



Australian Government
Anti-Dumping Commission

Exemption inquiry report: EX0040

**Zinc coated (galvanised) steel
Exported to Australia from the People's Republic of
China, the Republic of Korea and Taiwan**

**Applicant:
The Trade Consultant**

October 2015

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Abbreviations

Amended exemption goods	The amended goods subject of the application as described in section 3.4
Applicant	The Trade Consultant
BlueScope	BlueScope Steel Limited
China	The People's Republic of China
Commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
Customs Act	<i>Customs Act 1901</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Duties	Interim dumping duty, dumping duty, interim countervailing duty and countervailing duty
Exemption goods	The goods subject of the application as described in section 3.3
ITRB	International Trade Remedies Branch of the Australian Customs and Border Protection Service
Korea	The Republic of Korea
Parliamentary Secretary	Parliamentary Secretary to the Minister for Industry, Innovation and Science
Questionnaire	'Response to Exemption Application' questionnaire
REP 190	Report No 190
REP 193	Report No 193

1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the Commission) in response to an application by the Trade Consultant (the applicant) requesting an exemption from interim dumping duty, dumping duty, interim countervailing duty and countervailing duty (the duties) under subsections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*¹ (the Dumping Duty Act) in relation to the export of certain zinc coated (galvanised) steel (exemption goods) from the People's Republic of China (China), the Republic of Korea (Korea) and Taiwan.

This report sets out the Commission's findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied to make a recommendation to the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)² on whether or not to exempt goods from the duties.

1.1 Recommendation

The Commission has found that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade. The Commission considers the conditions of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption are satisfied.

The Commissioner recommends to the Parliamentary Secretary that the amended exemption goods (as that term is defined in section 3.4 of this report) be exempted from the duties.

1.2 Application of law to facts

1.2.1 Application

On 23 April 2015 the applicant wrote to the Commission requesting an exemption from the duties in relation to imports of the exemption goods. The applicant has applied for an exemption under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

1.2.2 Authority to make the decision

Subsections 8(7) and 10(8) of the Dumping Duty Act set out, among other things, the matters to be considered by the Parliamentary Secretary in deciding whether to exercise their discretion to exempt goods from the duties.

1.2.3 Initiation of inquiry

After examining the application, the Commission initiated an inquiry on 10 June 2015.

1.3 Findings and conclusions

The Commission has made the following finding based on the application and information provided by the sole Australian manufacturer of galvanised steel, BlueScope Steel Limited (BlueScope):

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

² The Parliamentary Secretary is the relevant decision maker with respect to this exemption enquiry.

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- there is no Australian industry producing goods that are like or directly competitive to the amended exemption goods;
- the amended exemption goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

Based on this finding the Commissioner recommends to the Parliamentary Secretary that the amended exemption goods (as that term is defined in section 3.4 of this report) be exempted from the duties.

2. Background to measures

2.1 Original investigation

On 5 August 2013, anti-dumping and countervailing measures were imposed on galvanised steel exported to Australia from China, Korea and Taiwan. This followed the completion of two investigations by the International Trade Remedies Branch of the then Australian Customs and Border Protection Service (ITRB): dumping investigation 190a into galvanised steel exported to Australia from China, Korea and Taiwan; and countervailing investigation 193a into galvanised steel exported to Australia from China.³

The ITRB terminated the investigations in so far as they related to certain exporters and countries as indicated below:

- exports from Korea by Union Steel Co., Ltd and exports from Taiwan by Sheng Yu Co. Ltd and Ta Fong Steel Co., Ltd;⁴ and
- exports from China by Angang Steel Company Limited and ANSC TKS Galvanising Co., Ltd.⁵

The then Attorney-General accepted the ITRB's recommendations and findings that galvanised steel from China, Korea and Taiwan had been dumped and galvanised steel from China had been subsidised and that material injury was caused to the Australian industry.

2.2 The goods subject to measures

The goods subject to the duties are:

Galvanised steel:

- *a flat rolled product of iron and non-alloy steel;*
- *plated or coated with zinc;*
- *whether or not surface treated including combinations of surface treatments; and*
- *in any width.*

The following goods were excluded from the investigation:

- Galvanised steel that is painted or pre-painted (including colorbond).

2.3 Tariff classification

The goods subject to measures may be classified under the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

- 7210.49.00 – Statistical codes 55, 56, 57 and 58; and
- 7212.30.00– Statistical code 61.

³ ITRB Report No 190 (REP 190) and ITRB Report No 193 (REP 193) refer.

⁴ Termination Report No. 190A.

⁵ Termination Report No 193(i).

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The rate of duty under these subheadings is currently 5% per cent for goods imported from Korea and Taiwan (the DCT duty rate) and free for imports from China (the DCS duty rate).

3. Exemption inquiry

3.1 Exemption application

On 23 April 2015 the applicant wrote to the Commission requesting an exemption from the duties in relation to its imports of galvanised steel (**Non-Confidential Attachment 1**).⁶

The applicant's letter outlined the following grounds in support of its application for an exemption from the duties:

Goods that are like or directly competitive to the exemption goods are not offered for sale in Australia.

3.2 Exemption inquiry

The Commission accepted the applicant's letter as an application for an exemption of the duties. On 10 June 2015, the Commissioner initiated an exemption inquiry, by publishing Anti-Dumping Notice (ADN) 2015/74. ADN 2015/74 advised that an exemption inquiry had been initiated, provided details of the goods subject to the inquiry and outlined the procedures to be followed during the inquiry.

On 15 June 2015 the Commission invited the only member of the Australian industry, BlueScope,⁷ to respond to the application, by completing the 'Response to Exemption Application' questionnaire (the questionnaire) and requested that a response be received by no later than 6 July 2015. A completed response from BlueScope to the questionnaire was received on 30 June 2015 and is contained at **Non-Confidential Attachment 2**.

3.3 Goods subject to the application for exemption

The exemption goods are described in the exemption application as:

STEEL, flat rolled, non-alloy, hot dipped galvanized, in lengths, having ALL of the following:

- (a) yield strength NOT less than 250 MPa and NOT greater than 350 MPa;*
- (b) tensile strength NOT less than 315 MPa and NOT greater than 430 MPa;*
- (c) elongation NOT less than 30%;*
- (d) total coating mass NOT less than 300 g/m²;*
- (e) in ANY of the following sizes:*
 - (i) width 40mm and thickness 4.0mm*
 - (ii) width 50mm and thickness 4.0mm*
 - (iii) width 50mm and thickness 8.0mm*

With tolerances allowable for specification (e) being:

- (a) thickness +/- 10%*
- (b) width +/- 10%*

⁶ The application was marked with a date of 27 February 2015 however the application was not lodged with the Commission until 23 April 2015.

⁷ REP 190 refers.

3.4 Industry proposed amendment to the exemption goods

BlueScope as the only Australian producer of galvanised steel accepted the applicant's claims that galvanised steel with the characteristics of the exemption goods was not produced in Australia but expressed concerns about the applicant's proposed tolerances for width and thickness. Accordingly, BlueScope stated that it does not oppose the application for exemption provided the tolerances for thickness and width of the exemption goods are amended and reduced to be in line with Australian Standards. The amendment was accepted by the applicant.

On the basis of this amendment, the exempted goods are described as (the amended exemption goods):

STEEL, flat rolled, non-alloy, hot dipped galvanized, in lengths, having ALL of the following:

- (a) yield strength NOT less than 250 MPa and NOT greater than 350 MPa;*
- (b) tensile strength NOT less than 315 MPa and NOT greater than 430 MPa;*
- (c) elongation NOT less than 30%;*
- (d) total coating mass NOT less than 300 g/m²;*
- (e) in ANY of the following sizes:*
 - (i) width 40mm and thickness 4.0mm;*
 - (ii) width 50mm and thickness 4.0mm;*
 - (iii) width 50mm and thickness 8.0mm;*

With tolerances allowable for specification (e) being:

- (a) thickness +/- 5%;*
- (b) width +/- 5%.*

3.5 Claims made in the application and evidence relied upon

In support of its claim that the like or directly competitive goods were not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade, the applicant provided the evidence described below.

BlueScope also provided information about the goods they offer for sale in Australia to assist the Commission determine whether the test for exemption is satisfied or not.

Information provided to the inquiry

The table below summarises the evidence and information submitted to the Commission by interested parties.

Interested party	Details	Evidence
Applicant	<p>The applicant provided confidential documents with its application that suggested the exemption goods were not produced in Australia.</p> <p>In addition to its application, the applicant provided a submission in reply to BlueScope's submission regarding production tolerances (Non-Confidential Attachment 5).</p>	<p>As BlueScope, the only Australian producer of galvanised steel, broadly accepted the applicant's claims, the Commission is satisfied as to the reliability of the information provided by the applicant.</p>

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Interested party	Details	Evidence
Australian industry	BlueScope initially contended in its questionnaire response that the goods imported by the applicant had been classified incorrectly and, had they been classified correctly, would not have been subject to the duties. Following the Commission providing advice on the correct tariff classification of the goods imported by the applicant, ⁸ BlueScope stated in a submission (Non-Confidential Attachment 4) that it would not oppose the application provided that the production tolerances were reduced to thickness +/- 5% and width +/- 5%.	The Commission is satisfied as to the reliability of the information provided by BlueScope, noting that the applicant subsequently agreed to the tolerances proposed by BlueScope.
Other interested parties	No information or submissions were received by the Commission from other interested parties.	

Other information the Commission had regard to

The Commission sought and obtained advice from the Department of Immigration and Border Protection as to the correct tariff classification of the goods imported by the applicant. The advice confirmed that, at least in part, the goods imported by the applicant would be subject to the duties. Relevant aspects of the advice are contained in a file note dated 14 July 2015 and placed on the EPR for EX0040 (**Non-Confidential Attachment 3**).

3.6 Legislative requirements for an exemption

The applicant has applied for an exemption under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Subsection 8(7) provides:

- (7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:
 - (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

...

And:

Subsection 10(8) provides:

- (8) The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:
 - (a) that like or directly competitive goods are not offered

⁸ Electronic public record EX0040/004, refers.

for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

...

The applicant requests that the Parliamentary Secretary exercise their discretion to exempt goods from the duties on the basis that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

3.7 Definition of “like or directly competitive goods”

Like goods

The term “like goods” is defined in subsection 269T(1) of the *Customs Act 1901* (the Customs Act). Section 6 of the Dumping Duty Act provides that the Customs Act is incorporated and shall be read as one with the Dumping Duty Act. Accordingly, the definition of like goods in the Customs Act is applicable to the Commission’s assessment of whether the exemption goods are like goods under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Subsection 269T(1) of the Customs Act defines like goods as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Chapter 2 of the Commission’s *Dumping and Subsidy Manual* embodies the Commission’s established policy and practice in relation to like goods. Where two goods are identical they are automatically like goods, but where two goods are not alike in all respects the Commission will assess whether they have characteristics closely resembling each other including assessing their physical likeness, commercial likeness, functional likeness and production likeness.

Directly competitive goods

The term “directly competitive” is not defined in the Dumping Duty Act or the Customs Act and has not been the subject of judicial consideration by Australian courts.

Accordingly, assistance in understanding this term can be derived by having recourse to relevant dictionary definitions and case law. Case law suggests an assessment of a “direct” relationship is a question of fact and degree.⁹ Drawing on the Macquarie Dictionary and case law, the Commission defines “directly” as:

excluding that which is indirect or remote;¹⁰ absolutely; exactly; precisely.

The Macquarie Dictionary also defines “competitive” as:

*of, relating to, involving, or decided by competition; and
having a feature comparable or superior to that of a commercial rival.*

The phrase “*directly competitive*” can therefore be taken to refer to goods with comparable features that rival each other in a commercial market. The assessment will

⁹ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

¹⁰ *Ibid.*

be one of fact and degree, and the goods will not merely remotely or indirectly compete.

Alternatives to satisfying subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act

The exemption provisions in subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act specifically provide for exemptions where either like goods or directly competitive goods are not offered for sale in Australia. It is not necessary to be satisfied that there are both like goods and directly competitive goods for sale in Australia in order to deny the application for an exemption. It is sufficient for there to be either like goods or directly competitive goods for sale in Australia for the requirements of the exemption not to be met.

If there are no like or directly competitive goods offered for sale in Australia, then that criterion for exemption in subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act will be met.

If there are like or directly competitive goods, then it is necessary to consider whether these like or directly competitive goods are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

3.8 Definition of “custom and usage of trade”

Although the domestically produced goods may be “like or directly competitive goods”, the Parliamentary Secretary may still grant an exemption to duties in circumstances where the “like or directly competitive goods” are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the “custom and usage of trade”.

The term “custom and usage of trade” is not defined in the Dumping Duty Act or the Customs Act. The Macquarie Dictionary defines “custom” as:

a habitual practice; the usual way of acting in given circumstance; and habits or usages collectively; convention.

The Macquarie Dictionary defines “usage” as:

*customary way of doing; a custom or practice;
the body of rules or customs followed by a particular set of people;
usual conduct or behaviour.*

As custom can only be inferred from a large number of individual acts, the existence of a custom and usage of trade must involve:

the multiplication or aggregation of a great number of particular instances; but these instances must not be miscellaneous in character, but must have a principle of unity running through their variety, and that unity must show a certain course of business and an established understanding respecting it.¹¹

Custom or usage of trade is a term used in common law in the interpretation of implied terms in contracts within a particular trade or industry.¹² When considering what is “custom or trade usage” the Courts have concluded that:

¹¹ *Anderson v Wadey* (1899) 20 N.S.W.R. 412 at p. 417.

¹² *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.

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1. Custom or usage was established mercantile usage or professional practice: *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410 at 440; and
2. Evidence of actual market practices was crucial to the existence of a custom or usage. However, universal acceptance was not necessary: *Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur Insurance (Australia) Ltd* (1986) 160 CLR 226.

4. Australian industry’s offer for sale of like or directly competitive goods

The applicant claims that Australian industry, specifically BlueScope, does not produce or offer for sale goods that are like or directly competitive to the exemption goods. The table below summarises:

- the applicant’s claims that Australian industry does not offer for sale in Australia goods that are like or directly competitive to the exemption goods;
- Australian industry’s response to those claims;
- a submission by Australian industry responding to the applicant and tariff advice concerning the exemption goods; and
- a submission by the applicant responding to Australian industry.

Applicant’s claims	Australian industry’s response
<p>The applicant claimed in its application that the exemption goods were not offered for sale in Australia.</p> <p>The applicant made a subsequent submission stating that it did not object to BlueScope’s proposal that production tolerances for the exemption goods be reduced (see the production tolerances in the amended exemption goods).</p>	<p>BlueScope initially contended that the goods imported by the applicant were incorrectly classified. Subsequently BlueScope, as the only Australian producer of galvanised steel, broadly accepted the applicant’s claim stating only that it would not oppose the application for exemption provided the tolerances for thickness and width of the exemption goods were reduced in line with Australian Standards.¹³</p>

¹³ Section 3.4 of this report sets out BlueScope’s proposed amendment to the exemption goods.

5. The Commission's assessment – like or directly competitive goods offered for sale in Australia

5.1 Finding

With respect to the amended exemption goods, the Commission finds that neither like nor directly competitive goods are offered for sale in Australia. Therefore, these conditions of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption are satisfied with respect to the amended exemption goods.

5.2 Like or directly competitive goods offered for sale in Australia

The Commission has examined the evidence presented by interested parties in relation to the application and considers that like or directly competitive goods to the amended exemption goods are not offered for sale in Australia.

The applicant's claim that like or directly competitive goods to the exemption goods were not offered for sale in Australia was not disputed by BlueScope (subject to BlueScope's concerns with the tolerances of the exemption goods).

The Commission accepts that the tolerances for width and thickness for the exemption goods (plus or minus 10%) would appear to make the exemption too broad.

BlueScope, as the only Australian producer of galvanised steel, accepted the applicant's claims that galvanised steel with the characteristics of the exemption goods was not produced in Australia but expressed concerns about the applicant's proposed tolerances for width and thickness. Accordingly, BlueScope stated that it would not oppose the application for exemption provided the tolerance for thickness and width of the exemption goods were amended and reduced in line with Australian Standards, namely tolerance allowances for width and thickness of +/- 5%. The applicant stated that it does not object to BlueScope's proposed amendment.

Accordingly, the Commission's assessment is that there is no Australian industry producing goods that are like to or directly competitive with the amended exemption goods. Based on this assessment the Commissioner recommends to the Parliamentary Secretary that the applicant's application in respect of the exemption from dumping and countervailing duties be granted for the amended exemption goods.

5.3 Conclusion

Accordingly, the Commission finds that the Australian industry does not offer for sale goods that are like or directly competitive to the amended exemption goods.

6. To all purchasers on equal terms under like conditions having regard to the custom and usage of trade

The Commission finds that the Australian industry does not offer for sale goods that are like or directly competitive to the amended exemption goods. Accordingly, like or directly competitive goods to the amended exemption goods are not offered for sale to all purchasers under like conditions having regard to the custom and usage of trade.

7. Recommendation

Based on the Commission's examination of the application and submissions made to the inquiry, the Commissioner considers that goods that are like or directly competitive to the amended exemption goods are not offered for sale in Australia. Accordingly, the Commission considers that like or directly competitive goods to the amended exemption goods are not offered for sale to all purchasers under like conditions having regard to the custom and usage of trade.

Accordingly, the Commissioner recommends that the Parliamentary Secretary exercise their discretion to exempt the amended exemption goods from the duties under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

7.1 Effective date of exemption

The applicant seeks an exemption in relation to a single consignment of goods that was entered for home consumption in Australia on 23 December 2014.

The effective date of granting an exemption is at the discretion of the Parliamentary Secretary. It is the Commission's usual policy to recommend that an exemption is backdated to the date of the application, which in this case would be 23 April 2015.

In the current case, the application was intended by the applicant to relate to a single consignment only. That consignment was entered for home consumption on 23 December 2014. In these circumstances the Commission considers it is reasonable to recommend that the Parliamentary Secretary exercise their discretion to backdate the exemption to include the applicant's single consignment of goods.

The Commission notes that the exemption, if granted in the terms recommended, will have the effect of exempting the amended exemption goods from the duties from 23 December 2014 and until such time as the exemption is revoked.

8. Attachments

Non-Confidential Attachment 1	Exemption Application (Public Record Copy)
Non-Confidential Attachment 2	Australian industry questionnaire response
Non-Confidential Attachment 3	Commission file note regarding tariff classification
Non-Confidential Attachment 4	Australian industry submission
Non-Confidential Attachment 5	Applicant's submission in reply to Australian industry submission