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International Trade • Customs • Commercial Law

Dr. Ross S. Becroft B.A., LL.B., M.Comm.Law. PhD

Louis H. Gross B. Juris., LL.B. Special Counsel

Level 17
390 St Kilda Road
Melbourne, Victoria, 3004
Australia
Telephone: (61 3) 9866 5666
Facsimile: (61 3) 9866 5644
Our Ref: RB:3092
Your Ref:

1 November 2012

BY EMAIL: itrops2@customs.gov.au

Director Operations 2
International Trade Remedies Branch
Australian Customs & Border Protection Service

Attention: Kristy Sawczuk
Case Manager

Dear Madam

Re: Investigations ITR190 and 1906: Zinc Coated Galvanised Steel and Aluminium Zinc Coated Steel Exported from China, Korea and Taiwan

I refer to the abovementioned investigation and **attach** a submission prepared on behalf of the China Iron and Steel Association (CISA).

I confirm we have previously provided a letter of authority and the ITR branch permitted us to file a submission by today.

Could you please kindly acknowledge receipt.

Yours faithfully
GROSS & BECROFT



Dr. Ross Becroft
Principal

Encl.

RECEIVED

01 NOV 2012

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**COMMENTS ON INJURY, CAUSATION AND PUBLIC INTEREST
IN THE ANTI-DUMPING PROCEEDINGS CONCERNING IMPORTS OF
ZINC COATED (GALVANIZED) STEEL
AND ALUMINIUM ZINC COATED STEEL
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA,
THE REPUBLIC OF KOREA AND TAIWAN**

ON BEHALF OF

**THE CHINA IRON AND STEEL ASSOCIATION (CISA) AND ITS
MEMBERS**

Angang Steel Company Limited

Baoshan Iron & Steel Co. Ltd.

Wuhan Iron and Steel Company Limited

Rudi Leleu
Charles De Jager
Tang Xiaoyi
Salans LLP
Brussels, Belgium

Ross Becroft
Gross & Becroft Lawyers
Melbourne, Australia

1 November 2012

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1 INTRODUCTION

- [1.] By way of Consideration Report No. 190 of 5 September 2012, the Australian Customs and Border Protection Service (Australian Customs) initiated anti-dumping proceedings concerning imports of zinc coated (galvanized) steel and aluminium zinc coated steel exported from the People's Republic of China (China), the Republic of Korea (Korea) and Taiwan.
- [2.] These proceedings are based on applications for anti-dumping duties lodged by BlueScope Steel Limited (BlueScope Steel or the Applicant). The Applicant is the sole producer of the goods under consideration ("GUC") in Australia, although it appears it does not produce all products covered by its applications.
- [3.] Accordingly, the present document submitted on behalf of the China Iron and Steel Association (CISA) and its members constitutes a first submission responding to the Applicant's allegations by covering the following principal elements of the case:
- Like product
 - State of the Chinese industry
 - Lack of dumping
 - Lack of causation
 - Lack of injury
 - Competition law concerns
 - Australian public interest
- [4.] Based on these elements, CISA and its members maintain that the Applicant's applications lack sufficiently concrete and credible evidence of imports of the relevant products from China causing any of the injury alleged by the Applicant.
- [5.] CISA and its members hereby reserve the right to present further evidence and arguments throughout any of the later stages of these proceedings. This includes hearings, which CISA and its members hereby request in the due course of the proceedings and at the earliest convenience of Australian Customs, as well as post-hearing briefs and comments on any disclosures by Australian Customs.

2 LIKE PRODUCT

- [6.] The description of the goods under consideration in these proceedings is overly broad in terms of the products' features and sizes. In addition, it appears that the Applicant does not produce a number of the goods under consideration and that many products currently within the description are not in the same market.

- [7.] In this context, CISA and its members preliminarily note that Australian Customs combines into one investigation two separate products (i.e., zinc coated (galvanized) steel and aluminium zinc coated steel) for which BlueScope Steel prepared separate applications. CISA and its members strongly disagree with this approach.
- [8.] Article 2.1 of the WTO Anti-Dumping Agreement (ADA) requires that an investigation should only cover *one product*, and the imported product must be a like product to the one sold in the domestic market of the exporting country. ADA Article 2.1, as elaborated in ADA Article 2.6, imposes a two-fold obligation on the investigating authority. First, the imported product must be *alike to* the domestic product (in both the exporting and importing country); second, the product scope (product under consideration) should not be overly broad and include products with dissimilar characteristics. By way of a practical example, an investigation should never cover “movable vehicles” including cars and bicycles, although these may be manufactured from essentially the same basic materials and be used for similar end-uses.
- [9.] Thus, pursuant to established practice of WTO Members, a product under consideration is limited to products that share the same physical characteristics, end-uses, consumer perceptions and tariff classification, which must all be reasonably identified. Aluminium zinc coated steel products should never be considered as “like products” of zinc coated (galvanized) steel products. These two products are coated with different materials and declared under different tariff codes.
- [10.] CISA and its members also note that Australian Customs conducted separate analyses, calculated separate dumping margins and ran separate injury tests in parallel for the two products. This again proves that these two products cannot be combined into one single investigation. CISA and its members maintain that Australian Customs seems to violate ADA Article 2.1 from the very beginning of its investigation by combining distinct proceedings in a single investigation with a clearly overbroad product scope.
- [11.] Accordingly, CISA and its members respectfully request that Australian Customs consider two important points relating to like product issues in these proceedings. First, there are substantial differences between Chinese imports and the goods under consideration produced in Australia. Second, the exclusion of certain Chinese imports from the scope of these proceedings is warranted.

2.1 Chinese and Australian Product Differences

- [12.] CISA and its members submit that there are fundamental differences between the goods under consideration exported from China and those produced in Australia. One factor that has a significant impact on the cost of the goods under consideration is the metallic coating mass in g/m^2 of substrates.
- [13.] A major part of the Chinese exports of zinc coated and aluminium zinc coated steel are provided at a lower level of metallic coating mass. However, the

coating level in Australia is commonly higher: for example Z275 and Z350, which means 275g or 350 g per m² of substrates, respectively.

- [14.] As the quantity of coating material has a direct impact on the cost of zinc coated and aluminium zinc coated steel, a simple comparison between Z100 and Z275 is inappropriate. Therefore, CISA and its members hereby request Australian Customs to consider adjustments on physical characteristics where applicable.
- [15.] As additional product-specific information becomes available in the course of the present proceedings, CISA and its members also reserve their legal rights to provide further evidence and arguments in this regard.

2.2 Warranted Product Exclusions

- [16.] CISA understands that some interested parties have brought to the attention of Australian Customs that the broad description of the goods under consideration includes certain products that the Applicant does not produce.
- [17.] In addition, CISA and its members note that there is a parallel anti-dumping proceeding concerning hot-rolled coil steel exported from Japan, Korea, Malaysia and Taiwan in which BlueScope Steel acts as the sole Applicant as well. In Section 4.4.3 of the "Statement of Essential Facts" No. 188 concerning the preliminary affirmative determination published on 3 October 2012, BlueScope Steel confirmed that it can only produce hot-rolled coil products in a thickness range of 1.5 mm to 12.7 mm. BlueScope Steel also confirmed that since the closure of its Western Port Hot Strip Mill, it is unable to manufacture hot-rolled coil products of a width greater than 1550 mm wide.
- [18.] Hot-rolled coil (and subsequently, cold-rolled coil) is the basic substrate of zinc coated (galvanized) steel and aluminium zinc coated steel products. Limits on the provision of substrates in terms of width and thickness impose a consequent limit on the provision of the downstream products. An obvious fact is that BlueScope Steel will not be able to produce zinc coated (galvanized) steel and aluminium zinc coated steel products of a width greater than 1550 mm, which could be widely supplied to the automotive industry. CISA and its members observed that another interested party (B & R Enclosure Pty Ltd) also confirmed that the maximum width available from BlueScope is 1400 mm.
- [19.] Based on the reasons provided below, CISA and its members hereby request the exclusion of the products that are not produced by the Applicant.
- [20.] In order to qualify as a "producer" for purposes of the ADA, and thus to constitute part of the domestic industry or the entire domestic industry as defined in ADA Article 4.1, an enterprise must actually produce output of the domestic like product at two specified times: (i) at the time of presentation of the application for the purpose of initiation; and (ii) during the dumping investigation period for the purpose of the injury investigation.

- [21.] If an applicant is not producing output of the complete goods under consideration at the time it presents its application, it is not a "producer" of that product, and thus cannot form part of or constitute the "domestic industry" for the full range of products within the meaning of ADA Article 4.1.
- [22.] With respect to the injury determination, if those products have not been produced domestically, imported products and domestically-produced products do not compete with each other. If there is no competition between the products, no material injury can be found and no causation can be linked to that material injury.
- [23.] In addition, Australian Customs on page 11 of its Consideration Report states that there are several Tariff Concession Orders (TCOs) applicable to the relevant tariff classification covering galvanized steel. Australian Customs goes on to acknowledge that the relevance of the TCOs requires further investigation. CISA and its members understand that the process of obtaining a tariff concession in Australia involves establishing that there is no producer of substitutable goods in Australia. As a result of obtaining a TCO, the goods can enter Australia on a duty free basis and the Minister may exempt goods from dumping duty if a tariff concession applies to the goods. Therefore, CISA and its members encourage Australian Customs indeed to establish the precise coverage of the relevant TCOs.
- [24.] Based on the abovementioned reasons, CISA and its members maintain that inclusion of certain products that are not actually produced by the Applicant is not warranted under either the Australian anti-dumping law or the WTO ADA.

3 STATE OF THE CHINESE INDUSTRY

- [25.] Domestic demand in China absorbs much Chinese production. As in the Australian market, the goods under consideration in China is mainly supplied to the building and construction industry, automotive industry and domestic appliance industry. Demand for the goods under consideration in all three industries in China is booming.
- [26.] According to recognized journals, between 2010 and 2011 demand in China has increased by 18.9 percent in the automotive industry, by 54.0 percent in the construction industry, and by 5.1 percent in the domestic appliance industry. In the meantime, production of the goods under consideration in China has remained stable during the same period (*see www.metalbulletinresearch.com, Coated Steels Market Tracker, Sept. 2012*).
- [27.] Furthermore, efforts have been made to limit the production capacity of the Chinese iron and steel industry through the following policies:
- *Circular Concerning Control of Total Production, Elimination of Outdated Production Capacities and Acceleration of Structural Adjustment for Steel Industry (2006)* which was issued by NDRC in June 2006 provided that "by the year 2010, blast furnaces of below 3 million m³ and other outdated

capacities shall be eliminated" for the purpose of strictly controlling newly added capacity in the steel industry and accelerating the elimination of outdated production capacities.

- *Circular Concerning Further Implementation Regarding Shutting Down Factories and Elimination of Outdated Production Capacities in the Steel Industry (2007)*, issued by NDRC in October 2007, stipulated that the provincial authorities should strictly implement the relevant rules in order to eliminate the outdated production capacities in the steel industry.
- *Circular Concerning Decomposition of the Implementation of Elimination of Outdated Production Capacities in 2009*, issued by the Ministry of Industry and Information Technology (MIIT), required that in the year of 2009, 6 million outdated production capacities of steel mills should be eliminated for the purpose of updating the industrial structure and fulfilling sustainable development.
- *Opinions on Prohibition of Excessive Capacities, Redundant Constructions and Guidelines of Industry Healthy Development (2009)*, jointly issued by NDRC and other Authorities, required the local authorities to control the total production, and eliminate the outdated production capacities in the steel industry.
- *Notice of Implementation of Prohibition of Excessive Capacities, Redundant Constructions and Guidelines of Industry Healthy Development (2009)*, issued by the Ministry of Environment Protection, emphasizing the overall control of redundant construction in, inter alia, the steel industry for environment protection concerns.
- *Circular Concerning the Implementation of the State Council's Regulations on Further Elimination of Outdated Production Capacity (2010)*, which was issued by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ). In this Circular, AQSIQ proposed that a further strictly control regarding steel industry would be imposed, with the aim to limit the production capacity of the industry.
- *The Twelfth Five-Year Development Plan of the Iron and Steel Industry (2011)*. On October 24, 2011, MIIT issued this document, which particularly addressed that, the key areas and work during the Twelfth Five-Year Development Plan would operate to update the industrial structure and to eliminate the outdated production capacities, as well as promote the healthy development of the industries to fulfill sustainable development.

[28.] Therefore, consistent measures have been implemented to curb the production and exports of iron and steel products. Due to these measures, Chinese imports are unlikely to increase.

4 LACK OF DUMPING

- [29.] The Applicant's allegations of dumping against Chinese exporters are flawed because they are based on a constructed normal value derived from the data of Korean and Taiwanese producers. Furthermore, the information contained in the applications is largely redacted and no meaningful non-confidential summary is provided. Accordingly, CISA and its members reserve the right to submit more detailed arguments on dumping as additional information becomes available in the course of the proceeding, including the data currently being collected by the cooperating Chinese producers for submission to Australian Customs.
- [30.] The Applicant also raises the issue of the VAT rebate system in China and applies a 4 percent upward adjustment to calculate the normal values of the Chinese imports. CISA and its members unequivocally challenge this approach for the reasons provided in the following paragraphs.
- [31.] First, all products destined for export should be entitled in theory to a full VAT rebate, or more accurately should be exempt from VAT. The way the Government of China charges 17 percent VAT on the purchase of raw materials and refunds 13 percent is obviously a general policy to curb exports, rather than an incentive to promote exports. In addition, Chinese producers are trying to move up the production chain to increase prices, as China's big steel groups aim to upgrade production holdings to reduce pollution and lift profit.
- [32.] Second, CISA and its members realize that, instead of deducting the 4 percent non-refundable VAT from the export price, Australian Customs adds it to the normal value, thereby overstating the alleged dumping margin of the Chinese imports. The VAT refund for exports is based on the turnover of the FOB export value. This means that any adjustment of the non-refundable VAT must be deducted from the export price. However, the Applicant incorrectly applies a 4 percent upwards adjustment based on the normal value of the Chinese imports.
- [33.] Basic arithmetical understanding confirms that when adding a fixed *percentage* to one side or subtracting it from the other in an equation, the equation remains valid. However, this is no longer true when both sides are not equal. In the current case, there is alleged dumping, which means the normal value is already higher than the export price. When adding 4 percent on top of the normal value, Australian Customs further overstates the dumping margin alleged by the applicant.
- [34.] Furthermore, the seemingly overbroad product scope advocated by the Applicant may also skew the results of the dumping analysis. Any analysis that does not duly take into account the significant differences between Chinese and Australian goods under consideration described above will obviously disadvantage the Chinese producers.
- [35.] In fact, CISA and its members question the reliability of data that Bluescope Steel and Australian Customs rely upon regarding exports of like goods from

each country. In the Consideration Report, at pages 25 and 26, there is discussion about the fact that Bluescope Steel was unable to rely on Australian Bureau Statistics import data and relied instead upon data from a European agency, the International Steel Statistics Bureau (ISSB). Further, Australian Customs notes that many of the figures may not be accurate because, for example, there is no distinction between painted and unpainted products in the import volumes of aluminium zinc coated steel. CISA and its members also note, for completeness, the large discrepancy between the dumping margins claimed by Bluescope Steel versus the margins cited by Australian Customs for China exports. These are 25% versus 15% for aluminium zinc coated steel and 18% versus 11% for galvanized steel.

- [36.] Given all these elements and discrepancies, the imposition of provisional measures is unwarranted in the present proceedings. Despite the Applicant's request that provisional measures be imposed, they are not required because there is sufficient uncertainty about the calculation of the dumping margins, particularly in light of the movement away from a market export price to a constructed value. Further, the provisional dumping margins cited by Australian Customs are low in comparison to other cases in which provisional measures have been applied in the past.

5 LACK OF INJURY

- [37.] Based on a review of the main indicators of injury, it becomes apparent that imports of the products under investigation from China are not the source of material injury to the Applicant. The global economic crisis, a resulting decrease in demand domestically and internationally, the Applicant's extensive restructuring efforts and corporate structure are all elements resulting in the injury alleged by the Applicant.
- [38.] In addition, the period of time immediately preceding the global economic crisis does not constitute a valid starting point for any injury analysis in this context. Especially with respect to prices and profits, comparisons between current conditions and the highpoint of 2008 will necessarily yield a declining trend. Given the persistent soft recovery, it may be a very long time before the profitability levels enjoyed in 2008 and before can be achieved again. While the Applicant relies on nominal profit of 6 percent for the purposes of its dumping calculations, profitability of between 2 and 3 percent is the new norm for global steel producers today. Similarly, the high prices obtained in 2008 in the overheated market that existed before the global economic crisis are unlikely to be obtained any time soon in the context of a still very soft recovery.
- [39.] Based on the application and other publically available documents, it is apparent that Bluescope Steel has both a manufacturing and product distribution business within its coated and industrial products group. To the extent Bluescope Steel sells products through its downstream business, the possibility exists for costs and profit shifting between these business units that may affect the market price within Australia. For example, the distribution

business may be more profitable whereas the upstream manufacturing business may be less profitable due to the way costs and profits are attributed through these entities. Therefore, CISA and its members respectfully request Australian Customs to enquire further on the extent to which the data used by the Applicant to try to bolster its allegations of injury does not reflect the true financial position of the Applicant.

- [40.] At present, there are no trade remedy measures in force against the goods under consideration imported from China into any third country. As Australian Customs has correctly noted, the European Commission terminated the anti-dumping proceeding concerning hot-dipped metallic-coated iron or steel flat-rolled products on 7 February 2009.
- [41.] Similarly, the Brazilian investigating authority DECOM terminated its proceeding concerning galvanized, galvalume and pre-painted flat steel products from Australia, China, India, Korea and Mexico in September 2012. However, it is interesting to note that the Applicant in the present proceedings, BlueScope Steel, was assigned a dumping margin of 50.5 percent in this Brazilian proceeding, the highest dumping margin of any of the exporting producers targeted.
- [42.] CISA and its members maintain that in the absence of trade remedy measures imposed by a third country, there is no threat of diversion of Chinese exports from third-country markets to the Australian market.

6 LACK OF CAUSATION

- [43.] A causal link is lacking between imports from China and the situation of the Applicant. There has been no negative impact from the allegedly dumped imports from China. Any difficulties experienced by the Applicant are due to other factors.
- [44.] Alternative causes for the injury alleged by the Applicant include a lack of investment in its plant and equipment, a lack of economies of scale, exchange rate movements and the restructuring of its business in 2011. In regards to the restructuring of its business we refer to a media release dated 22 August 2011, which on page 2 notes the closure of a number of production facilities (*see* <http://www.abc.net.au/rural/news/content/201208/s3566761.htm>).
- [45.] Whilst the press release refers to these facilities being involved in the exporting of products, query whether the restructuring has artificially increased the cost to make and sell of Bluescope Steel's products. In addition, the press release refers to the decline in Australian domestic steel demand in the wake of the global economic crisis, as a result of which steel producers worldwide have suffered.
- [46.] In accordance with the elements above, a causal link cannot be established between any injury alleged by the Applicant and allegedly dumped imports from China. Accordingly, CISA and its members respectfully request that

Australian Customs terminate the present proceeding on the basis of the absence of such causal link.

7 COMPETITION LAW CONCERNS

- [47.] Bluescope Steel is the sole producer of zinc coated (galvanized) steel and aluminium zinc coated steel in Australia. Bluescope Steel also retains an overwhelming majority of the market share in Australia for these products. This is verified in sections 8.7.2 of Consideration Report No. 190, which confirms that Bluescope Steel's market share of aluminium zinc coated steel has remained relatively constant since 2009-10. There has been some decline in the market share of Bluescope Steel for Galvanised Steel since 2009-10, but this decline is relatively modest. Ultimately, the fact that Bluescope Steel is a monopoly producer and retains a majority market share raises some very important competition law issues.
- [48.] In the event that anti-dumping duties are imposed, there is a strong likelihood that competition in the Australian market for these products will be substantially reduced. Vigorous import competition is essential to ensure that a monopoly producer does not in the future take advantage of its market power, by, for example, raising prices or taking steps to prevent the development of competitors in the market place. There may also be less incentive for producers to improve productivity and invest in domestic plant and equipment. Such adverse consequences may also affect downstream businesses (particularly small and medium sized enterprises) and ultimately consumers.
- [49.] In addition to the abovementioned factors, any substantial lessening of competition in the form of reduced imports may result in a reduction in the reliability of supply of galvanised steel and Aluminium Zinc coated steel, which are used in so many other industrial and consumer markets.
- [50.] The structure of the market and competition considerations are important in the analysis of whether any occurrence of dumping has caused material injury to the Australian industry. It is also a relevant factor in the exercising of Ministerial discretion to impose anti-dumping duties. In this particular case, it is an important factor given the dominant role of Bluescope Steel in these markets.

8 AUSTRALIAN PUBLIC INTEREST

- [51.] In addition to the risk noted above of significantly reducing competition within Australia, the imposition of anti-dumping measures in the present cases is highly likely to impact negatively a number of Australian users of the two products, representing much larger and broader interests than those of the Applicant. Consequently, it would not be in the wider Australian public interest to pursue these proceedings.

- [52.] The user industries in Australia, tend to be fragmented and to consist of smaller companies. These users may fear retaliation from a single dominant domestic producer supplying them, if they criticize current market conditions. Given tight supply and limited competition in the Australian market, the Applicant is likely to be in a position of strength in relation to many of its customers. Imports from the countries targeted in these proceedings appear to be the only serious source of competition in this context.
- [53.] However, Australian users, who are in fact competing directly with the affiliate business of the applicant, will be adversely impacted by an increase in their input costs due to the anti-dumping duties. The imposition of anti-dumping measures in this context is unlikely to pass on throughout the production chain. Australian users will have to absorb the additional cost due to the anti-dumping duties. CISA observed that such claims have been raised by several interested parties such as GM Holden Limited ("Holden") and the Australian Steel Association Inc.
- [54.] While Chinese imports of the goods under consideration have increased moderately in recent years, their increased market share has been gained at the expense mostly of other exporters, especially with respect to aluminium zinc coated steel. However, the Applicant's significant and remarkably steady market share consistently above 60 percent for zinc coated (galvanized) steel and always nearly 60 percent for aluminium zinc coated steel is more striking throughout the relevant years. Such market shares clearly evidence the extent of the Applicant's control of the Australian market.
- [55.] As a result of the introduction of various quality management commitments in recent years, end-users have been obliged to secure continuous supplies from a sufficient number of suppliers to ensure the availability of quality products. For many end-users, reliance on the Applicant as their sole supplier is simply not commercially feasible and/or wise. Australian users have expressed their concerns about the availability of sufficient quantities and qualities of the products supplied by BlueScope. In this context, CISA particularly notices that one of the manufacturers of enclosure products (B&B Enclosure Pty Ltd) acknowledged that BlueScope is unable to provide the full extent of the requirements of the Australian market for steel coils.
- [56.] The increase in the usage of Chinese products is also partly based on the uniform product sourcing requirements of certain major construction globally. Many of these companies have already been buying from China to satisfy requirements outside of Australia, where the Applicant does not supply the relevant products. Therefore, these end-users will have to turn to imported products for their projects within Australia.
- [57.] The elimination of that necessary source of competition on the Australian market as a result of the imposition of any anti-dumping duties against imports from China would have a seriously deleterious effect on Australian users of the goods under consideration. Ultimately, the Applicant's actions are fundamentally anticompetitive and contrary to the Australian public interest.

9 CONCLUSION

[58.] Based on the elements presented above, CISA and its members maintain that the anti-dumping proceedings initiated against imports of zinc coated (galvanized) steel and aluminium zinc coated steel from China should be terminated without the imposition of anti-dumping duties given serious like product concerns, the state of Chinese industry, a lack of dumping, causation and injury, serious competition law concerns and the fact that it would not be in the Australian public interest to impose such measures.

[59.] In the meantime, pending Australian Customs' detailed review and analysis of all the issues identified in this submission, the imposition of provisional measures would be entirely unwarranted in the present proceedings.

* * *