

19<sup>th</sup> April 2013

Ms Joanne Reid  
Director Operations 2  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
5 Constitution Avenue  
CANBERRA ACT 2601

Received  
19 April 2013

**Public Version**

Dear Joanne,

**Alleged Dumping of Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel Exported from the People's Republic of China, the Republic of Korea and Taiwan**

**1. Introduction**

The central concern of OneSteel in this matter is the proper application of the provisions of the Customs Act to the issues of the identification of goods and the assessment of whether the alleged dumping of goods of a particular kind has directly caused material injury. In our submission the continuing acceptance by Customs of the applicant's nomination of a very broad range of products that includes goods of different kinds which are not 'like to each other' and that are destined for different discrete market sectors has clearly impeded the proper application of the Act. This situation has been compounded by the fact that the applicant's goods description also includes products that during the injury investigation period it has been unable to supply, or has chosen not to supply, to the Australian market. Indeed this compromised supply capability is an ongoing issue today.

The terms of s269TG(1),(2) &(3) of the Act that prescribe the circumstances in which the Minister may issue a dumping notice require the identification of *particular goods* for the purpose of a retrospective notice and *goods of a particular kind* for the purpose of a prospective notice. Having completed this primary identification process the Minister must then assess whether the exportation at allegedly dumped prices of goods (being like to the particular goods and/or like to the goods of a particular kind) have caused or are threatening material injury to an industry producing goods that, in turn, are like to the particular previously exported goods or are like to anticipated exports of goods of that particular kind.

The symmetry of these provisions is reinforced by the 'because of that' terminology that underpins the critical causation requirement. It is exports of goods that are like to goods of a particular kind

that must be directly causing material injury to the domestic production of goods that are like to the goods of the same particular kind. The overall construction of the statutory provisions and the unambiguous terminology used in relation to causation makes it clear that an indirect, tangential or remote effect of the exportation of goods of a particular kind on the local production of goods of a different kind is insufficient to provide grounds for the publication of a dumping notice.

'Goods of a kind' and similar phrases have always been a feature of Customs law both in Australia and internationally and imply a significant degree of product homogeneity. In the present case the goods description promoted by the applicant covers a range of product categories of different kinds and is quintessentially heterogeneous. To take but one example, galvanised hot rolled coil steel is unambiguously not a product of the same kind as galvanised cold rolled coil steel and, as OneSteel has demonstrated in previous submissions, the application of the four recognised criteria reveals that the two products are not even like goods.

As detailed in an earlier submission by OneSteel,<sup>1</sup> the most appropriate response to the disconnect that exists in this case between the original goods description and the discrete goods of a kind categories that exist within that description would be for Customs to redefine the goods and we continue to urge the adoption of this course of action. An alternative approach, although less satisfactory, would be to adapt the process followed by Customs in the recent hot rolled coil steel case<sup>2</sup> in relation to pickled and oiled product and conduct injury assessments by reference to goods of a particular kind that are supplied to a discrete market segment. Two examples of this alternative approach follow in sections 2 & 3 below.

## **2. Structural Pipe and Tube market – galvanised HRC**

The feed material required for the structural pipe<sup>3</sup> and tube market is a galvanised hot rolled coil product, as distinct from galvanised cold rolled coil. The specific requirements of the products required for that market are detailed in TC 1242989 and TC1243148.

It is clear from the evidence already submitted by OneSteel ATM, that the applicant has not suffered any injury during the injury investigation period in this market as OneSteel was the only domestic producer of galvanised hot rolled coil and it was not produced by the applicant either during that period or at the date of lodgement of its application. Furthermore, from the end of the investigation period until at least the end of May 2013, no injury has occurred to the domestic industry as the applicant hasn't been able to supply in commercial volumes. This inability to supply other than minimal trial volumes is further evidenced by the operation of the two relevant TCOs.

---

<sup>1</sup> OneSteel Submission 8<sup>th</sup> April 2013

<sup>2</sup> REP: 188

<sup>3</sup> AS/NZS 1163:2009 C450L0

Even if the applicant is able to produce trial products that will be available for delivery in late May 2013, and subsequent OneSteel tube mill production trials and testing occur in June, commercial volumes are will not be available for supply until July 2013. It is obvious, therefore, that when the Minister commences his consideration in May 2013 of whether to issue a dumping notice in respect of hot rolled galvanised coil there will be no evidence that prior allegedly dumped exports to Australia of goods of that kind have caused any injury and, in the absence of any demonstrated ability to supply in commercial quantities, insufficient evidence that future exports may threaten material injury. In this latter respect OneSteel draws the attention of Customs to the requirement of s 269TAE(2B) of the Act that

*...the Minister must take account only of such changes in circumstances ... as would make that injury foreseeable and imminent.*

Consideration of a threat of material injury must be based on facts, not conjecture<sup>4</sup>, and the requirement for a change in circumstances involves the identification of an actual change that has occurred and not merely an asserted or predicted change. Again there will be no evidence of any actual change of circumstances available to the Minister at the time of his consideration of the CEO's report. OneSteel also wishes to emphasise the importance of the following admonition to administering authorities in Article 3.8 of the Anti-Dumping Agreement:

*With respect to cases where injury is threatened by dumped imports the application of anti-dumping measures shall be considered and decided with special care.*

The special care requirement has additional resonance in the present matter where the evidence before Customs of the applicant's proposals for the decentralised manufacture of galvanised hot rolled coil are clearly incompatible with any future supply of the product at realistic commercial terms.

In conclusion OneSteel submits that there is no evidence to support a finding that exports of galvanised hot rolled coil steel have caused material injury and consequently there is no ground for the publication of a dumping notice in respect of goods of that particular kind.

### **3. Unchromated galvanised steel and aluminium zinc coated coil for the pre-painting market sector.**

Unchromated coated steel products are another important segment of the overall goods description put forward by the applicant and the products are manifestly different from other goods falling within the applicant's overall goods description. As previously indicated<sup>5</sup> locally produced unchromated coated steel is an intermediate feed product that, apart from captive use by the applicant, is only suitable for sale to two independent manufacturers that use unchromated

---

<sup>4</sup> Anti-Dumping Agreement: Article 3.7

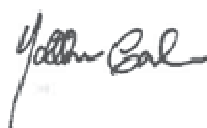
<sup>5</sup> Coil Coaters Submission 8<sup>th</sup> April 2013

coil in widths greater than 600mm for their paint lines, namely OneSteel Coil Coaters and Ace Gutters. The locally produced product and the exported products purchased by the two independent Australian users are goods of the same particular kind and consequently for the reasons established in section 1. above are properly comparable for the purpose of undertaking a separate and specific material injury assessment. That assessment, as we have highlighted in earlier submissions<sup>6</sup>, must take account of a singular set of circumstances in which, apart from a single sale of a small quantity to a related entity<sup>7</sup>, the applicant has neither sold nor sought to procure sales of the product on commercial terms during the whole of the injury investigation period. In more recent times the implausibility of the attempt by the applicant to demonstrate to Customs, for the purpose of the current investigation, that it stands ready to sell to Coil Coaters is revealed by the patently uncommercial terms of an 'offer' that is really no offer at all, but effectively a constructive refusal to supply. Given all this, it is submitted that Customs must conclude that such 'offers' to supply Coil Coaters are totally irrelevant to the assessment of claims of any past, present or predicted injury.

In a situation where the applicant has demonstrated and continues to demonstrate that it has no genuine interest in supplying independent customers on commercially feasible terms, the injury assessment is a simple process. By adhering to a policy of constructively refusing supply of unchromated coated steel the applicant must be assumed to be acting in accordance with its perception of the most profitable course of action for the company. That perception is patently incompatible with any subsequent claim of material injury due to loss of profits or profitability and, with a zero sales base at the beginning and end of the injury investigation period, the applicant has obviously not suffered any loss of volume and or market share.

Again OneSteel concludes that there is no evidence to support a finding that exports of unchromated coated steel have caused material injury and consequently there is no ground for the publication of a dumping notice in respect of goods of that particular kind.

Yours truly



Matt Condon

Manager Trade Measures

OneSteel

P: +61 2 8424 9880

M: +61 409 861 583

E: [condonm@onesteel.com](mailto:condonm@onesteel.com)

---

<sup>6</sup> OneSteel Coil Coaters Submission – 8<sup>th</sup> April 2013

<sup>7</sup> SEF 190 p38