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7 March 2013

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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: 9555549 / 9557713

By email: itrops2@customs.gov.au

Dear Sir

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

We refer to our letter of 5 February 2013 to which we have yet to receive a response.

We also refer to the notice by the Australian Customs and Border Protection Service ("**Customs**") dated 6 February 2013 advising of the Preliminary Affirmative Determination and Imposition of Dumping Securities by Customs and the associated Preliminary Affirmative Determination Report Number 190 ("**PAD**").

Our client has now instructed us to write to you further seeking, once again, that the Investigations be suspended or terminated. For these purposes, our client believes that the terms of the PAD and the decision to impose Dumping Securities merely emphasises the need for suspension or termination of the Investigations.

Please note that in making this further submission, unless otherwise defined, we have adopted the defined terms as used in our letter of 5 February 2013.

1. Undue reliance on the HSS Report

Our letter of 5 February 2013 identified problems associated with reliance on the HSS Investigation in the Investigations.

However, we note that in the PAD, Customs made a number of findings based on the HSS Report to support the imposition of Dumping Securities.

- (a) In section 9.3.1 of the PAD, Customs has relied on the HSS Report and found it reasonable to consider that the GOC influences in the iron and steel industry continue to exist in the Chinese domestic market such that HRCS selling prices do not reflect competitive market costs and that there is therefore a "market situation".
- (b) In section 9.3.2 of the PAD, Customs has relied on the HSS Report and found that certain private domestic prices and import prices are not suitable for determining prices due to the GOC influences in the iron and steel industry.

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INTERLAW.

- (c) In section 9.3.3 of the PAD, Customs has relied on the HSS Report in finding it is reasonable to make the substitution at the HRCS level for integrated producers at the PAD stage.

However, we note that the HSS Report is subject to review in the HSS TMRO Review on the basis that Customs had erred in its approach and Customs has now been directed to undertake the HSS Reinvestigation. As a result, the findings in paragraphs 1(a)(b) and (c) above must be subject to doubt. Without limiting the generality of this issue, we note that in the TMRO HSS Report, the TMRO found that not only did Customs make an error in determining that there was a "market situation" in the PRC for HSS but that on the evidence before Customs in the HSS Investigation there were not grounds upon which Customs could have definitively found that there was such a market situation (see paragraph 111 of the TMRO HSS Report). That being the case, it seems to be unsound for Customs to have made the determination described in paragraph 1(a) above as one basis for imposing Dumping Securities.

2. Need for the PAD and the imposition of Dumping Securities

Notwithstanding the concerns about the undue reliance on the HSS Report described above, our client is also of the view that there do not appear to be sufficient reasons for Customs to have issued the PAD and imposed Dumping Securities at this stage of the Investigation.

For these purposes, our client has the following reservations regarding these actions by Customs.

- (a) There is no compelling evidence of any impending collapse of the business or the market of BSL which would warrant the urgent imposition of Dumping Securities. At worst, the Consideration Reports and the PAD only point to a potential increase in the level of material injury (which is not conceded) which has been taking place for a number of years and which had not previously been the subject of any applications by BSL.
- (b) The normal course of the Investigations would lead to the issue of a Statement of Essential Facts and recommendation to the Minister in the foreseeable future which would have allowed for the proper and considered imposition of any necessary interim duties by the Minister. Again, there seems to be no reason to immediately impose Dumping Securities at this stage of the Investigations.
- (c) In section 14.3 of the PAD, Customs has identified certain grounds which it claims to be necessary to take securities. Included is the alleged evidence of exports from China (amongst others) after the investigation period and evidence of ongoing price offers. However, this ignores the reality that our client (amongst others in the automotive industry) only acquire Galvanised Steel under long-term contracts which are already in place and have been the subject of open and transparent negotiation over time. Therefore, it would seem inappropriate to be imposing Dumping Securities in relation to those earlier negotiated contracts which are unaffected by alleged dumping.
- (d) In earlier investigations relating to HRCS and in relation to the Investigations, it is clear that the main focus of inquiry and interest by BSL has been in relation to markets other than the automotive market. Further, the HRCS Investigation found no injury had been experienced by BSL in relation to the sales to the

automotive industry caused by alleged dumping. Holden fully expects a similar finding to be made in the Investigations on the basis that any losses by BSL in the automotive industry are caused by factors other than alleged dumping or subsidisation but are caused more particularly due to decrease in sales by the Australian automotive industry. On that basis, the imposition of Dumping Securities on all imports of Galvanised Steel including to the automotive industry appears to be both inappropriate and to create undue levels of cost and complexity for those in the automotive industry.

3. Concerns as to findings in the PAD

In general terms, Holden is concerned that Customs has elected to issue the PAD and to impose Dumping Securities at this stage of the Investigations when Customs openly acknowledges that it has yet to undertake a complete and comprehensive investigation and is still awaiting further submissions or information.

Our client would point to the following aspects within the PAD where Customs has elected to impose Dumping Securities without due consideration to relevant factors.

- (a) In section 6.1.4 of the PAD, Customs indicates that the PAD does not discuss TCOs that have been, are or could be, applicable to imports of Galvanised Steel and AZCS as they are not relevant to PADs. Holden would disagree with such a proposition. The purpose of considering such TCOs is to ensure that no measures are imposed in respect of imports where there is no Australian manufacture of relevant goods. It is widely acknowledged (even in BSL's visit report) that there are a number of items which BSL does not produce and which are the subject of TCOs. The effect of the PAD and the imposition of Dumping Securities is that such Dumping Securities will be imposed on goods to which TCOs will apply and where no interim dumping duty would be imposed. This appears to be contrary to the intent of the legislation and the measures.
- (b) Sections 8.1.1 and 8.1.3(i) of the PAD identify that the major markets for Galvanised Steel relate to the domestic building product manufacturing industry. Section 8.1.3(i) of the PAD also records that smaller quantities are sold directly to customers in the automotive, manufacturing and pipe and tube sectors. At the same time, there are earlier findings by Customs that there has been no injury in the automotive market to BSL in relation to HRCS exports which all parties appear to agree is fundamental to the production of Galvanised Steel. On that basis, it seems inappropriate to be applying and seeking Dumping Securities in respect of imports of Galvanised Steel intended to be used in the automotive industry for the production of motor vehicles. Holden has previously advised as to means to separate such imports and avoid the imposition of securities.
- (c) Customs appears to have formed the view that there is a market situation in the PRC for Galvanised Steel even in the absence of a response by the GOC to the "Market Situation Questionnaire". That response was due on 8 February 2013, two (2) days after the PAD was issued and Dumping Securities imposed. It seems extraordinary that Customs should have advanced in that way without the GOC response, based on the HSS Report, when by that date, it was clear that the finding was subject to the HSS Reinvestigation.

- (d) In section 9.2.1 of the PAD, Customs acknowledges that a number of exporter visit reports have not been finalised and placed on the public record at the time of considering the PAD which, when concluded, might require revision of the level of the Dumping Securities. Again, Holden believes it is premature to have issued a PAD and imposed Dumping Securities without having fully completed all exporter visit reports.
- (e) In undertaking its preliminary injury assessment in section 10 of the PAD, Customs has only undertaken a "macro" analysis of the market for Galvanised Steel in determining that there is a likelihood of material injury having been caused by dumping. However, this ignores the approach which Customs believed to be appropriate in relation to the HRCS Investigations of undertaking a further "micro" analysis of each of the relevant industry sectors. Accordingly, it appears to be unsound to proceed even to seek Dumping Securities without such micro analysis.
- (f) In section 10.6 of the PAD, Customs says that it has preliminarily considered it is appropriate to consider the cumulative effect of the allegedly dumped imports. However, section 269TAE(2C) of the Act provides for consideration of the cumulative effect of exports from different countries where the Minister is satisfied that it is appropriate to consider the cumulative effects. In these circumstances, we believe that it is inappropriate for Customs to have taken upon itself to take into account the accumulation of injury in determining to impose Dumping Securities.
- (g) In section 11.2.2 of the PAD, Customs acknowledges that its "price undercutting" analysis was only completed at a macro-product level only rather than taking into account micro analysis based on specific product types, customer types and distribution channels and market segment. It would appear to be premature and unreasonable to have imposed Dumping Securities without such proper analysis.
- (h) Section 11.4 of the PAD refers to a brief analysis of other factors which could have caused material injury to BSL. The PAD indicates that further examination needs to be undertaken in relation to some of those items. If so, it again appears to be inappropriate and premature to have taken Dumping Securities when a detailed analysis had yet to be completed. Further, for these purposes, we would draw Customs' attention to the article regarding losses of the steel division of Arrium Limited to be found on page 19 of *The Australian* newspaper of 7 February 2013. In this article, it refers to a significant loss by the steel division of Arrium but at no stage does Arrium refer to that loss having been attributable to allegedly dumped or subsidised exports of steel of any type. This would suggest that any material injury could properly be occasioned by reasons other than alleged dumping or subsidy. It also suggests that BSL is uniquely affected by dumped or subsidised products.

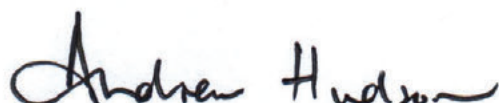
In these circumstances, given the state of the Investigations and the reliance on HSS 177, there appears to be significant reservations as to the basis upon which Customs has taken this premature decision to impose Dumping Securities.

4. Failure to take into account the HSS TMRO Report, the TMRO ARW Review or the HSS Reinvestigation

We note that on 14 January 2013, the Minister, following a recommendation from the TMRO, asked Customs to reinvestigate certain findings in the TMRO HSS Report including in relation to market situation. This appears to be a fundamental issue as to the Investigations especially given the observations by the TMRO that he could not contemplate a situation in which such a "market situation" finding could be maintained based on the evidence before Customs in the HSS Investigation. These were similar reservations as to determination of a "market situation" in the PRC in the TMRO ARW Report which led to the ARW Ministerial Decision and the ARW Reinvestigation. However, Customs still proceeded with the PAD and the imposition of Dumping Securities by way of notification on 6 February 2013 apparently without reference to the findings of the TMRO in the TMRO HSS Review or the TMRO ARW Review or the terms of the Reinvestigations, other than a footnote as to the HSS Reinvestigation having been ordered. It appears to Holden that Customs has acted prematurely without taking into account relevant considerations such as to be found in the HSS TMRO Review, the TMRO ARW Review and the Reinvestigations.

In the circumstances, Holden would, once again, reiterate its belief that the Investigations should be suspended or terminated pending proper consideration of the terms of the TMRO HSS Review, the TMRO ARW Review and the Reinvestigations. This would entail withdrawal of the PAD and the Dumping Securities.

Yours faithfully
Hunt & Hunt



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