, our client Union Steel China Co., Ltd ("USC") expressed its outright rejection of the "particular market situation" findings in Preliminary Affirmative Decision 190. USC re-stated this in its submission to Customs dated 2 April 2013 which dealt with the present state of the dumping margin calculations undertaken by Customs in relation to USC.

In light of Customs' more recent findings in SEF 190 regarding the existence of a "particular market situation" in the market for the goods under consideration, USC has instructed us to provide the following further comments.

A The particular market situation finding relies on a questionable and undecided basis

SEF 190 states that, in relation to the determination of normal value for the aluminium zinc coated steel exported by USC, the domestic prices of the goods are "not suitable" because:

> *In its recent investigation into dumping of hollow structural sections (HSS) exported from China, Customs and Border Protection found that a particular market situation existed in the Chinese iron and steel industry that rendered domestic selling prices of HSS unsuitable for the determination of normal value…*
>
> *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. Based on these facts and the findings in REP 177[37], Customs and Border Protection considers it reasonable 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.*

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> *37 It is noted that on 14 January 2013 the Minister, following a recommendation from the Review Officer, asked Customs and Border Protection to reinvestigate the market situation findings in REP177. The reinvestigation report is due to the Minister on 14 April 2013.*
>
> [underlining supplied]

This statement can only mean that the previous finding (in REP 177) in relation to a different product concerning a different investigation period makes it "reasonable" to make a new finding that a "market situation" exists and that the domestic sales of the goods by USC or any Chinese enterprise are unsuitable for normal value determination. This, it seems, is because aluminium zinc coated steel producers "form part of the iron and steel industry in China" and use hot-rolled coil ("HRC") as the main raw material in the production of those goods.

However, as mentioned in the footnote, a reinvestigation of that finding is underway, on the basis of the recommendation of the Trade Measures Review Officer ("TMRO"), who found that Customs did not have sufficient evidence to make the finding. This was a recommendation that the Minister accepted.

Customs itself has accepted that the reinvestigation of its own findings regarding any "particular market situation" in REP177 *"will have direct implications on the current galvanised steel and aluminium zinc coated steel investigations".*[1] We also see this acceptance recognised in advice provided by Customs to CISA, that Customs cannot provide *"further comment"* regarding the implications of the TMRO's finding and of the reinvestigation for the current investigation *"as the reinvestigation is in the early stages it is too early to provide further comment*".

In light of this background, USC is confused by the statements in SEF 190:

- that the particular market situation finding in REP 177 can be used as the basis to make a particular market situation finding in the current investigation, even though that finding is the subject of an ongoing Ministerially-directed reinvestigation; and
- that the TMRO's finding in relation to the particular market situation in REP 177, accepted by the Minister for the purposes of a reinvestigation, is branded in SEF 190 as *"his view"*[2], and is not discussed any further.

Customs acknowledges that the TMRO's finding would have direct implications for the current investigation regarding any "particular market situation". Therefore USC is disappointed to find that SEF 190 does not pay proper respect or regard for the fact that such a reinvestigation is underway, or for the issues raised by that reinvestigation. It seems that a "default position" has been adopted: a default position which prefers the interests of the Australian industry over that of exporters such as USC.

SEF 190:

- does not comment upon the comprehensive discussion by the TMRO of the definition of a "particular market situation" and the tests which might be employed to determine whether such a situation exists;
- does not recognise that the TMRO decided – after thorough analysis of the totality of the evidence - that none of the key factors cited in REP 177 for a "particular market situation" finding were satisfied; and
- gives sole emphasis to the TMRO's statement that *"that he did not wish for his conclusion to be read as positively finding that there is definitely no market situation in the Chinese domestic iron and steel industry"* [underlining in original].

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1 Record of meeting, Customs and China Iron and Steel Association

2 SEF 190, page 110

USC maintains that it is unsatisfactory for such a prejudicial attitude to be adopted against Chinese exporters. The particular market situation finding in SEF 190 does not have regard to the facts of this case; does not have regard to the views of the TMRO; and contradicts the recommendations of the TMRO, the direction of the Minister, and the non-concluded nature of Customs' own reinvestigation.

B The particular market situation finding is not supported by what is said in SEF 190

The finding in SEF 190 that a "particular market situation" existed in China during the period of investigation such that domestic sales of aluminium zinc coated steel are unsuitable to use as the basis for a normal value for comparison with export prices rests on two bases:

- Customs' finding in REP 177 that the circumstances of a "particular market situation" in the Chinese "iron and steel industry" continue to exist; and
- that Chinese aluminium zinc coated steel producers are part of the Chinese "iron and steel industry" and use HRC as the main raw material for the production of aluminium zinc coated steel.

First of all, the "market situation" finding made in REP 177 purported to relate to the Chinese market for <u>hollow structural sections</u> during the <u>period of investigation</u> of that Report. USC considers that Customs cannot make a finding regarding the "market situation" of a specific product such as aluminium zinc coated steel by making a general assessment of the "Chinese iron and steel industry" (an assessment which USC does not agree with). Moreover, that assessment cannot be re-used in the current investigation because the current investigation relates to a different period of time.

Secondly, USC submits that there is no necessary legal or logical connection between a finding that the Chinese HRC price is "distorted" and the conclusion that a "particular market situation" exists in the Chinese market for aluminium zinc coated steel. The only "link" suggested by SEF 190 is at the conclusion of Appendix 1:

> *…Furthermore, the various taxes, tariffs, export and import quotas have influenced the raw materials used in production of the goods, which based on fundamental economic theory would lead to a distortion in the selling prices of the goods themselves.*
>
> *Customs and Border Protection's preliminary assessment and analysis of the available information indicates that prices of galvanised steel and aluminium zinc coated in the Chinese market are not substantially the same as they would have been without the influences by the GOC.*

Thus, the "evidence" in SEF 190 that underpins the finding of a "particular market situation" in relation to the goods under consideration is *"fundamental economic theory"*. SEF 190 explores this economic theory under the heading "*What <u>causes increase</u> in Supply?"* (underlining supplied) in Section 6 of Appendix 1 to SEF 190. Subheadings in Section 6 discuss:

- how the GOC's policies conforms with "what causes increase in supply" (6.2);
- how subsidisation "causes increase in supply" (6.3); and
- that Chinese HRC prices are lower than the prices in "Korea and Taiwan" (6.4).

Respectfully, USC maintains that the alleged "fundamental economic theory" is simplistic, and biased (in that only "what causes increase" is considered). It is not based on facts or information provided in the current investigation, and it lacks of relevance to the goods subject to investigation. In particular, in relation to the question of *"how has the GOC intervened in the iron and steel industry"*, SEF 190 states:

> *The most influencing factors identified were the 40% export tax on coke and scrap metal, 0% VAT rebates on HRC, coke, coking coal and iron ore.*

However, as Customs observed:

- in relation to aluminium zinc coated steel, the import and export policies appear to encourage export and discourage import, which according to the rationale in SEF 190 would have the effect of decreasing supply in the domestic market and increasing the price of the goods;
- in relation to HRC, there is a 3% import tax compared to a 0% export tax; and
- in relation to coking coal and iron ore, whilst the export tax is 10% compared to the import tax of 0%, China has been the biggest importer of these commodities in the world by a huge margin.[3]

These facts all point towards a conclusion that import and export tax policies did not *"[lead] to increased supply of those goods moving the supply down (right) and artificially lowering the cost and thereby the selling price of these raw material"* of the goods under consideration. The "economics of supply" assessment in SEF 190 fails to consider these aspects.

Furthermore, the single-minded "fundamental economic theory" of an increase in supply is not based on any quantitative evidence as to whether that "increase of supply" (or any "lowering [of] costs") actually occurred during the period of investigation.

In relation to the relevance of subsidisation, SEF 190 states:

> *Customs and Border Protection has noted that 27 of the 29 alleged subsidy programs were investigated during the recent HSS investigation (INV177). Customs and Border protection found that those 27 subsidy programs were in receipt of countervailable subsidies from the GOC. Therefore, Customs and Border Protection considers it is likely that the 27 identified countervailable subsidy programs in INV177 will also have impacted on the costs of factors of production of galvanised steel and aluminium zinc coated steel in China.*

USC notes that Customs is still conducting its countervailing investigation of the same goods as those under consideration in this investigation in a parallel investigation ("INV 193"). To date, Customs has not made any preliminary findings in that investigation. Further, in relation to USC, its visit report states that the countervailable subsidy received by USC would be negligible.[4] Further, USC understands that the most significant subsidy to the corresponding exporters in INV 177 – the alleged "program" relating to the provision of HRC at less than adequate remuneration - has also been rejected by the TMRO on the quite proper basis that State-invested enterprises are not "public bodies". The Minister has directed Customs to reinvestigate that finding. Against this background, reliance on the proposition that countervailable subsidy programs in INV 177 will also have impacted on the costs of factors of production of galvanised steel and aluminium steel in China seems to be unsubstantiated and not based on any valid evidence as to their existence or quantum.

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[3] In particular, according to OECD, China's iron ore importation was about 686.7 million tonnes, compared to its total production, on a comparable grade basis, of 321.9 million tonnes[3], which means that any export tax would have little impact to the supply or prices in the domestic market. OECD, *"The Iron Ore Market in 2011"*- http://www.oecd.org/sti/ind/OECD%20May12%20Summary%20%20Iron%20ore%20doc%20%283%29.pdf

[4] Customs has not made any finding in relation to the "Program 1 – provision of HRC at less than adequate remuneration" subsidy.

Further, USC notes that at heading *"6.4 Comparative analysis of HRC costs"*, a finding is made that "prices in Korea and Taiwan" – two distinct markets by themselves - can be used to:

> *…support[ ] the conclusion that the cost of the raw materials used in the production of HRC in China are lower than what it would be without government influence, which in turn has resulted in the price of HRC in China being lower than what it would be without government influence.*

Again, with respect, USC considers this kind of analysis and conclusion to be ridiculous. Both Korea and Taiwan have their own government policies, and their economies are influenced by those policies accordingly. Neither Korea nor Taiwan has a HRC market that is "without government influence". A Korean HRC price, or a Taiwanese HRC price, or a fictional *"Korea and Taiwan"* HRC price cannot be a measure of what the Chinese HRC price should be - with or without government influence, or indeed with or without government.

C Relevant information was not considered in making the particular market situation finding

USC considers that in order to make a "particular market situation" finding in the current investigation, an analysis of the actual market conditions in the Chinese aluminium zinc coated market would need to be conducted. Assumptions based of economic policies or hypothetical economic models applying to upstream products and to broad industry sectors are not the required analysis.

In USC's letter dated 15 February 2013 we observed that the particular market situation finding in the PAD was entirely based on REP 177.

In SEF 190, references are made to information provided by the Government of China in its response to the Government Questionnaire. However there is a marked tendency in SEF 190 only to consider what the GOC response does <u>not</u> say or does <u>not</u> provide, rather than to give due consideration to what the GOC did say or does provide. For example:

- *The GOC stated that the National Steel Policy is an 'aspirational' document (and not a 'legal' document) which sets out the means by which the steel industry can modernise its operation and remain competitive and efficient in future.*

  However, the GOC did not explain and/or provide any evidence to differentiate the difference between an 'aspirational' document and a 'legal' document.

- *Furthermore, the GOC in its response to the GQA-14 provided independent reports on the iron and steel industry. The reports 'China steel industry to keep stable growth in next five years by Wu Wenzhang', 'The iron and steel industry: a global market perspective by Ignacio et al', and 'Trends and Price Structures and Risk management by Patrick A. McCormick' are at public record attachments 6, 7 and 8.*

  While these reports have analysed the past performances of the global steel markets (including the Chinese steel market), production and usage of steel (including upstream products), and tried to predict the future trends, they do not contain an analysis of the GOC's major policies, plans, blueprints, legislations and its direct and/or indirect effects on prices on iron and steel products in China. Furthermore, the reports do not specifically provide any details as to how the prices of the iron and steel products and the raw materials are determined in China.

In contrast to the mention of this information provided by the Government of China – for the purposes only of dismissing it - SEF 109 does not at all mention information provided by Chinese exporters of galvanised steel and aluminium zinc coated steel in their Exporter Questionnaire ("EQ") responses and elsewhere.

USC, Wuxi Changjiang Sheet Metal Co., Ltd, Jiangyin Zongcheng Steel Co., Ltd, Wuhan Iron and Steel Company Limited, and Angang Steel Company Ltd/ANSC-TKS Galvanizing Co., Ltd all provided responses to separate EQs in relation to the alleged "particular market situation".

There are answers in these EQ responses which relate to the matters that Customs claims the GOC should have dealt with but did not. For example, in the USC EQ response[5]:

2 Selling price

(a) Describe in detail how the selling price of the goods is determined. In particular, provide details of any restrictions, limitations, or other considerations imposed on your business.

USC prepares its internal domestic price guideline lists every month. These lists provide guidelines for price negotiations to take place. *Factors taken into account include the market situation (supply and demand), purchase quantity and payment terms, costs (hot rolled steel, aluminium zinc coating metal, fabrication) and profit.* *There is no local/regional authority or State involvement in setting prices, quantities, conditions and terms.* *The price of full-hard steel from Wuxi Changjiang [CONFIDENTIAL TEXT DELETED – details of product transfer policy].*

b) Do you have more than one supplier of HRC? If so, provide an explanation of the reasons of price differences between these suppliers?

Wuxi Changjiang purchases HRC from many vendors. Purchase prices vary because of negotiation, market conditions, specification (quality, size), transportation charges, purchase quantity, supplier-customer loyalty, terms of sale, etc.

Further, also in the USC EQ response[6]:

7. Interaction with the GOC

c) How has the GOC's National Steel Policy impacted on your business and how do you ensure compliance with this policy?

The GOC's "National Steel Policy" does not impact on the company's business.

d) Have you had dealings or communications with the National Development and Reform Commission (NDRC) and/or the Ministry of Industry and Information Technology (MIIT) in the last 5 years? If so, provide details.

No.

There is no indication in the SEF that the responses provided by USC and by other Chinese exporters in relation to the alleged "particular market situation" were considered by Customs. These responses provide direct evidence in relation to the issue.

Because Customs continues to maintain its position in REP 177 and bases its decision almost entirely on REP 177, and does not take into account the evidence provided in the current investigation, USC believes that the "particular market situation" findings in SEF 190 are not based on a proper consideration of the

5 USC response to the Supplementary Exporter Questionnaire regarding particular market situation, page 14

6 ibid, page 12

responses provided by interested parties.

D Conclusion

As stated above, USC considers that the findings regarding “particular market situation” and the denial of USC’s domestic selling price for normal value purposes continue to be deeply flawed.

USC sincerely requests that Customs rectify the deficiencies and errors in SEF 190 in making its final report to the Minister. Customs should recommend that the evidence does not support a finding that a “particular market situation” exists in the aluminium zinc coated market in China and that USC’s domestic selling prices of the goods are appropriate to be used for the purposes of a normal value to be compared with its export prices.

Yours sincerely

Charles Zhan
Solicitor