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 lawyers

17 May 2013

The Director
 Operations 3
 International Trade Remedies Branch
 Australian Customs and Border Protection Service
 Customs House
 5 Constitution Avenue
 CANBERRA ACT 2601

Our ref: ATH
 Matter no:

By email: itrops3@customs.gov.au

Dear Director

GM Holden Limited
Reinvestigation of certain findings regarding alleged dumping of Hot Rolled Coil Steel
exported from Japan, the Republic of Korea, Malaysia and Taiwan
Response submission to the Reinvestigation
Non-confidential version

We refer to 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 Reinvestigation. Please note that this is a non-confidential version and there is no confidential version of this Submission.

For the purposes of this Submission, all defined meanings are set out in the Schedule of Definitions.

1. Executive Summary

Having reviewed the TMRO Decision, the Ministerial Direction and the Reinvestigation ACDN, Holden's views can be summarised as follows.

- (a) Holden welcomes and endorses the recommendation by the TMRO as subsequently adopted in the Ministerial Direction that Customs consider whether it would be preferable to structure the conditions attaching to the imposition of dumping duties on imports for the automotive industry in such a way that imports that are acknowledged not to be causing or likely to cause injury to the Applicant are not liable to duty under the dumping duty notice in the first instance (and only exempt such imports if subsequently exempted under section 8(7) of the Dumping Act).
- (b) Holden believes that there is no reason why pickled and oiled HRCS from Korea, Malaysia and Taiwan sold and used in the automotive sector should not be treated in the same manner as Japanese exports of pickled and oiled HRCS for the automotive sector.

More details on each of these issues are set out in the paragraphs below.

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. Reinvestigation for supply to the Automotive Industry

- (a) In paragraph 26.1 of the TMRO Decision, the TMRO suggested that Holden should consider the practice of applying for exemptions in relation to the HRCS Investigation and the application of any measures to the automotive industry. However, Holden notes that section 8(7) of the Dumping Act is not appropriate to exempt imports of HRCS by Holden as there are no tariff concession orders in place in relation to HRCS and the Applicant has not conceded that it does not supply HRCS that could be used in the automotive industry. Accordingly, Customs should not seek to rely on the possibility of exemptions under the section 8(7) of the Dumping Act as a means to avoid the need to adopt measures to ensure that no dumping duties are applied to imports of HRCS intended for the automotive industry.
- (b) In paragraph 3.3 of our letter on behalf of Holden to Customs dated 23 October 2012, Holden provided a mechanism to ensure that no measures are imposed on imports by the automotive industry in relation to HRCS. Those comments were reiterated in our letter sent to Customs on 8 April 2013 regarding the Galvanised Steel Investigation. Again, we strongly recommend that Customs create a new statistical code for HRCS to be used in the automotive industry within the Customs Dumping Commodities Register and designate that goods bearing such statistical code would be exempt from dumping or countervailing duties. In relation to this Investigation, that would allow for the importation of such HRCS without the payment of dumping duties or the taking of other securities. Holden understands that Customs may be concerned that this mechanism will create a situation where the HRCS is actually put to uses other than automotive purposes. To address and alleviate these concerns, we would recommend the following:
- (1) Customs is well aware of those exporters and importers and automotive companies involved with the use of HRCS and undertakings should be sought from each of them to use the HRCS only for automotive purposes and to comply with the precise terms of the new statistical code.
 - (2) Customs should monitor the use of the new HRCS statistical code including its use by new parties and make enquiry of new parties who use it and those who have previously been using it to ensure that there has been compliance with the terms of the statistical code. Customs would then be in a position to audit and heavily penalise any misuse of the statistical code.
 - (3) Customs can use its new anti-circumvention provisions to ensure that there has been no misuse by other means.
- (c) In relation to paragraph 3 of the terms of reference for the Reinvestigation as set out in the Ministerial Direction and the Reinvestigation ACDN, Holden makes the following additional observations.

4. Additional observations

- (a) Any conditions attaching to the imposition of dumping duties should operate in a way that imports that are acknowledged by Customs not to be causing or likely to cause injury to the Applicant should not be liable to duty under the dumping duty in the first instance (and only exempt if subsequently exempted under the terms of section 8(7) of the Dumping Act.
- (b) In the various Customs reports in the Investigation and in the Galvanised Steel Investigation, the Applicant has not provided proof of any injury in relation to its sales of such steel products to the automotive industry and that, as a result, Customs has found no injury in relation to sales to the automotive industry.
- (c) In paragraph 54 of the TMRO Decision, the TMRO has suggested that the finding of lack of injury to Bluescope in the automotive sector was based on the fact that, during the Investigation period, sales of HRCS into the sector were being made under long term contracts let by vehicle manufacturers for the supply of products specific to particular vehicle models. Holden does not agree with this interpretation. Customs also indicated that the Applicant was unable to provide any proof that injury to the automotive industry was caused by the alleged dumping. As set out in section 8.8.4 of the Final Report, Customs suggested that injury was also due to other factors such as the reduction in demand for cars manufactured in Australia. Accordingly, any attempt to link the exclusion of measures to the automotive industry to circumstances in which there are long term supply contracts is not appropriate.

As set out in paragraph 1(a) of our letter of 8 April 2013 in relation to the Galvanised Steel Investigation, Holden encourages Customs to take note of the conclusions on injury to Australian industry in the various investigations for the steel supplied 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.

5. Application of measures to oiled and pickled HRCS from non-Japanese sources

Again, Holden endorses the recommendation of the TMRO in the TMRO Decision that there is no reason why exports from non-Japanese countries of oiled and pickled HRCS should be treated in any way differently to exports of oiled and pickled HRCS from Japanese exporters and that Customs should adopt a consistent approach to exports from all countries.

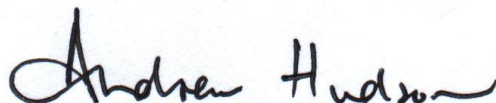
6. Conclusion

Based on the comments above, Holden remains of the view that the Investigation and the Reinvestigation should not endorse the application of measures on exports of HRCS destined for use in the automotive industry.

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We would be pleased to discuss further and to be afforded the opportunity to discuss these matters in the same manner as those opportunities have been afforded to the Applicant.

Yours faithfully
Hunt & Hunt

A handwritten signature in black ink that reads "Andrew Hudson". The signature is written in a cursive, flowing style.

Andrew Hudson
Partner

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Schedule of definitions

- (a) "**ACDN**" means Australian Customs Dumping Notice No. 2012/66 in relation to the Application for measures.
- (b) "**Act**" means the *Customs Act 1901* (Cth).
- (c) "**Application for Measures**" means the application by BSL for the imposition of dumping duties on HRCS exported from Japan, Korea, Malaysia and Taiwan.
- (d) "**AZCS**" means aluminium zinc coated steel described in the Galvanised Steel Application.
- (e) "**BSL**" or "the **Applicant**" means BlueScope Steel (AIS) Pty Ltd.
- (f) "**Consideration Report**" means the Consideration Report Number 188 issued by Customs dated 14 June 2012 in relation to the Investigation.
- (g) "**Customs**" means the Australian Customs and Border Protection Service.
- (h) "**Dumping Act**" means the *Customs Tariff (Anti-Dumping) Act 1975*.
- (i) "**Final Report**" means Report to the Minister No 188 issued by Customs dated 19 November 2012 in relation Investigation.
- (j) "**Galvanised Steel**" means zinc coated (galvanised) steel described in the Galvanised Steel Application and the Consideration Report.
- (k) "**Galvanised Steel 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.
- (l) "**Galvanised Steel Investigation**" means the investigation into alleged dumping of Galvanised Steel and AZCS arising out of the Galvanised Steel Application.
- (m) "**Holden Consideration Report Response**" means the Holden response to ACDN 2012/30 and the Consideration Report dated 25 July 2012.
- (n) "**Holden SEF Response**" means the Holden response to the SEF and PAD dated 23 October 2012.
- (o) "**Holden Submissions**" means the various submissions by Holden in relation to the Investigation including, without limitation:
 - (1) the Holden Consideration Report Response;
 - (2) the Holden SEF Response; and
 - (3) the Holden TMRO Submission.
- (p) "**Holden TMRO Submission**" means the submission on behalf of Holden to the TMRO dated 21 January 2013.

- (q) **"HRCS"** means Hot Rolled Coiled Steel whose production is described in the Consideration Report.
- (r) **"Investigation"** means investigation No. 188 by Customs in response to the Application for Measures.
- (s) **"Korea"** means the Republic of Korea.
- (t) **"Minister"** means the Minister for Home Affairs.
- (u) **"Ministerial Decisions"** means the decisions of the Minister dated 4 December 2012 pursuant to sections 8 and 10 of the Dumping Act as notified in the Notices.
- (v) **"Ministerial Direction"** means the direction of the Minister dated 1 May 2013 to undertake this Reinvestigation.
- (w) **"Notices"** means the notices of the Ministerial Decisions published in the Government Gazette and *The Australian* newspaper on 20 December 2012.
- (x) **"PAD"** means the Preliminary Affirmative Decision Number 188 issued by Customs dated 3 October 2012 in relation to the Investigation.
- (y) **"PRC"** means the Peoples Republic of China.
- (z) **"Public File"** means the public file maintained by Customs in relation to the Investigation.
- (aa) **"Report"** means the report to the Minister Number 188 issued by Customs dated November 2012 in relation to the Investigation.
- (bb) **"Reinvestigation"** means the reinvestigation No 2019 as to certain findings in relation to the Investigation as described in the Reinvestigation ACDN and the Ministerial Decision.
- (cc) **"Reinvestigation ACDN"** means Australian Customs Dumping Notice number 2013/30 in relation to the Reinvestigation.
- (dd) **"SEF"** means the Statement of Essential Facts Number 188 issued by Customs dated 3 October 2012 in relation to the Investigation.
- (ee) **"Submission"** means this submission on behalf of Holden.
- (ff) **"TMRO"** means the Trade Measures Review Officer.
- (gg) **"TMRO Decision"** means the decision of the TMRO in relation to the Investigation dated 2 April 2013.