



**Australian Government**  
**Anti-Dumping Commission**

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**Exemption inquiry report: EX0036**

**Aluminium zinc coated steel  
Exported to Australia from  
the People's Republic of China**

**Applicant:  
Ace Gutters Coil Coaters Pty Ltd**

**November 2015**

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## Abbreviations

Abbreviations/short form	Full reference
AM material	Steel with an aluminium, zinc and magnesium alloy coating
Applicant	Ace Gutters Coil Coaters Pty Ltd
AZ material	Steel with an aluminium and zinc alloy coating
BlueScope	BlueScope Steel Limited
China	the People's Republic of China
CMC	Commercial Metals Company Australia
Commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
Customs Act	<i>Customs Act 1901</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Duties	Interim dumping duty, dumping duty, interim countervailing duty and countervailing duty
Exemption goods	The goods subject of the application as described in section 3.3
ITRB	International Trade Remedies Branch of the then Australian Customs and Border Protection Service
Korea	Republic of Korea
Parliamentary Secretary	Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
Questionnaire	'Response to Exemption Application' questionnaire
REP 190	Report No 190
REP 193	Report No 193

# 1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the Commission) in response to an application by Ace Gutters Coil Coaters Pty Ltd (the applicant) requesting an exemption from interim dumping duty, dumping duty, interim countervailing duty and countervailing duty (the duties) under subsections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*<sup>1</sup> (the Dumping Duty Act) in relation to the export to Australia of certain aluminium zinc coated steel from the People's Republic of China (China) (the exemption goods).

This report sets out the Commission's findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied to make a recommendation to the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)<sup>2</sup> on whether or not to exempt goods from the duties.

## 1.1 Recommendation

The Commission has found that there is no basis for the Parliamentary Secretary to be satisfied that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade. The Commission considers the condition of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption is not satisfied.

Based on this finding, and the findings set out in this report, the Commissioner recommends to the Parliamentary Secretary that there is no discretion to exempt the exemption goods from the duties.

## 1.2 Application of law to facts

### 1.2.1 Application

On 20 January 2015 the applicant wrote to the Commission requesting an exemption from the duties in relation to imports of the exemption goods. The applicant has applied for an exemption under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

### 1.2.2 Authority to make the decision

Subsections 8(7) and 10(8) of the Dumping Duty Act set out, among other things, the matters of which the Parliamentary Secretary must be satisfied in order to exercise their discretion to exempt goods from the duties.

### 1.2.3 Initiation of inquiry

After examining the application, the Commissioner initiated an inquiry on 21 May 2015.

## 1.3 Findings and conclusions

The Commission has made the following findings and conclusions based on the application, information provided by the Australian manufacturer of aluminium zinc coated steel, BlueScope Steel Limited (BlueScope) and submissions:

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<sup>1</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

<sup>2</sup> The Parliamentary Secretary is the relevant decision maker for this inquiry.

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- there is an Australian industry producing like or directly competitive goods;
- there is no basis to be satisfied that the exemption goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

Based on these findings the Commissioner recommends to the Parliamentary Secretary that there is no discretion to exempt the exemption goods from the duties.

## 2. Background to measures

### 2.1 Original investigations

On 5 August 2013, dumping duties and countervailing duties were imposed on aluminium zinc coated steel exported to Australia from China and the Republic of Korea (Korea). This followed the completion of two investigations by the International Trade Remedies Branch of the then Australian Customs and Border Protection Service (ITRB): dumping Investigation 190 into aluminium zinc coated steel exported to Australia from China and Korea; and countervailing Investigation 193 into aluminium zinc coated steel exported to Australia from China.<sup>3</sup>

The ITRB terminated the investigations in so far as they related to certain exporters and countries as indicated below:

- exports from Korea by Union Steel Co. Ltd and exports from Taiwan by Sheng Yu Co. Ltd;<sup>4</sup>
- all exports from Taiwan;<sup>5</sup> and
- exports from China by Angang Steel Company Limited.<sup>6</sup>

The then Attorney-General accepted the ITRB's recommendations and findings that aluminium zinc coated steel from China and Korea had been dumped and aluminium zinc coated steel from China had been subsidised and that material injury was caused to the Australian industry.

### 2.2 The goods subject to measures

The goods exported from China, covered by the current dumping duty and countervailing duty notices are:

*Aluminium zinc coated steel:*

- *a flat rolled product of iron and non-alloy steel;*
- *plated or coated with aluminium-zinc alloys;*
- *whether or not surface treated including combinations of surface treatments;*
- *whether or not including resin coating; and*
- *in widths equal to or greater than 600mm.*

The following goods are excluded from the goods subject to the measures:

- aluminium zinc coated steel that is painted or pre-painted (including colorbond); and
- unchromated products of aluminium zinc coated steel exported from Korea only.

### 2.3 Tariff classification

The goods subject to measures may be classified under the following subheading in Schedule 3 of the *Customs Tariff Act 1995*:

<sup>3</sup> ITRB Report No 190 (REP 190) and ITRB Report No 193 (REP 193) refer.

<sup>4</sup> Termination Report No. 190A.

<sup>5</sup> Termination Report No. 190B.

<sup>6</sup> Termination Report No 193(i).

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- 7210.61.00 – Statistical codes 60, 61 and 62.

The rate of duty under this subheading is currently free for imports from China (the DCS duty rate).

### 3. Exemption inquiry

#### 3.1 Exemption application

On 20 January 2015, the applicant wrote to the Commission requesting an exemption from the duties in relation to its imports of the exemption goods (**non-confidential attachment 1**).<sup>7</sup>

The applicant's letter stated, in effect, the following alternative grounds in support of its application for an exemption from the duties:

- *goods that are like or directly competitive to the exemption goods are not offered for sale in Australia; and*
- *if there are goods that are like or directly competitive to the exemption goods offered for sale in Australia then they are not offered to all purchasers on equal terms under like conditions.*

#### 3.2 Exemption inquiry

The Commission accepted the applicant's letter as an application for an exemption from the duties. On 21 May 2015, the Commissioner initiated an exemption inquiry, by publishing Anti-Dumping Notice (ADN) No. 2015/64. ADN No. 2015/64 advised that an exemption inquiry had been initiated, provided details of the goods subject to the inquiry and outlined the procedures to be followed during the inquiry.

On 21 May 2015 the Commission invited the only member of the Australian industry, BlueScope, to respond to the application by completing the 'Response to Exemption Application' questionnaire (the questionnaire) and requested that a response be received by no later than 11 June 2015. A completed response from BlueScope to the questionnaire was received on 4 June 2015 and is contained at **non-confidential attachment 2**.<sup>8</sup>

#### 3.3 Goods subject to the application for exemption

The exemption goods are described as:

*Unchromated aluminium zinc coated steel exported from China.*

#### 3.4 Claims made in the application and evidence relied upon

In support of its claim that like or directly competitive goods were not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade, the applicant provided the evidence described below.

BlueScope provided information about the goods they offer for sale in Australia to assist the Commission determine whether the test for exemption is satisfied or not.

*Information provided to the inquiry*

By way of background, the Commission understands that, in the current context:

- the term "AZ" refers to steel with an aluminium and zinc alloy coating; and

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<sup>7</sup> Electronic Public Record (EPR) EX0036/001, refers.

<sup>8</sup> EPR EX0036/003, refers.



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- the term “AM” refers to steel with an aluminium, zinc and magnesium alloy coating.<sup>9</sup>

The table below summarises the evidence, information submitted to the Commission by interested parties.

Interested party	Details	Evidence / submissions
Applicant	<p>In addition to its application, the applicant provided a submission in reply to BlueScope’s questionnaire response (<b>non-confidential attachment 3</b>).<sup>10</sup></p> <p>The applicant provided correspondence showing an attempt by the applicant to purchase unchromated aluminium zinc coated steel, AZ material, from BlueScope through an intermediary, Commercial Metals Company Australia (CMC).</p> <p>The applicant was advised by CMC that BlueScope could no longer supply AZ material. CMC told the applicant that BlueScope could supply AM material but had not accepted the order in an unchromated form.</p>	<p>BlueScope confirmed in its questionnaire response that:</p> <ul style="list-style-type: none"> <li>it no longer supplies AZ material; and</li> <li>instead it now supplies AM material (including unchromated AM material).</li> </ul>
Australian industry	<p>In addition to its questionnaire response, BlueScope provided a further submission (<b>non-confidential attachment 4</b>).<sup>11</sup></p> <p>In its questionnaire response, BlueScope argued that its AM material is a like good to AZ material and provided an extract from the relevant Australian Standard (AS 1397 – 2011) showing that the products share the same end uses.</p> <p>Confidential attachments showed:</p> <ul style="list-style-type: none"> <li>an offer of sale to the applicant, dated 3 April 2013 for AZ material; and</li> <li>a more recent sale of unchromated AM material by BlueScope to a non-related customer.</li> </ul>	<p>BlueScope provided material prepared by a third party, namely relevant sections of Australian Standard (AS 1397 – 2011), showing that the products share the same end uses.</p> <p>The applicant did not dispute the veracity of the evidence provided by BlueScope (although the applicant argued that AS 1397 – 2011 was not relevant to the Commission’s consideration of the exemption).</p>
Other interested parties	No information or submissions were received by the Commission from other interested parties.	

<sup>9</sup> Australian Standard 1397 – 2011 at sections D3.2.5 and D3.2.6 refers.

<sup>10</sup> EPR EX0036/004, refers.

<sup>11</sup> EPR EX0036/005, refers.

*Additional information the Commissioner had regard to*

The table below summarises the additional information the Commissioner had regard to for the purposes of considering the exemption.

Source	Details
Previous findings of the ITRB	<p>The Commission has, to the extent relevant, drawn on the findings of the ITRB's original investigations in relation to unchromated aluminium zinc coated steel.<sup>12</sup></p> <p>The Commission notes that, during the original investigations, the applicant and OneSteel Coil Coaters Pty Ltd (OneSteel Coil Coaters) sought and were denied an exemption from measures on unchromated aluminium zinc coated steel (AZ). At that time the applicant and OneSteel Coil Coaters claimed that BlueScope did not offer for sale to third party customers in Australia unchromated aluminium zinc coated steel, or alternatively that BlueScope would not offer for sale unchromated aluminium zinc coated steel on commercially sustainable terms. The exemption was denied because the ITRB found that BlueScope offered like goods for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.</p> <p>The basis for the ITRB's finding was that quotes for unchromated aluminium zinc coated steel provided by BlueScope to OneSteel Coil Coaters and the applicant appeared to be based on similar pricing terms when comparing equivalent product sizes, with the only variance in price occurring due to quantity ordered. The ITRB considered that the fact that Ace Gutters and OneSteel Coil Coaters considered the price offered was too high, was not a relevant consideration in relation to an exemption.<sup>13</sup></p>

### 3.5 Legislative requirements for an exemption

The applicant has applied for an exemption under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Subsection 8(7) provides:

- (7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:
  - (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

...

And:

Subsection 10(8) provides:

<sup>12</sup> Investigations 190 and 193.

<sup>13</sup> REP 190 at pages 45-47 refers.

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- (8) The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:
- (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

...

The applicant requests that the Parliamentary Secretary exercise their discretion to exempt goods from the duties on the alternative bases that:

- goods that are like or directly competitive to the exemption goods are not offered for sale in Australia;
- if like or directly competitive goods are offered for sale in Australia then they are not offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

### 3.6 Claims regarding matters that are not grounds for an exemption

Some claims made by the applicant regarded matters that are not grounds for an exemption. In particular, the applicant claimed that:

- there were no reasonable grounds for the Commission to be satisfied that like goods imported by the applicant had caused or were causing material injury to Australian industry; and
- the volume of unchromated aluminium zinc coated steel imported by the applicant would account for a small proportion of the Australian market and hence could not cause material injury to Australian industry.

There is no provision in subsection 8(7) or subsection 10(8) to grant an exemption for the reason that there is no, or there is insufficient evidence to show, material injury to Australian industry. Furthermore, these issues were considered during the original anti-dumping investigations where measures were imposed. Accordingly these claims relating to injury have not been examined.

### 3.7 Definition of “like or directly competitive goods”

#### Like goods

The term “like goods” is defined in subsection 269T(1) of the *Customs Act 1901* (the Customs Act). Section 6 of the Dumping Duty Act provides that the Customs Act is incorporated and shall be read as one with the Dumping Duty Act. Accordingly, the definition of like goods in the Customs Act is applicable to the Commission’s assessment of whether the exemption goods are like goods under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Subsection 269T(1) of the Customs Act defines like goods as:

*Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*



Chapter 2 of the Commission's *Dumping and Subsidy Manual* embodies the Commission's established policy and practice in relation to like goods.<sup>14</sup> Where two goods are identical they are automatically like goods, but where two goods are not alike in all respects the Commission will assess whether they have characteristics closely resembling each other including assessing their physical likeness, commercial likeness, functional likeness and production likeness.

#### Directly competitive goods

The term "directly competitive" is not defined in the Dumping Duty Act or the Customs Act and has not been the subject of judicial consideration by Australian courts.

Accordingly, assistance in understanding this term can be derived by having recourse to relevant dictionary definitions and case law. Case law suggests an assessment of a "direct" relationship is a question of fact and degree.<sup>15</sup> Drawing on the Macquarie Dictionary and case law, the Commission defines "directly" as:

*excluding that which is indirect or remote;<sup>16</sup> absolutely; exactly; precisely.*

The Macquarie Dictionary defines "competitive" as:

*of, relating to, involving, or decided by competition; and*

*having a feature comparable or superior to that of a commercial rival.*

The term directly competitive can therefore be taken to refer to goods with comparable features that rival each other in a commercial market. The assessment will be one of fact and degree, and the goods will not merely remotely or indirectly compete.

#### Alternatives to satisfying subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act

The exemption provisions in subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act specifically provide for exemptions where either like goods or directly competitive goods are not offered for sale in Australia. It is not necessary to be satisfied that there are both like goods and directly competitive goods for sale in Australia in order to deny the application for an exemption. It is sufficient for there to be either like goods or directly competitive goods for sale in Australia for the requirements of the exemption not to be met.

If there are no like or directly competitive goods offered for sale in Australia, then the requirements for exemption in subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act will be met.

If there are like or directly competitive goods, then it is necessary to consider whether these like or directly competitive goods are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

### **3.8 Definition of "custom and usage of trade"**

Although the domestically produced goods may be "like or directly competitive goods", the Parliamentary Secretary may still grant an exemption to duties in circumstances where the "like or directly competitive goods" are not offered for sale in Australia to all

<sup>14</sup> Available online at

[http://adcommission.authprod.ind/accessadsystem/Documents/DumpingandSubsidyManual-December2013\\_001.pdf](http://adcommission.authprod.ind/accessadsystem/Documents/DumpingandSubsidyManual-December2013_001.pdf)

<sup>15</sup> *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

<sup>16</sup> *Ibid.*

purchasers on equal terms under like conditions having regard to the “custom and usage of trade”.

The term “custom and usage of trade” is not defined in the Dumping Duty Act or the Customs Act. The Macquarie Dictionary defines “custom” as:

*a habitual practice; the usual way of acting in given circumstance; and habits or usages collectively; convention.*

The Macquarie Dictionary defines “usage” as:

*customary way of doing; a custom or practice;  
the body of rules or customs followed by a particular set of people;  
usual conduct or behaviour.*

As custom can only be inferred from a large number of individual acts, the existence of a custom and usage of trade must involve:

*the multiplication or aggregation of a great number of particular instances; but these instances must not be miscellaneous in character, but must have a principle of unity running through their variety, and that unity must show a certain course of business and an established understanding respecting it.*<sup>17</sup>

Custom or usage of trade is a term used in common law in the interpretation of implied terms in contracts within a particular trade or industry.<sup>18</sup> When considering what is “custom or trade usage”, the Courts have concluded that:

1. custom or usage was established mercantile usage or professional practice: *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410 at 440; and
2. evidence of actual market practices was crucial to the existence of a custom or usage. However, universal acceptance was not necessary: *Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur Insurance (Australia) Ltd* (1986) 160 CLR 226.

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<sup>17</sup> *Anderson v Wadey* (1899) 20 N.S.W.R. 412 at p. 417.

<sup>18</sup> *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.

## 4. Australian industry's offer for sale of like or directly competitive goods

The applicant claims that Australian industry, specifically BlueScope, does not produce or offer for sale goods that are like or directly competitive to the exemption goods. The table below summarises:

- the applicant's claims that Australian industry does not offer for sale in Australia goods that are like or directly competitive to the exemption goods;
- Australian industry's response to those claims;
- a submission by the applicant responding to Australian industry; and
- a submission by Australian industry responding to the applicant.

Applicant's claims	Australian industry's response
<p>The Commission understands the applicant's claim to be that:</p> <ul style="list-style-type: none"> <li>• AZ material is no longer produced by Australian industry (specifically BlueScope, who previously produced AZ material); and</li> <li>• therefore Australian industry does not produce or offer for sale in Australia goods that are like or directly competitive to the exemption goods.</li> </ul>	<p>BlueScope accepted that AM material (which it does produce) is not identical to AZ material. However, BlueScope claimed that AM material is like or directly competitive to AZ material. In support of this argument BlueScope submitted that:</p> <ul style="list-style-type: none"> <li>• BlueScope had developed its AM product as part of progressive product improvement of its AZ product;</li> <li>• the relevant Australian standard stated that AM material and AZ material have the same end uses; and</li> <li>• product details showed that the only difference between AZ and AM material is the addition of magnesium in the coating.</li> </ul> <p>BlueScope's product information stated that magnesium is added to AM material to improve its corrosion resistance compared to AZ material.</p>
<p>The applicant claimed that the AM material offered for sale in Australia by BlueScope was chromated and chromated AM material is unsuitable for use in the applicant's paint line.</p>	<p>BlueScope responded to the applicant's claim that AM material offered for sale in Australia by BlueScope is chromated and so unsuitable for use in a paint line, by stating that:</p> <ul style="list-style-type: none"> <li>• BlueScope produced unchromated AM material as an input for its own pre painted steel products; and</li> <li>• had previously supplied unchromated AM material to an unrelated Australian purchaser.</li> </ul> <p>BlueScope has provided the Commission with internal and sales transaction documents evidencing the supply of unchromated AM material to the unrelated Australian purchaser.</p>



## 5. The Commission's assessment – like or directly competitive goods offered for sale in Australia

### 5.1 Finding

The Commission finds that like goods are offered for sale in Australia. Accordingly, it is necessary to determine if the goods are offered for sale to all purchasers under like conditions having regard to the custom and usage of trade (see sections 6 and 7).

### 5.2 Like or directly competitive goods offered for sale in Australia

The Commission has examined the evidence presented in the application, in the Australian industry questionnaire response and subsequent submissions, and considers that like or directly competitive goods to the exemption goods are offered for sale in Australia.

The Commission understands the application to be based, in effect, on there being no identical goods offered for sale in Australia. The Commission accepts that identical goods may not be offered for sale in Australia given that BlueScope no longer produces AZ material. However the test in subsections 8(7)(a) and 10(8)(a) has a broader cast, and goods need not be identical to be like.<sup>19</sup>

BlueScope provided detailed information and evidence in its questionnaire response in support of its claim that AM material and AZ material are like goods. The Commission notes in particular that:

- on the evidence provided it was clear that BlueScope had developed its AM product as part of progressive product improvement of its AZ product and BlueScope intended for the new AM product to replace its offering of the AZ product; and
- the relevant Australian standard states at D3.2.5 and D3.2.6 that AM materials and AZ materials have the same end uses.

The Commission assesses likeness through four factors: physical likeness, commercial likeness, functional likeness and production likeness. The following table summarises the Commission's assessment of whether AM material is alike to AZ material in terms of those factors.

Factor	Parties' claims	Commission's assessment
Physical likeness	<p>The applicant claimed, in effect, that AM material was not identical to AZ material.</p> <p>BlueScope provided information showing the respective constituent physical materials in its AM and AZ products. Those constituent physical materials are the same except for the addition to the alloy coating of BlueScope's AM product</p>	<p>The Commission is satisfied that, while not identical, the AM material produced by BlueScope is physically alike to AZ material because there is only a small difference in the constituent physical materials.</p>

<sup>19</sup> Refer to the definition of 'like goods' in the Customs Act, extracted at section 3.7 of this report.

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Factor	Parties' claims	Commission's assessment
	of 1-3% magnesium.	
Commercial likeness	<p>BlueScope stated that it developed its new AM product as part of progressive product improvement of its AZ product.</p> <p>BlueScope provided marketing material for its AM product that demonstrated BlueScope considered the new AM product was a strong commercial substitute for its retired AZ product.</p> <p>The applicant did not directly address BlueScope's claims in respect of commercial likeness.</p>	<p>The Commission is satisfied that BlueScope's development and subsequent marketing of its AM product as a replacement for its AZ product and BlueScope's own commercial use of AM in place of AZ demonstrates that AM material is commercially alike to AZ material.</p> <p>In addition, CMC's offer to the applicant of AM product in lieu of the AZ product suggests that CMC sees AM material as commercially like to AZ.</p>
Functional likeness	<p>The applicant claimed that the AM material produced by BlueScope would not function as a feed to a continuous paint line because (the applicant claimed) BlueScope did not produce unchromated AM material.</p> <p>BlueScope submitted that it produced unchromated AM material for its own paint line. BlueScope provided an Australian standard that stated the same end uses (functions) for AZ and AM material.</p> <p>Chromated and unchromated aluminium zinc coated steel are discussed further below.</p>	<p>The Commission is satisfied that AM material produced by BlueScope is functionally alike to the AZ material because the materials have the same end uses.</p>
Production likeness	<p>BlueScope submitted that its AM product was like AZ product in terms of production likeness because the manufacturing processes were identical.</p> <p>The applicant did not dispute BlueScope's claim in respect of the manufacturing processes.</p>	<p>The Commission is satisfied that AM material is alike to the AZ material in terms of production likeness.</p>

*Chromated and unchromated aluminium zinc coated steel*

In a later submission, the applicant claimed that the AM material produced by BlueScope is chromated and therefore is not a like good to unchromated AZ material.<sup>20</sup> The applicant stated that unchromated product is required as feed for the applicant's continuous paint line and that chromated product is not suitable for that purpose. However, the applicant provided no evidence in support of its claim that BlueScope

<sup>20</sup> EPR EX0036/004, refers.



produced only chromated AM material. Rather, the applicant's claim appeared to revert to a contention that AM material offered to the applicant in 2013 was unacceptable to the applicant because it was not unchromated AZ material and not because it was chromated (see paragraph D.3 of the applicant's submission).

In response to the applicant's submission, BlueScope made a further submission, which stated that BlueScope has:

- produced over 750,000 tonnes of unchromated AM material as input feed for its own pre painted steel products; and
- previously supplied unchromated AM material to an unrelated Australian customer.<sup>21</sup>

An additional claim by the applicant in its submission was that the Australian standard referred to by BlueScope was not relevant to the Commission's consideration of the exemption because that standard related to chromated, not unchromated, forms of AM and AZ material and did not address the suitability of either AM or AZ material for paint line feed.<sup>22</sup> BlueScope's response was that to the extent that end uses in the standard are identical, unchromated forms of AZ and AM material will be like goods.<sup>23</sup> The standard, on its terms, does not state that it relates only to chromated forms of AM and AZ material.

### **5.3 Conclusion**

The Commission considers that AM material produced in Australia is a like good to AZ material (in terms of physical, commercial, functional and production likeness). Further, the Commission considers that unchromated AM material produced in Australia by BlueScope is a like good to unchromated AZ material.

Given the Commission's view that AM material and AZ material are like goods, the Commission considers that there is no need to assess whether AM material and AZ material are directly competitive under the alternative test in subsections 8(7)(a) and 10(8)(a).

Accordingly, the Commission finds that the Australian industry does offer for sale goods that are like to the exemption goods.

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<sup>21</sup> EPR EX0036/005, refers.

<sup>22</sup> EPR EX0036/004, refers.

<sup>23</sup> EPR EX0036/005, refers.

## 6. To all purchasers on equal terms under like conditions having regard to the custom and usage of trade

The applicant claims that, if like or directly competitive goods are offered for sale in Australia then they are not offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade. The table below summarises:

- the applicant's claims that the Australian produced goods are not offered for sale to all purchasers under like conditions having regard to the custom and usage of trade; and
- Australian industry's response to those claims;
- a submission by the applicant responding to Australian industry; and
- a submission by Australian industry responding to the applicant.

Applicant's claims	Australian industry's response
<p>The Commission understands the applicant's claim, in part, to be that BlueScope does not offer for sale in Australia unchromated aluminium zinc coated steel to all purchasers on equal terms under like conditions. This claim was supported by details of an unfulfilled purchase order dated 11 December 2014 from the applicant for AZ material and a statement that the intermediary CMC had not at that point gained acceptance of the order for AM material.</p>	<p>BlueScope stated that AM material was available to all purchasers on equal terms. BlueScope submitted that:</p> <ul style="list-style-type: none"> <li>• BlueScope had offered AZ products to the applicant in the second quarter of 2013;</li> <li>• BlueScope had stated in its 2013 offer to the applicant that BlueScope was moving its supply from AZ material to AM material from 1 January 2014; and</li> <li>• The terms of conditions of sale offered by BlueScope for the AZ material have been applied, unchanged, to offers for the AM material.</li> </ul>

## **7. The Commission's assessment - to all purchasers on equal terms under like conditions having regard to the custom and usage of trade**

### **7.1 Finding**

The Commission finds that the evidence before it provides no basis for the Parliamentary Secretary to be satisfied that the exemption goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

### **7.2 To purchasers on equal terms under like conditions having regard to the custom and usage of trade**

In support of its application, the applicant provided an email from Commercial Metals Company Australia (CMC) to the applicant, which stated that:

- BlueScope was not capable of producing AZ material but could produce AM material; and
- CMC had not "gained acceptance [from BlueScope] of this [AM material] order in unchromated form at this point".<sup>24</sup>

The Commission considers that the claim that CMC had not gained acceptance of an order of AM material at a particular point in time does not demonstrate that BlueScope does not offer AM material for sale in Australia to all purchasers on equal terms.

The Commission notes that, on the evidence provided, the applicant did not request that CMC seek acceptance from BlueScope of an order for AM material. Accordingly the Commission considers that BlueScope did not refuse, or otherwise did not offer, to sell AM material to the applicant (as a purchaser in Australia). The Commission further notes that the applicant stated in its submission that BlueScope made an offer in 2013 to sell AM material to the applicant to coincide with BlueScope's introduction of AM material into the Australian market.<sup>25</sup> The Commission also notes that BlueScope had sold the AM product to an unrelated purchaser which transaction appears to confirm that BlueScope is not refusing to sell the AM product to purchasers.

In the original investigation, the ITRB found that AZ material was offered for sale in Australia to all purchasers on equal terms.<sup>26</sup> That finding was based on two quotes by BlueScope to sell to purchasers in Australia, one of which was the applicant. The ITRB found that the quotes appeared to be based on similar pricing terms when comparing equivalent product sizes with the only variance occurring in quantity limitations.

The Commission notes that BlueScope submitted in its questionnaire response and submission that it has not changed its terms and conditions of sale as those terms and conditions relate to the sale of unchromated aluminium zinc coated steel (being AZ material previously and AM material currently) into the Australian market.<sup>27</sup> The

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<sup>24</sup> EPR EX0036/001, refers.

<sup>25</sup> EPR ref EX0036/004, refers.

<sup>26</sup> REP 190 at page 46 refers.

<sup>27</sup> EPR EX0036/003 and 005, refer.

Commission has not received evidence by the applicant to counter BlueScope's submission.

The applicant, in its submission in response to BlueScope's questionnaire, submitted that the offer of AM material made to the applicant in 2013 was not on commercially viable terms.<sup>28</sup> BlueScope then provided a submission in response that this argument was considered and rejected in REP 190.<sup>29</sup> The Commission notes that REP 190 stated that the fact that the applicant "*consider[s] the price offered is too high, is not a relevant consideration in relation to an exemption pursuant to section 8(7)(a) [of the Dumping Duty Act]*"<sup>30</sup> and that no information or evidence has come before the Commission in this inquiry that would change that position.

### 7.3 Conclusion

The Commission finds that the evidence before it provides no basis for the Parliamentary Secretary to be satisfied that the exemption goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade. Accordingly the condition of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption is not satisfied and there is no discretion to grant the exemption.

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<sup>28</sup> EPR EX0036/004, refers.

<sup>29</sup> EPR EX0036/005, refers

<sup>30</sup> REP190, page 46.

## **8. Recommendation**

Based on the Commission's examination of the application and submissions made to the inquiry, the Commissioner considers that like or directly competitive goods to the exemption goods are offered for sale in Australia.

Based on the Commission's examination of the application and submissions made to the inquiry, the Commissioner considers that there is no basis to be satisfied that the exemption goods are not offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

Accordingly, the Commissioner recommends that the Parliamentary Secretary has no discretion to exempt the exemption goods from the duties.

## 9. Attachments

Attachments	Confidentiality	Title	Electronic public record identifier
Attachment 1	Non-confidential	Exemption inquiry application	EX0036/001
Attachment 2	Non-confidential	Australian industry questionnaire response	EX0036/003
Attachment 3	Non-confidential	Applicant's submission in reply to Australian industry's questionnaire response	EX0036/004
Attachment 4	Non-confidential	Australian industry submission in response to the Applicant's submission	EX0036/005