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8 April 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: 9555549

Received  
 08 April 2013

By email: [itrops2@customs.gov.au](mailto:itrops2@customs.gov.au)

Dear Sir or Madam

**Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel exported from the People's Republic of China  
 Investigation into alleged dumping  
 Submission by GM Holden Limited to Statement of Essential Facts No. 190  
 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 SEF.

For the purposes of this response, all defined terms have the same meaning as set out in the Schedule of Definitions.

**1. Executive summary**

Having reviewed the SEF, Holden's views can be summarised in the 2 following main themes.

- (a) Holden welcomes and endorses the approach by Customs to recognising the many grounds for the potential grant of exemptions for Galvanised Steel products for use in the automotive sector, as referred to in the SEF. The existence of current TCOs and current applications for TCOs (to which BSL has not objected) and the acknowledgment by BSL that it does not produce certain types of Galvanised Steel for use in the automotive industry recognises that there should be no dumping duties imposed for such products used in the automotive industry. {note- have done a global search and replace of lower case 'galvanised steel' to leading upper case, as it is a defined term. Assume in each case we intend to use it in the way defined; changes not separately marked up}

This is also consistent with findings by Customs in the HRCS Investigation that BSL suffered no injury in its sales of HRCS to the automotive sector and, indeed, claimed no such injury. Given that HRCS is an important raw material for Galvanised Steel then, taken with the TCOs which have been and will be granted, it becomes clear that the approach of Customs to alleged dumping and subsidisation of goods exported to the automotive industry needs specific and separate attention.

For these purposes, Holden endorses the approach that Customs will consider the potential grounds for exemption and include that in its report to Minister at the time of

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recommending whether there should be interim dumping duties imposed on exports of Galvanised Steel.

At the same time, Holden notes that Customs' analysis of the impact of proposed measures does not yet specifically take into account the significant adverse effect of the imposition of countervailing or dumping duties on exports of Galvanised Steel (and indeed HRCS) to the automotive sector. As discussed with Customs on many occasions, the adverse effects are considerable and are unnecessary and inappropriate given that BSL has not claimed any injury in its sales to the automotive sector arising from exports of such products.

Accordingly, Holden encourages Customs to take note of the outcomes of these issues relating to the automotive industry as part of its continuing investigations, and in respect of any future investigations, of other steel products which may have an impact on the automotive industry. By way of example, Customs should not merely accept descriptions of goods under consideration proposed by applicants which could potentially cause the application of dumping and countervailing duties in the automotive industry even when there is no injury to the applicant in that market. We would suggest that Customs adopts descriptions of goods under consideration which enable the separate review of goods being provided to the automotive industry. This will allow for separate investigations as to whether there has been any injury to the automotive industry that would support the imposition of any countervailing and dumping duties affecting products used in the automotive industry and avoid any automatic imposition of such measures just because injury is found in other sectors, but not in the automotive industry.

- (b) Notwithstanding the comments above, Holden remains of the view that there are a number of errors in the way in which Customs has conducted the Investigation and come to conclusions and recommendations as set out in the SEF. These have been outlined in the Holden Submissions and will be reiterated in this Submission. Holden is concerned to ensure that those errors are addressed so that they will not lead to any incorrect conclusion as to the imposition of duties on the automotive industry in the first instance.

## **2. Earlier Holden submissions**

This Submission should be read together with the earlier Holden Submissions. This Submission should in no way be seen as derogating from those earlier Holden Submissions.

## **3. Exemptions**

As described above, Holden endorses and supports the approach of Customs to recommend to the Minister that the Minister ought to grant exemptions for products used in the automotive industry at the same time as it recommends the imposition of measures for other sectors. This will avoid the need for those parties who would be adversely affected, such as Holden, to have to incur the time and expense of making a separate, subsequent application for exemption. For these purposes, Holden wishes to request that Customs recommend to the Minister that the following exemptions be granted at the same time that any measures are imposed (if they are to be imposed) for other non-auto sector products/markets.

- (a) All goods the subject of current TCOs.
- (b) All goods which are the subject of TCOs which are in the process of being considered (and to which BSL has not objected).

- (c) All future goods the subject of TCOs which may be applied for by our client and to which BSL does not object.
- (d) Tailor-welded steel as referred to in section 6.6.1 of the SEF.
- (e) Zero spangle steel referred to in section 6.6.2 of the SEF.

For these purposes we note that in section 7.4.1.1 of the SEF, Customs has noted that there are reasonable grounds for the Minister to consider an exemption for duty for these goods

- (f) Galvanised Steel outside of the dimensions capable of being produced by the Australian Industry, per Customs' comment at the top of page 35 of the SEF.

Holden has previously provided extensive information to Customs of the basis for seeking these exemptions.

Holden appreciates that there may be some need for Customs to update procedures to allow for exemptions by way of an "end use qualifier" relating to goods destined for automotive manufacture only.

For these purposes, we refer to paragraph 3.3 of our letter to Customs of 23 October 2012 in relation to the HRCS Investigation which sets out a mechanism which could be adopted to achieve this aim.

#### **4. Grounds of objection to the reasoning and conclusions in the SEF**

##### **(a) *Approach to the GUC***

As set out above, Holden remains of the view that Customs has accepted a description of the "Goods under Consideration" which is entirely too broad and should have adopted an approach to "Goods under Consideration" which recognises the use of goods in the 3 different industries where relevant goods are used and allowed for separate investigations into alleged dumping and alleged material injury in each of those 3 industries. In the HRCS Investigation, the failure to undertake this separate investigation and consideration of injury for each relevant industry has led to the imposition of measures on goods being exported to the Automotive Industry where there is no injury claimed by BSL or found by Customs; an irregular and adverse result( for further detail, see 4(a) of our letter of 15 October 2012 in relation to the Investigation and in the HRCS Submissions).

Holden hopes that in relation to future investigations, Customs only accepts a descriptions of goods under consideration that appropriately identify and distinguish the separate markets into which relevant goods are sold, to allow for separate investigation and consideration to be given as to whether the imposition of measures is warranted in any particular market based on the specific factors applying to that particular market.

##### **(b) *Undue reliance on the HSS Investigation***

Holden notes that the SEF continues to draw heavily on the HSS Investigations in relation to the existence in the PRC of a "particular market situation" for the goods.

Holden took objection to this approach in the Holden Submissions. It remains of the view that it was unsound and inappropriate for Customs to proceed on the basis of its findings in the HSS Investigation while those findings were found to have been incorrect by the TMRO in the TMRO HSS Report and the issues are now subject to reinvestigation by Customs at your direction pursuant to the HSS Reinvestigation.

(c) **Section 8 – Australian Market**

As with the HRCS Investigation, both BSL and Customs had identified that there were 3 separate markets for Galvanised Steel in Australia. Again, Holden reiterates that it believes there should have been 3 separate investigations as to the existence of dumping (or subsidisation) of sales of products into, and relevant consideration given to whether any injuries had resulted in, each of those 3 different markets.

(d) **Sections 9.1(1) and 9.3.1 and Appendix 1 – Particular Market Situation**

Holden refers to its comments in paragraph 4 (b) above (and the submissions referred to in that paragraph) and its view that proceeding on the basis that China was a "particular market situation" in relation to Galvanised Steel (and HSS and HRCS) was unsound.

(e) **Section 9.4.5 – Treatment of selected non-cooperating exporters**

As stated in the Holden Submissions, Holden has objected to the approach taken to determine export prices for export sales by all selected non-cooperating Chinese exporters pursuant to section 269TAB(3) of the Act, as set out in section 9.4.5 of the SEF. By using the lowest weighted export price for the entire investigation, Customs has not relied on the "best available information" as contemplated by the WTO Anti-Dumping Agreement and the Act. In respect of any selected non-cooperating exporter who exports to Holden, Customs has undertaken a full review of exports to Holden and would have been able to properly determine the actual export price for those exports from the information provided by Holden. The actual export prices of sales to Holden from those selected non-cooperating exporters to Holden should be used.

(f) **Section 10 – Injury Assessment**

Holden has a number of concerns regarding this aspect of the SEF.

- (1) As stated above, Holden is firmly of the view that there are, in fact, 3 separate and distinct markets for exports of Galvanised Steel. Accordingly, it would have been appropriate to have undertaken 3 separate market analyses on a "micro analysis" basis (consistent with the approach in the HRCS Investigation) rather than undertaking one macro investigation. Customs should then recommend the imposition of measures based on the analysis arising from such separate micro analysis.
- (2) In addition, Holden remains of the view that the cumulation of injury by Customs as set out in section 10.5 of the SEF (and in the earlier PAD) is inappropriate in the circumstances. It is not mandatory.

Separate assessments of injury should be made relating to products being exported from each of the exporting countries.

(g) **Section 11 – Has Dumping caused Material Injury?**

The acceptance of an unreasonably wide description of the "goods under consideration" and the unwillingness by Customs to undertake separate market analysis and adopt separate measures relevant to the factors affecting the industry has unduly biased the investigation towards the imposition of dumping (and presumably countervailing) duties where there is no injury to the relevant automotive market sector. While Customs claims (in section 11.2.2 of the SEF) that it has undertaken a micro analysis, no details have been provided in the SEF.

(h) **Section 11.4.1 – Import Parity Pricing (IPP)**

Holden remains of the view that the approach adopted by BSL towards pricing ("import parity pricing") almost automatically pushes BSL into a situation of price undercutting and price suppression at any time that prices for the exported products should reduce for any reason. Accordingly, as set out in the Holden Submissions, Holden remains of the view that the import parity pricing approach significantly contributes to BSL's situation and is not evidence of the existence of alleged dumping.

(i) **Section 11.7 – Injury caused by factors other than Dumping**

As with previous Holden Submissions and submissions by Holden in the HRCS Investigation, Holden is of the view that the injury caused by factors other than dumping has not been properly assessed by Customs and is not properly included in its analysis.

(j) **Section 12 – Will Dumping and Material Injury continue?**

Holden believes that Customs' analysis in sections 12.3.1 and 12.3.2 of the SEF is inadequate. Holden does not believe that Customs has taken properly into account the impact of factors like BSL's own adoption of the import parity pricing arrangements, other market factors causing injury to BSL, and the return to stability in the market for Galvanised Steel. Holden believes that if such factors are properly taken into account, Customs should find that there is no prospect of dumping or material injury continuing that would support the imposition of measures.

(k) **Section 13 – Non-Injurious Price**

Holden agrees with the conclusions by Customs in section 13.5 of the SEF as to the means to establish a non-injurious price.

(l) **Section 14 – Discretionary Factors**

Holden remains of the view as set out in the Holden Submissions that Customs has, erred in this aspect in that it has not undertaken a detailed analysis of the potential effects of the imposition of measures such as those contemplated by Customs on other downstream industries. As a result, if such inadequate review is provided to the Minister, it does not afford the Minister a

proper basis on which to make a decision and he is consequently more likely to impose measures such as contemplated by Customs that will be unwarranted and adversely impact the automotive industry.

#### 5. Other submissions made by other interested parties

In making this Submission, Holden also refers to the following submissions made by other interested parties:

- (a) letter dated 15 February 2013 on behalf of Union Steel China;
- (b) letter dated 11 March 2013 on behalf of the Ministry of Commerce of the Government of the People's Republic of China; and
- (c) letter dated 7 March 2013 on behalf of Chung Hung Steel Corporation.

Having reviewed those other submissions, Holden is of the view that these other submissions are consistent with this Submission and recommends their reasoning and conclusions.

#### 6. Subsidy investigation

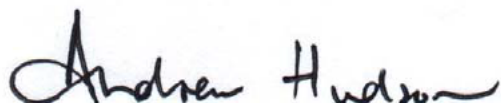
We note that Customs has been afforded further time to complete its SEF into the alleged subsidisation of Galvanised Steel. For these purposes, many of the comments above apply equally to the subsidy investigation and should be taken into account by Customs in relation to that investigation.

#### 7. Conclusion

Based on the comments above, Holden remains of the view that the Investigation and the SEF should not have endorsed the application of measures on certain exports of Galvanised Steel destined for use in the automotive sector in the manner contemplated by the SEF. However, to the extent that such measures are imposed, our client is of the view that the exemptions referred to as potentially applying (as described in the SEF and described above) should be granted by the Minister at the time he makes his determination as to the application of measures on the whole.

We would be pleased to discuss further.

Yours faithfully  
**Hunt & Hunt**



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## Schedule of Definitions

- (a) "**Act**" means the *Customs Act 1901* (Cth).
- (b) "**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.
- (c) "**Application**" means the application by BSL which resulted in the Investigation.
- (d) "**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.
- (e) "**ARW Ministerial Decision**" means the decision made by the Minister following consideration of the ARW Report.
- (f) "**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.
- (g) "**ARW Reinvestigation**" means the reinvestigation to be conducted by Customs following the ARW Ministerial Direction.
- (h) "**ARW Report**" means Customs Report No. 181 to the Minister in relation to the ARW Investigation.
- (i) "**AZCS**" means aluminium zinc coated steel described in the Application and the Consideration Report.
- (j) "**BSL**" or "**Applicant**" means BlueScope Steel Limited being the applicant for the Investigation.
- (k) "**Consideration Report**" means report number 190 issued by Customs in response to the Application.
- (l) "**Customs**" means the Australian Customs and Border Protection Service.
- (m) "**Galvanised Steel**" means zinc coated (galvanised) steel described in the Application and the Consideration Report.
- (n) "**Holden Submissions**" means the following earlier submissions made by us on behalf of Holden in relation to the Investigation including:
  - (1) letter dated 15 October 2012 in response to the Consideration Report;
  - (2) letter dated 13 December 2012 in response to the Visit Report on the Applicant;
  - (3) letter dated 5 February 2013 seeking suspension or termination of the Investigation; and
  - (4) letter dated 7 March 2013 seeking suspension or termination of the Investigation following the issue of the PAD.

- (o) **"HRCS"** means hot rolled coil steel as referred to in the HRCS Investigation.
- (p) **"HRCS Investigation"** means investigation number 188 by Customs into alleged dumping of HRCS exported from Japan, Korea, Malaysia and Taiwan.
- (q) **"HRCS Submissions"** means the submissions by Holden in relation to the HRCS Investigation.
- (r) **"HSS"** means certain hollow steel sections as described in the HSS Investigation.
- (s) **"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.
- (t) **"HSS Ministerial Decision"** means the decision made by the Minister following consideration of the HSS Report.
- (u) **"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.
- (v) **"HSS Reinvestigation"** means the reinvestigation to be conducted by Customs following the HSS Ministerial Direction.
- (w) **"HSS Report"** means Customs Report number 177 to the Minister in relation to the HSS Investigation.
- (x) **"Investigation"** means the investigation into alleged dumping of Galvanised Steel and AZCS arising out of the Application.
- (y) **"Minister"** means the Minister for Home Affairs.
- (z) **"Ministerial Directions"** means the:
  - (1) HSS Ministerial Direction; and
  - (2) ARW Ministerial Direction.
- (aa) **"PAD"** means Preliminary Affirmative Determination Report number 190 issued by Customs as part of the Investigation.
- (bb) **"Reinvestigations"** means the:
  - (1) HSS Reinvestigation; and
  - (2) ARW Reinvestigation.
- (cc) **"SEF"** means Statement of Essential Facts number 190 issued by Customs in relation to the Investigation.
- (dd) **"Submission"** means this submission.
- (ee) **"TCO"** means a tariff concession order in respect of goods granted by Customs pursuant to the Act.



- (ff) **"TMRO"** means the Trade Measures Review Officer.
- (gg) **"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.
- (hh) **"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.