

5 February 2013

The Director
Operations 2
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Our ref: ATH
Matter nos: 9557713

By email: itrops2@customs.gov.au

Dear Sirs

**Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel exported from the People's Republic of China
Investigations into alleged dumping and subsidisation
Further Submission by GM Holden Limited
Non-Confidential Version**

We refer to our previous correspondence and confirm we act on behalf of GM Holden Limited ("**Holden**"). We have now been instructed to make the following submission in relation to the Investigations.

1. Definitions

- (a) "**Act**" means the *Customs Act 1901* (Cth).
- (b) "**Applications**" means the applications by BSL which resulted in the Investigations.
- (c) "**ARW Investigation**" means Investigation Number 181 by Customs into alleged dumping and subsidisation of aluminium road wheels exported from the People's Republic of China.
- (d) "**ARW Ministerial Decision**" means the decision made by the Minister following consideration of the ARW Report.
- (e) "**ARW Ministerial Direction**" means the direction of the Minister set out in the *Australian Newspaper* on 23 January 2013 following consideration of the TMRO ARW Report.
- (f) "**ARW Reinvestigation**" means the reinvestigation to be conducted by Customs following the ARW Ministerial Direction.
- (g) "**ARW Report**" means Customs Report No. 181 to the Minister in relation to the ARW Investigation.
- (h) "**AZCS**" means aluminium zinc coated steel described in the Applications and the Consideration Reports.

- (i) "**BSL**" or "**Applicant**" means BlueScope Steel Limited being the applicant for the Investigations.
- (j) "**Consideration Reports**" means:
 - (1) Report number 190 issued by Customs in response to the application for the Dumping Investigation; and
 - (2) Report number 193 issued by Customs in response to the application for the Subsidy Investigation.
- (k) "**Customs**" means the Australian Customs and Border Protection Service.
- (l) "**Dumping Application**" means the application for dumping duty notices in relation to AZCS and Galvanised Steel exported from the PRC, the Republic of Korea and Taiwan made by BSL as referred to in ACDN 2012/40 and dated August 2012.
- (m) "**Dumping Investigation**" means the investigation into alleged dumping of Galvanised Steel and AZCS arising out of the Dumping Application.
- (n) "**Galvanised Steel**" means zinc coated (galvanised) steel described in the Applications and the Consideration Reports.
- (o) "**HSS**" means certain hollow steel sections as described in the HSS Investigation.
- (p) "**HSS Investigation**" means Investigation number 177 by Customs into alleged dumping of HSS exported from the PRC, Korea, Malaysia, Taiwan and the Kingdom of Thailand.
- (q) "**HSS Ministerial Decision**" means the decision made by the Minister following consideration of the HSS Report.
- (r) "**HSS Ministerial Direction**" means the direction by the Minister set out in the Australian Newspaper on 18 January 2013 following consideration of the TMRO HSS Report.
- (s) "**HSS Reinvestigation**" means the reinvestigation to be conducted by Customs following the HSS Ministerial Direction.
- (t) "**HSS Report**" means Customs Report number 177 to the Minister in relation to the HSS Investigation.
- (u) "**Investigations**" means:
 - (1) the Dumping Investigation;
 - (2) the Subsidy Investigation
- (v) "**Minister**" means the Minister for Home Affairs.
- (w) "**Ministerial Directions**" means the:
 - (1) HSS Ministerial Direction; and
 - (2) ARW Ministerial Direction.

- (x) **"Reinvestigations"** means the:
 - (1) HSS Reinvestigation; and
 - (2) ARW Reinvestigation.
- (y) **"Submission"** means this submission.
- (z) **"Subsidy Application"** means the application for countervailing duty notices in relation to AZCS and Galvanised Steel exported from the PRC, the Republic of Korea and Taiwan made by BSL as referred to in ACDN 2012/56 and dated October 2012
- (aa) **"Subsidy Investigation"** means the investigation into alleged subsidisation of Galvanised Steel and AZCS arising from the application by BSL which led to the Subsidy Investigation.
- (bb) **"TMRO"** means the Trade Measures Review Officer.
- (cc) **"TMRO ARW Report"** means the Report by the TMRO in response to application by parties for review of the ARW Investigation and the ARW Ministerial Decision.
- (dd) **"TMRO HSS Report"** means the Report by the TMRO in response to application by parties for review of the HSS Investigation and the HSS Ministerial Decision.

2. Holden Submission

For the reasons set out below, Holden request that Customs suspends the Investigations pending the outcome of the Reinvestigations and any appeals from those Reinvestigations or any appeals from the Ministerial Directions.

3. The HSS Investigation

Holden has instructed us to make the following comments in relation to the effect of the HSS TMRO Report and the HSS Ministerial Direction.

- (a) BSL has relied extensively on the HSS Report and the HSS Ministerial Decision in the Applications.
- (b) Specifically, we note that BSL relied on the HSS Report and the HSS Ministerial Decision in relation to the following issues for the Dumping Investigation all of which are now subject to review in of the HSS Reinvestigation:
 - (1) a finding that there was a "particular market situation" in the Chinese iron and steel market such that sales in that market were not suitable for use in determining normal values under section 269TAC(1) of the Act;
 - (2) the calculation of the benchmark used to construct a normal value for Chinese HSS producers under section 269TAC(2)(c) of the Act;
 - (3) the calculation of the export price and the dumping margins for certain exporters; and
 - (4) the calculation of dumping margins for "selected non-cooperating exporters" referred to in the Dumping Investigation.

- (c) Further, we note that BSL also relied on the HSS Report and HSS Ministerial Decision in arguing the following issues relating to the Subsidy Investigation all of which are subject to review in the HSS Reinvestigation:
- (1) that State-Invested Enterprises providing HRC to HSS producers under Program 20 are "Public Bodies"; and
 - (2) that hot rolled coil supplied under Program 20 was provided for less than adequate remuneration.
- (d) The Consideration Reports reflect that Customs also was prepared to proceed with the Investigations based on findings in the HSS Report and the HSS Ministerial Decisions which findings have been called into doubt by the TMRO HSS Report and the HSS Ministerial Decision and are subject to the HSS Reinvestigation.

Accordingly, it is clear that both BSL and Customs relied extensively on the HSS Report and the HSS Ministerial Decision in the application for and the initiation of the Investigations respectively, while many of the fundamental findings in that material are now subject to the HSS Reinvestigations

4. The ARW Investigation

Holden is also of the view that the findings of the ARW TMRO Report and the ARW Ministerial Direction support the submission that the Investigation should be suspended.

Notwithstanding that the ARW Investigation did not rely on the HSS Report and related to different goods, the ARW TMRO Report and the ARW Ministerial Direction are still vitally important to the Investigations in relation to the following findings:

- (a) the calculation of the dumping margin for "selected non-cooperating exporters";
- (b) the finding that an exporter received a particular benefit under all countervailable subsidies identified by Customs; and
- (c) the finding that there was a countervailable subsidy of the type described as "Program 1" in the ARW Investigation.

All of these issues are relevant to the Investigations as they correspond to some of the issues which are subject to review pursuant to the HSS Reinvestigation (see paragraph 3 above).

5. Request for suspension of the Investigations

Following our review of the HSS TMRO Report, the HSS Ministerial Direction, the ARW TMRO Report and the TMRO Ministerial Direction, Holden believes that the Investigations should be suspended until the Reinvestigations have been completed and any appeals or reviews associated with the Reinvestigations or the Ministerial Directions have been concluded.

This Submission is not made lightly. However, given:

- (a) the extent to which BSL and Customs relied on the HSS Report and the HSS Ministerial Decision in the application for the Investigations and the decision to proceed with the Investigations respectively as set out in the Consideration Reports;

- (b) the fact that the Applications contained no different information in relation to the issues which are now subject to the Ministerial Directions but merely sought to rely on the findings of Customs in the HSS Report and the HSS Ministerial Decision;
- (c) the nature of the issues which the TMRO determined to require Reinvestigations and on which the Minister agreed in the Ministerial Directions;
- (d) the likelihood that the Reinvestigations may lead to different approaches and conclusions in relation to the existence of a "particular market situation" in the Chinese Iron and Steel markets, the calculation of normal values and treatment of non-cooperating exporters;
- (e) the findings in the HSS TMRO Report that State Invested Enterprises are not public bodies that produce or supply HRCS and/or narrow strip to HSS Producers for the purposes of the definition of "subsidy" in section 269T of the Act. This is also relevant to the Investigations given the claim in the Applications that HRCS is a vital component to the production of galvanised steel;
- (f) the finding in the HSS TMRO Report that there is no evidence that such HRCS is provided at less than adequate remuneration;
- (g) the finding in the HSS TMRO Report that there needed to be a re-calculation of the export price and the dumping margin for certain exporters;
- (h) the consequences of different findings as to the existence of dumping or subsidies and any revised margins to be applied following the Reinvestigation;
- (i) the significant disadvantage to exporters and importers of the goods the subject of the Investigations if Customs proceeds with the Investigations and elects to impose securities or make recommendations to the Minister regarding the imposition of anti-dumping or countervailing duties in reliance of the findings in the HSS report and the HSS Ministerial Decision which far outweigh any potential injury to the Australian industry from suspension of the Investigation (which is not admitted);
- (j) the very real probability that if the Investigations continue based at all on the HSS Report and the HSS Ministerial Direction they would be likely to be subject to immediate review; and
- (k) the effect on the confidence of parties subject to the anti-dumping and countervailing systems provided by the Australian Government and of Australia's overseas trading partners by proceeding while the issues of the Reinvestigation have yet to be determined,

our client believes that the suspension of the Investigations as contemplated by paragraph 2 above is appropriate and reasonable and is required in all the circumstances.

For the purposes of this request for the suspension of the Investigations, we note that there is no prohibition in the Act or the *Customs Tariff (Anti-Dumping) Act 1975* against such a suspension.

6. Termination of the Investigations

Notwithstanding the request in paragraph 5 above, Holden believes that Customs also has the option to terminate the Investigations on the following bases:

- (a) section 269TDA of the Act only sets out circumstances in which the CEO of Customs **must** terminate an Investigation. Accordingly, the Act does not prohibit the CEO of Customs from exercising a discretion to terminate the Investigations where the CEO believes there are sufficient grounds for termination or insufficient grounds for continuing to pursue the Investigations; and
- (b) a number of grounds for the HSS Reinvestigation relate to issues which are fundamental to the calculation of normal value, export price, dumping margin, and the treatment of non-cooperating exporters. Given that the issues will not be resolved conclusively prior to the due date for Customs delivery of the Statement of Essential Facts for the Investigations, then there is no **certain** basis by which Customs could be sure as to dumping margins or countervailing margins. Accordingly that would allow Customs to terminate the Investigations pursuant to Sections 269TDA(1) and (2) of the Act at the time it delivers its Statement of Essential Facts.

7. Effect of termination or suspension

Holden believes that the effect of suspension or termination of the Investigations would allow Customs to await the result of the HSS Reinvestigation and ensure that the Investigations are handled in a manner consistent to the findings of the HSS Reinvestigation.

Following a suspension, Customs would be in a position to reinstitute the Investigations.

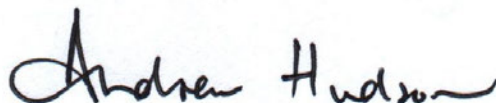
Even if the Investigations are terminated, the Applicant could renew applications as soon as the HSS Reinvestigation is completed. Further, the Minister would be in a position to initiate an investigation regarding anti-dumping measures pursuant to section 269TAG of the Act.

8. No imposition of securities

Holden is aware that the Investigations have reached a stage where Customs could impose securities pursuant to a Preliminary Affirmative Determination. However, given the questions as to the Investigations which have arisen and are identified above, Holden believes it would be unsound and inappropriate to issue a Preliminary Affirmative Determination or impose securities on the goods the subject of the Investigations.

We look forward to hearing from you.

Yours faithfully
Hunt & Hunt



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