



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT

NO. 290

**APPLICATION FOR AN ANTI-CIRCUMVENTION INQUIRY INTO
THE SLIGHT MODIFICATION OF GOODS EXPORTED TO
AUSTRALIA**

**ZINC COATED (GALVANISED) STEEL
EXPORTED FROM THE REPUBLIC OF KOREA AND TAIWAN**

21 April 2015

PUBLIC RECORD

CONTENTS

CONTENTS..... 2

1 SUMMARY AND RECOMMENDATION 3

 APPLICATION OF LAW TO FACTS 3

 FINDINGS AND CONCLUSIONS 3

 RECOMMENDATION 3

2 REQUIREMENTS UNDER SECTION 269ZDBD 5

 FINDINGS..... 5

 REQUIRED CONTENT UNDER SUBSECTION 269ZDBD(1) 5

 REQUIRED CONTENT UNDER SUBSECTION 269ZDBD(2) 5

 CONCLUSION 10

3 APPENDICES AND ATTACHMENTS..... 11

 LEGISLATIVE FRAMEWORK - CIRCUMVENTION ACTIVITY - SLIGHT MODIFICATION OF GOODS 12

 WHAT IS A SLIGHTLY MODIFIED GOOD? 12

1 SUMMARY AND RECOMMENDATION

This Consideration Report No. 290 (CON 290) provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application seeking the conduct of an anti-circumvention inquiry into the slight modification of goods exported to Australia.

The goods the subject of the original dumping duty notice¹ are zinc coated (galvanised) steel (galvanised steel) exported to Australia from the Republic of Korea (Korea) and Taiwan. The alleged circumvention goods are goods that have been slightly modified so as to not be subject of the original dumping duty notice.

The application was lodged on 1 April 2015 by BlueScope Steel Limited (BlueScope), the sole Australian producer of like goods.

Application of law to facts

Division 5A of Part XVB of the *Customs Act 1901* (the Act)² sets out procedures for considering an application for an anti-circumvention inquiry.

Subsection 269ZDBB(6) provides for a circumvention activity, in relation to a dumping and/or countervailing duty notice, which occurs in the circumstance (the slight modification of goods exported to Australia) prescribed by Regulation 48 of the *Customs (International Obligations) Regulation 2015* (the Regulation).

Attachment 1 provides an overview of the legislative framework for the slight modification of goods exported to Australia as a prescribed circumvention activity.

Findings and conclusions

The Commission has examined the application in relation to the slight modification of goods and is satisfied that:

- the application complies with the requirements of section 269ZDBD; and
- there appear to be reasonable grounds for asserting that circumvention activity in relation to the original notice has occurred.

Recommendation

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) decide not to reject the application.

¹ Dumping duty notice published in *The Australian* newspaper and in the *Commonwealth Gazette* on 5 August 2013.

² All references in this report to divisions, sections and subsections of legislation, unless otherwise specified, are to the *Customs Act 1901*.

PUBLIC RECORD

If the Commissioner accepts this recommendation, to give effect to that decision the Commissioner must publish the notice at **Attachment 2** indicating that the Commission will conduct an anti-circumvention inquiry into the slight modification of goods exported to Australia. For the purposes of this inquiry, the inquiry period to determine whether circumvention has occurred will be from 1 July 2011 to 31 March 2015.

2 REQUIREMENTS UNDER SECTION 269ZDBD

Findings

The Commission is satisfied that the contents of the application comply with the requirements under subsections 269ZDBD (1) and (2) of the Act.

Required content under subsection 269ZDBD(1)

The application is in writing, is in an approved form, contains such information as the form requires (as discussed in the following sections) and is signed in the manner indicated in the form. Confidential and public record versions of the application were submitted.

The Commission considers that the public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information within the confidential application.

The Commission is satisfied that the application meets the requirements of subsection 269ZDBD(1) of the Act.

Required content under subsection 269ZDBD(2)

Subsection 269ZDBD(2) requires that the application include:

- a description of the kind of goods that are the subject of the original notice;
- a description of the original notice the subject of the application;
- a description of the circumvention activities in relation to the original notice that the applicant considers have occurred; and
- a description of the alterations to the original notice that the applicant considers should be made.

2.1.1 Description of the kind of goods

In its application, BlueScope has described the goods the subject of the original notice (“the goods”) as:

“flat rolled products of iron and non-alloy steel of a width less than 600mm and, equal to or greater than 600mm, plated or coated with zinc”.³

The goods are generically called galvanised steel.

³ BlueScope galvanised steel anti-circumvention application, page 4.

PUBLIC RECORD

The Commission is satisfied that the application has provided a description of the kind of goods that are the subject of the original notice.

Additional product information

In its application, BlueScope also provided additional information to support its description of the goods, as follows:

The notice further indicated that the amount of zinc coating on the steel is described as its coating mass and is nominated in grams per meter squared (g/m^2) with the prefix being Z (Zinc) or ZF (Zinc converted to a Zinc/Iron alloy coating). Common coating masses used for zinc coating are: Z350, Z275, Z200/Z180, Z100 and for zinc/iron alloy coating are ZF100, ZF80 and ZF30 or equivalents based on international standards and naming conventions.

Tariff classifications

BlueScope claimed that the goods are classified to tariff subheadings 7210.49.00 (statistical codes 55, 56, 57 and 58) and 7212.30.00 (statistical code 61) of Schedule 3 to the *Customs Tariff Act 1995*.

The Commission has confirmed with the Trade Policy and Negotiation section of the Australian Customs and Border Protection Service (ACBPS) that the goods are correctly classified to the tariff classifications and statistical codes provided in BlueScope's application. The Commission has also confirmed with the ACBPS the current duty rates for goods imported under these tariff subheadings. The general rate of duty is 5% and for imports from Korea and Taiwan, the goods are subject to a Developing Countries (DCT) duty rate which is currently 5%. However due to the Korea-Australia Free Trade Agreement, Korean originating goods under these tariff classifications fall under a reducing scale of duty which is currently at 3%.⁴

2.1.2 Description of the original notice

The application referred to the original dumping duty notice pursuant to subsection 269TG(2) published on 5 August 2013. This notice covers all exporters of galvanised steel from the People's Republic of China (China), Korea and Taiwan except for Union Steel Co., Ltd (Union Steel Korea) from Korea; Sheng Yu Co., Ltd (Sheng Yu) from Taiwan; and Ta Fong Steel Co., Ltd (Ta Fong) from Taiwan.⁵

Bluescope's application relates only to dumped exports from Korea and Taiwan.

The Commission is satisfied that the application included a description of the original notice the subject of the application.

⁴ 'DCT' denotes the rate for Hong Kong Special Administrative Region of the People's Republic of China, Korea, Republic of Singapore and Taiwan.

⁵ BlueScope galvanised steel anti-circumvention application, page 4.

2.1.3 Description of the circumvention activities in relation to the original notice that the applicant considers have occurred

The circumvention goods are exported to Australia from a foreign country in respect of which the notice applies

Pursuant to subregulation 48(2)(a), BlueScope claims that “following the imposition of the measures ... [it] observed a discernible increase in import volumes under the tariff sub-headings 7225.92.00 statistical code 38 and 7226.99.00 statistical code 71. Prior to the measures, import volumes under these classifications ... were minimal”.⁶

BlueScope claims that the goods properly classified to tariff sub-headings 7225.92.00 (statistical code 38) and 7226.99.00 (statistical code 71) of Schedule 3 to the *Customs Tariff Act 1995* can be described as galvanised steel made from “alloyed” products (alloyed galvanised steel). The Commission understands that BlueScope considers the alloyed galvanised steel to be the circumvention goods.

The Commission has confirmed with the ACBPS that the alleged circumvention goods are correctly classified to the tariff classifications and statistical codes provided in BlueScope’s application.

To support its claim, BlueScope’s application included import volume data sourced from the Australian Bureau of Statistics (ABS) with data collected for each month during the period 1 July 2013 through to 28 February 2015.

The Commission compared the import volumes in the application to the data in the ACBPS import database. The import data showed that the volume of Korean and Taiwanese imports of alloyed galvanised steel under the relevant tariff classifications was similar to the data relied upon by BlueScope. Consequently, the Commission considers that the import volume information submitted by BlueScope in so far as it relates to imports from Korea and Taiwan is reliable, relevant and suitable.

The Commission observed that from mid-2013 onwards, imports of alloyed galvanised steel from Korea and Taiwan increased significantly. Over the same period, imports of non-alloyed galvanised steel from Korea and Taiwan have declined by amounts equal to or more than the volume of the alloyed galvanised steel imports. The Commission also notes that a separate country was also responsible for a significant increase in imports of alloyed galvanised steel.

Based on the information in the application, the Commission is satisfied that the alleged circumvention goods are exported to Australia from a foreign country in respect of which the notice applies.

The Commission’s assessment is at **Confidential Appendix 1**.

⁶ BlueScope galvanised steel anti-circumvention application page 9.

Before that export, the circumvention goods are slightly modified

Pursuant to subregulation 48(2)(b), BlueScope claims that the production process to manufacture the circumvention goods and the goods the subject of the original dumping duty notice are essentially the same with the only difference being the inclusion of ferro-boron. BlueScope sets out in its application a calculation of the relatively small cost of adding ferro-boron in sufficient quantity to meet the greater than 0.0008 per cent boron chemistry requirement.⁷

The Commission notes that BlueScope, in its application, has alleged the addition of ferro-boron has the effect of slightly modifying the goods subject to the original dumping duty notice. The Commission understands that a variety of other elements (eg.chromium, silicon) may be added in the steel production process and such addition might provide for the goods to be described as alloyed galvanised steel. The Commission considers that the addition of any elements that provide for change of description from non-alloyed galvanised steel to alloyed galvanised steel may constitute a slight modification of the goods.

Accordingly, the Commission is satisfied that before the exportation, the alleged circumvention goods are slightly modified.

The use or purpose of the circumvention goods is the same before, and after, they are so slightly modified

Pursuant to subregulation 48(2)(c) of the Regulation, BlueScope claims that the circumvention goods and the goods the subject of the original notice:

- Have the same *physical characteristics*: the only difference being the inclusion of 80 grams of boron in one tonne of steel;
- Have the same *end-uses*: since the publication of the original dumping notice, there are no “new” end-use applications that have emerged; and
- Are *interchangeable*.

BlueScope’s application included a confidential attachment containing market intelligence to support the above claims. This document indicated that there is interchangeability and similar end use of the alleged circumvention goods when compared to the goods the subject of the original notice.

Accordingly, the Commission is satisfied that the use or purpose of the alleged circumvention goods is the same before, and after, they are so slightly modified.

⁷ BlueScope galvanised steel anti-circumvention application, page 11.

PUBLIC RECORD

Had the circumvention goods not been so slightly modified, they would have been subject of the notice

Pursuant to subregulation 48(2)(d) of the Regulation, BlueScope claims that had the circumvention goods not been so slightly modified with the addition of the boron element, the goods description and tariff classification would have been the subject of the notice.

In addition, BlueScope claim that the circumvention goods and the goods subject to the original dumping duty notice can be used interchangeably; that customer preference, marketing and trade channels are the same; and there does not exist a price difference as offered to the Australian market. As discussed above, BlueScope also claimed the production processes in respect of both goods are essentially the same.

In support of these claims, BlueScope provided a confidential attachment as part of its application. The confidential attachment shows that the channels of trade and distribution for both alloyed and non-alloyed galvanised steel are the same.

The Commission notes that BlueScope's above comparisons between alloyed and non-alloyed galvanised steel are consistent with the finding in the Commission's visit report concerning BlueScope, published for the purpose of the dumping investigation No. 249 in respect of galvanised steel from India and the Socialist Republic of Vietnam, where the Commission found that although BlueScope does not manufacture alloyed galvanised steel, it "...produces like goods to the goods the subject of the application (including those goods that comprise other alloy steel)...".⁸

The Commission is satisfied that had the alleged circumvention goods not been so slightly modified, they would have been subject of the notice.

Section 8 or 10 of the Customs Tariff (Anti-Dumping Act) 1975 (the Dumping Duty Act), as the case requires, does not apply to the export of the circumvention goods to Australia

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties, respectively. In this case, the Commission notes that a countervailing duty notice is not applicable to galvanised steel exported from Korea and Taiwan. The Commission is satisfied that the alleged circumvention goods are not subject to a dumping duty notice under subsection 269TG(2) and it is also satisfied that section 8 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia.

⁸ Zinc coated (galvanised) steel (Inv No. 249) Australian industry (BlueScope Steel Ltd) visit report, pp. 18-19.

2.1.4 Description of the alterations to the original notice that the applicant considers should be made

The applicant's claims

BlueScope contends that the dumping duty notice must be altered to ensure that anti-dumping measures apply to the slightly modified goods exported to Australia.

As a result, BlueScope proposes that the notices be altered as follows:

*“flat rolled iron or steel products (**whether or not containing alloys**) of a width less than 600mm and, equal to or greater than 600mm, plated or coated with zinc”.*⁹

The Commission's assessment

The Commissioner will take this into consideration when making his final recommendations to the Parliamentary Secretary at the conclusion of the inquiry.

Conclusion

The Commission is satisfied that the application meets the requirements of subsection 269ZDBD(2) of the Act.

Having regard to the matters contained in the application, the Commission is also satisfied that there appear to be reasonable grounds for asserting that circumvention activity, being the slight modification of goods exported to Australia, has occurred.

The Commission recommends that the goods the subject of the inquiry should be described as:

*“flat rolled iron or steel products (**containing alloys**) of a width less than 600mm and, equal to or greater than 600mm, plated or coated with zinc”.*

⁹ BlueScope galvanised steel anti-circumvention application, page. 14

3 APPENDICES AND ATTACHMENTS

Attachment 1	Legislative framework – extract of Regulation describing the slight modification of goods exported to Australia
Attachment 2	Public notice
Confidential Appendix 1	The Commission's assessment in relation to the changes in the export volumes for each good

ATTACHMENT 1 – LEGISLATIVE FRAMEWORK

Legislative framework - circumvention activity - slight modification of goods

Subsection 269ZDBB(6) provides for a circumvention activity which occurs in the circumstances prescribed by the Regulation. Subregulation 48(2) of the Regulation provides that a circumvention activity occurs where there is a slight modification of goods exported to Australia. This circumvention activity occurs if the following apply:

- the circumvention goods are exported to Australia from a foreign country in respect of which the dumping and/or countervailing duty notice applies;
- before that export, the circumvention goods are slightly modified;
- the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
- had the circumvention goods not been so slightly modified, they would have been the subject of the notice;
- section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

What is a slightly modified good?

Subregulation 48(3) of the Regulation sets out how the Commissioner should determine whether a circumvention good is slightly modified. The Subregulation states:

- (3) For the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention good and the good the subject of the notice, having regard to any factor that the Commissioner considers relevant, including any of the following factors:
 - (a) each good's general physical characteristics;
 - (b) each good's end use;
 - (c) the interchangeability of each good;
 - (d) differences in the processes used to produce each good;
 - (e) differences in the cost to produce each good;
 - (f) the cost of modification;
 - (g) customer preferences and expectations relating to each good;
 - (h) the way in which each good is marketed;
 - (i) channels of trade and distribution for each good;
 - (j) patterns of trade for each good;
 - (k) changes in the pricing of each good;
 - (l) changes in the export volumes for each good;
 - (m) tariff classifications and statistical codes for each good.