Australian Government
Anti-Dumping Review Panel

REPORT OF THE ANTI-DUMPING REVIEW PANEL

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REVIEW OF DECISION TO IMPOSE DUMPING DUTIES ON:

ZINC COATED (GALVANISED) STEEL EXPORTED FROM TAIWAN.

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Introduction

1. Onesteel Australian Tube Mills Pty Ltd (**ATM**) has applied, pursuant to sections 269ZZA and 269ZZC of the Customs Act 1900 (**the Act**) for a review of the decision of the Attorney-General to impose dumping duties in respect of galvanised steel exported to Australia from Taiwan.

2. The application for review was accepted and notice of the proposed review as required by section 269ZZI was published on 20 September 2013. The Senior Member of the Review Panel has directed, in writing pursuant to section 269ZYA, that the Review Panel for the purpose of this review be constituted by me.

3. On 31 October 2013 I required the Anti-Dumping Commissioner (**ADC**) to reinvestigate certain findings pursuant to section 269ZZL of the Act. The report on those investigations was given to the Review Panel on 28 November 2013. A non-confidential version of the report is annexed.

4. With its application for review, ATM provided a detailed submission by MinterEllison a law firm retained to represent it. Submissions were also received from Bluescope Steel Limited (**Bluescope**) on 17 September 2013. Further submissions were received from ATM on 18 and 21 September 2013.

5. In conducting this review I have had regard to the matters set out in the application for review by ATM and the documents to which reference is made in that application. I also had regard to the submission by Bluescope and the further submissions by ATM except to the extent that the submissions raised matters to which I could not have regard under sub-section 269ZZK(4). I also had regard to the report of the Commissioner under sub- section 269ZZL(2).

Background

6. On 3 August 2012 an application was made by Bluescope pursuant to section 269TB of the Act that the Minister publish dumping notices in respect of, among other things, galvanised steel exported from Taiwan. The application was accepted and an investigation was initiated on 5 September 2012.

7. The findings made as a result of the investigation were set out in Report 190 of the International Trade Remedies Branch of the Australian Customs and Border Protection Service (**Customs**). On 25 July 2013 the Attorney-General accepted the recommendations made in Report 190 and made declarations pursuant to subsections 269TG(1) and (2) of the Act that section 8 of the Customs Tariff (Anti-Dumping) Act 1975 (**the Dumping Duty Act**) applied to certain goods, including galvanised steel exported from Taiwan. Notice of the Attorney-General's decision was published on 5 August 2013.

Ground for Review

8. ATM contends that the decision to impose anti-dumping measures with respect to its exports was not the correct or preferable decision for the following reasons:

    a. in the absence of an Australian industry producing like goods during the relevant period there were no reasonable grounds for the Attorney-General to have been satisfied that the exported goods imported by ATM had caused or were causing material injury to an Australian industry producing other categories of products included within the goods under consideration (**GUC**);

    b. the Attorney-General's satisfaction in relation to the possibility of future injury does not provide any basis for a lawful conclusion that

there is a threat of material injury which is the only ground provided in the Act for a finding of future injury;

c. there is no finding, and there cannot be any reasonable finding, that hot rolled coil galvanised steel (**HRC steel**) has characteristics closely resembling those of cold rolled coil galvanised steel (**CRC steel**);

d. Customs failure, in recommending ascertained export prices (**AEP**) to the Attorney-General, to take account of significant price reductions after the end of the investigation period has resulted in the determination by the Attorney-General of inflated dumping margins and the preferable determination would be one that takes account of more recent price data;

e. the decision to express AEPs in US dollars rather than Australian dollars results in an increase in the floor price of GUC imports if the value of the Australian currency depreciates and the preferable decision would be to express AEPs in Australian dollars.

9. Each of the above reasons is considered below. However, I have first addressed the issue of whether or not the CRC steel produced by Bluescope is a like good to the HRC steel exported from Taiwan and imported by ATM. This is because this issue is determinative of the first three contentions raised by ATM.

Consideration of Grounds for Review

No like Goods Produced

10. ATM contends that there was no Australian manufacturer of HRC steel (i.e., galvanised steel made from hot rolled coil substrate) once it closed its production facility. It further contends that the CRC steel (i.e.,

galvanised steel made from cold rolled coil) produced by Bluescope is not a substitutable product.

11. Report 190 dealt with the differences between HRC steel and CRC steel as submitted by ATM at paragraph 6.6.4 of the Report.

12. In dealing with the issue of whether or not the different types of galvanised steel were like goods, the Report finds that they are "broadly like goods"[1]. There was however no analysis of the characteristics of the HRC and CRC products in terms of those which Customs usually used to determine whether certain goods, which are not identical, have nevertheless characteristics closely resembling each other such that they come within the description of like goods. These terms are physical likeness, commercial likeness, functional likeness and production likeness.

13. Given the reference to the products only being "broadly" like goods, the lack of an analysis of the characteristics of the products and the submissions made by ATM on this issue, I required the ADC to reinvestigate the finding at paragraph 6.6.4.

14. On 28 November 2013 I received a report from the ADC. In that report, the ADC reviewed the submissions by ATM and others on the issue. The ADC examined whether or not the locally produced CRC steel and the imported HRC steel were like goods against the considerations of physical likeness, commercial likeness, functional likeness and production likeness. With physical likeness, the ADC particularly looked at the mechanical/chemical and coating properties of the HRC Steel and CRC steel and the dimensions of the HRC steel and CRC steel.

15. The ADC found that, while there were differences between CRC steel and HRC steel in relation to the substitutability or "likeness" of the goods in

[1] Report 190, page 36

different circumstances, they were nevertheless like goods. In coming to this conclusion the ADC placed greater emphasis on the physical likeness and functional likeness of HRC steel and CRC steel, as it is these features which primarily affect whether consumers will purchase one product or the other. The ADC concluded that while there are instances in which HRC steel and CRC steel are non-substitutable, CRC and HRC steel can be produced in a range of common dimensions and grades and used interchangeably in a number of applications.

16. With regard to those circumstances in which the HRC steel and CRC steel would not be substitutable for each other, the ADC noted that exemption from dumping duties may be granted for the HRC steel products if they met certain requirements. The exemption to which the ADC was referring is an exemption under subsection 8(7) of the Dumping Duty Act.

17. I am satisfied that the report from the ADC has properly considered the issue of whether or not the locally produced CRC steel is a like good to the imported HRC steel and agree with the finding for the reasons set out in that report.

18. The confirmation of the finding as to like goods deals with the ATM submission on this issue. ATM contends that there should be separate assessments of such matters as material injury and causation for each product category within the GUC. However, none of the precedents to which ATM refers, support a separate assessment of goods which are like goods to others in the general class of GUC. Given that there is a finding that the imported HRC steel is a like good to the locally produced CRC steel and also to the imported CRC steel, there is no basis for excluding such exports from the anti-dumping measures on exports of galvanised steel. As noted above, there may be a basis for excluding certain imports on the basis of their intended use under subsection 8(7) of the Dumping Duty Act, but that is not a matter for this review to consider.

Threat of Injury

19. In its submission on this issue, ATM refers to comments made by Customs in Report 190 at section 7.3.2.1. The substance of the criticism by ATM is that in this section of the report, Customs erred in a number of ways in making a finding of a threat of injury to the Australian injury from exports of HRC steel. It is not necessary however to consider in detail the arguments made by ATM in this respect. They are based on a mistaken reading of Report 190 and the basis upon which the Attorney- General made the declaration under subsection 269TG (2) with respect to the exports of HRC steel, namely that there was a threat of material injury to the Australian industry. The confusion was possibly caused by the language used by Customs at section 7.3.2.1, in particular its reference to there being "a foreseeable and imminent threat of injury".

20. In section 7.3.2.1, Customs is dealing with the issue of exemptions under subsection 8(7) of the Dumping Duty Act. This section does not set out the basis upon which Customs recommended to the Attorney-General that measures be imposed on the exports of galvanised steel from Taiwan, including exports of HRC steel. The basis for the recommendation was that the dumping of galvanised steel exports to Australia from Taiwan had caused material injury to the Australian industry producing like goods.[2]

Past and Present Injury

21. This submission by ATM is based on the inconsistencies between section 7.3.2.1 and section 11 of Report 190. As noted above, section 7.3.2.1 deals with the issue of exemptions under subsection 8(7) of the Dumping Duty Act. Section 11 deals with the issue of whether or not the exports of galvanised steel at dumped prices had caused material injury to the Australian industry producing like goods. Customs found:

[2] Report 190, pages 133 and 134

> "… that certain galvanised steel exported to Australia from China, Korea and Taiwan at dumped prices have caused material injury to the Australian industry producing like goods."[3]

22. As the ADC notes in the report on the reinvestigation of the "like goods" issue, there may be circumstances where the locally produced CRC steel is not substitutable for the imported HRC steel and this may be the basis of an exemption under subsection 8(7) of the Dumping Duty Act. In section 7.3.2.1 of the report, Customs was considering this issue. It is a different issue to that dealt with at section 11.

23. ATM complains that there was no micro analysis of the impact of the imports of HRC steel on the Australian steel industry. This complaint however assumes that there had not been a finding that the HRC steel products and the CRC steel products were like goods. Given this finding, the approach by Customs in section 11 of the report in dealing with the effect of the imports of galvanised steel on the Australian industry was appropriate.

Ascertained Export Price

24. ATM contends that, in fixing the AEPs, average prices applying in a 12 month period subsequent to the investigation period should have been used. ATM concedes that the AEP for exporters is usually determined by the Minister having regard to the prices ascertained during the investigation period, which happened in this case.

25. The investigation period for an anti-dumping investigation is that set out in the notice issued under subsection 269TC(4) of the Act at the commencement of the investigation. Paragraph 269TC(4)(bf) of the Act refers to the examination of exportations to Australia of goods the subject

[3] Report 190, page 108

of an application during a period specified in the notice as "the investigation period".

26. Pursuant to section 269TACB of the Act, the export price or prices of goods exported to Australia during the investigation period are those used to determine whether or not dumping has occurred. This determination is one of the preconditions to the decision of the Minister under subsections 269TG (1) and (2) of the Act to declare that section 8 of the Dumping Duty Act applies.

27. Subsection 269TG(3) requires that in any notice under subsections 269TG(1) and (2) the Minster has to include a statement of the normal value, export price and non-injurious price of the goods. These are known as the variable factors which are used in the calculation of any dumping duty.

28. In *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, Justice Nicholas stated:

> "When s 269TG is read as a whole, it is apparent that subs (3) refers to the goods the subject of a declaration under subss (1) or (2). In particular, the references in subs (3)(c) of s 269TG to "the goods to which the declaration relates" and in subs (3)(d) and (e) to "those goods" indicate that the goods referred to are the same goods as those the subject of the declaration made under subss (1) or (2) and that they will have the same dumping margin as that calculated pursuant to s 269TACB. In my opinion, if a declaration is made under subss (1) or (2) in respect of goods then subs (3) requires that, along with the relevant declaration, the public notice set out details of the ascertained variable factors that led to the declaration. The ascertained normal values and export prices will each be the same single figure (usually expressed as a percentage) referable to a particular exporter

that was used to determine, in accordance with the requirements of s 269TACB, whether dumping occurred and, if so, at what margin.

140 Further, where in Part XVB of the Act the Minister is conferred with a discretion as to how he or she will go about determining a dumping margin, the relevant provisions usually make this quite clear. There is nothing in s 269TG to suggest that there was any intention to confer upon the Minister a discretion that would enable him or her to determine variable factors different to those utilised for the purpose of determining whether dumping occurred and, if so, at what margin."

29. The above analysis indicates that the AEP for the purpose of any dumping duty notice is to be that used to determine whether or not there was dumping. A different AEP cannot be used for the purpose of subsection 269TG(3). For this reason, it does not appear to be open to the Minister to ascertain a different export price for the purpose of the dumping duty.

30. Accordingly, the submission by ATM that the AEP should be revised to reflect more recent price trends must fail. In any event, even if it was possible to fix a different AEP for the purpose of the dumping duty notice to that used to determine whether there was dumping, there seems to be no compelling reason why this should be done. If, subsequent to the imposition of anti-dumping measures, there are changes in the variable factors, the remedy is to seek a review of the variable factors under Division 5 of Part XVB of the Act, once the 12 month period has expired.

AEP Currency

31. The final reason put forward by ATM as to why the decision of the Minister was not the correct or preferable decision is that the AEP was expressed to be in US dollars rather than Australian dollars. ATM contends that this is a departure from the more common practice of expressing the AEP in Australian dollars. In fact, the Dumping and Subsidy

Manual (August 2012) published by Customs provides that the AEP will generally be expressed in the currency in which the export sales are usually made[4].

32. ATM refers to the fact that the non-injurious price (**NIP**) was expressed in Australian dollars as being a reason for also expressing the AEP in Australian dollars. In Report 190 the NIP was fixed at the price equal to the normal value for each of the exporters. So, in this case, the NIP does not have a role in the determination of the dumping duty. However, there does not seem to be any reason why the AEP should not be expressed in US dollars. As noted by ATM the movement of the exchange rates can also erode the value of the dumping measures to Australian industry where there is an appreciating Australian dollar.

Conclusion

33. For the above reasons, I consider that the decision of the Attorney-General to impose anti-dumping measures under subsections 269TG(1) and (2) of the Act with respect to the exports of galvanised steel from Taiwan was the correct or preferable decision.

34. Pursuant to section 269ZZK of the Act, I recommend that the Minister affirm the reviewable decision.

Joan Fitzhenry
Anti-Dumping Review Panel
13 December 2013

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