

7 January 2013

The Director
Operations 2
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Our ref: ATH
Matter no: 9555549

By email: itrops2@customs.gov.au

Dear Director

**Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel exported from the People's Republic of China
Initiation of an investigation into alleged subsidisation
Submission by GM Holden Limited
Non - confidential version**

We act on behalf of GM Holden Limited ("**Holden**") and have been instructed by Holden to make the following submission to the Australian Customs and Border Protection Service ("**Customs**") in relation to the investigation referred to in Australian Customs Dumping Notice No. 2012/56 ("**ACDN**").

Please note that this is the **non - confidential** version of this Submission. A **confidential** version has also been provided.

1. Definitions

For the purposes of this Submission, the following definitions have been adopted.

- (a) "**ABS**" means the Australian Bureau of Statistics.
- (b) "**ACDN**" means Australian Customs Dumping Notice No. 2012/56 in relation to the Application.
- (c) "**Act**" means the *Customs Act 1901* (Cth).
- (d) "**Application**" means the applications by BSL seeking publication of countervailing duty notices in respect of Galvanised Steel and AZCS exported to Australia from the PRC as referred to in the ACDN and dated September 2012.
- (e) "**Australian Industry**" has the same meaning as in the Application and in the Consideration Report.
- (f) "**AZCS**" means aluminium zinc coated steel.
- (g) [REDACTED] [Name of Supplier]

- (h) "**BSL**" or "**Applicant**" means BlueScope Steel Limited being the applicant for the measures.
- (i) "**Consideration Report**" means Report number 193 issued by Customs in response to the Application.
- (j) "**Customs**" means the Australian Customs and Border Protection Service.
- (k) "**DS379**" means the WTO Appellate Body decision in "United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China – DS379".
- (l) "**Dumping Application**" means the applications for dumping duty notices in relation to AZCS and Galvanised Steel exported from the PRC, the Republic of Korea and Taiwan made by BSL on behalf of the Australian Industry as referred to in ACDN 2012/56 and dated August 2012.
- (m) "**Dumping Investigation**" means the investigation into alleged dumping of Galvanised Steel and AZCS arising out of the Dumping Application.
- (n) "**Dumping Policy Statement**" means the "Streamlining Australia's Anti-Dumping System. An Effective Anti-Dumping and Countervailing System for Australia" issued by the Australian Government, June 2011.
- (o) "**Dumping Submissions**" means the submissions by Holden to the Dumping Investigation.
- (p) "**EXW**" means Ex Works according to INCOTERMS.
- (q) "**FCA**" means FCA according to INCOTERMS.
- (r) "**FIS**" means delivered free into store.
- (s) "**Galvanised Steel**" means zinc coated (galvanised) steel referred to in the Application and the Consideration Report.
- (t) "**GFC**" means the Global Financial Crisis.
- (u) "**GOC**" means the Government of the PRC.
- (v) "**GM**" means General Motors.
- (w) "**GUC**" means goods under consideration as described in the Application.
- (x) "**HRCS**" means Hot Rolled Coil Steel as described in the Application and the Investigation.
- (y) "**HRCS Investigation**" means Investigation number 188 by Customs into alleged dumping of HRCS exported from Japan, the Republic of Korea, Malaysia and Taiwan.
- (z) "**HRCS Final Report**" means Report to the Minister No. 188 by Customs to the Minister regarding the HRCS Investigation.
- (aa) "**HRCS SEF**" means Statement of Essential Facts number 188 issued by Customs in the HRCS Investigation.

- (bb) "**HSS**" means certain hollow steel sections as described in the HSS Investigation.
- (cc) "**HSS Investigation**" means Investigation number 177 by Customs into alleged dumping of HSS exported from the PRC, Korea, Malaysia, Taiwan and the Kingdom of Thailand.
- (dd) "**HSS Report**" means Customs Report number 177 to the Minister in relation to the HSS Investigation.
- (ee) "**INCOTERMS**" (International Commercial Terms) means the standard accepted commonly used trade terms and conditions utilised in international trade as published by the International Chamber of Commerce and entitled "INCOTERMS 2000"
- (ff) "**Investigation**" means the investigation by Customs in response to the Application being investigation 193a relating to Galvanised Steel and investigation 193b relating to AZCS.
- (gg) "**ISSB**" means ISSB Limited.
- (hh) "**Korea**" means the Republic of Korea.
- (ii) [REDACTED] [Name of Supplier]
- (jj) "**Material Injury Direction**" means the ministerial direction on material injury dated 1 June 2012 published in Australian Customs Dumping Notice No. 2012/24.
- (kk) "**Minister**" means the Minister for Home Affairs.
- (ll) "**OEM**" means Original Equipment Manufacturer.
- (mm) "**PRC**" means the People's Republic of China.
- (nn) "**Public File**" means the public file maintained by Customs in relation to the Investigation.
- (oo) "**Record of Meeting**" means the Record of Meeting dated 10 December 2012 between Customs and BSL as contained on the Public File.
- (pp) "**SCM Agreement**" means the Agreement on Subsidies and Countervailing Measures.
- (qq) "**SIEs**" means State Invested Enterprises as referred to in DS379 and the HSS Report.
- (rr) "**Submission**" means this submission.
- (ss) "**Suppliers**" means [REDACTED] [Names of Suppliers]
- (tt) "**TCO**" means Tariff Concession Order.
- (uu) "**WTO**" means the World Trade Organisation.

Further, any defined terms used in this Submission which are not set out above are the same as those used in the Dumping Submissions.

2. Holden

As stated above, we act on behalf of Holden.

2.1 *The business of Holden*

We refer to the comments by us on behalf of our client in the Dumping Submission regarding the business of Holden.

2.2 *Interest of Holden*

At the outset, we are instructed that the Submission only relates to the interest of Holden as an importer and purchaser of Galvanised Steel from the Suppliers for use in the automotive trade as an OEM of motor vehicles and the potential application of countervailing duties to those imports. Our client has no other comment in relation to other aspects of the Investigation. Holden does not take any supply of AZCS from the PRC and therefore this Submission does not touch on the AZCS element of the Application and the Investigation.

2.3 *Potential effect of the application of measures on Holden*

It is important to note that our client is neither a distributor nor retailer of Galvanised Steel who purchases Galvanised Steel to meet perceived consumer demand. Rather, our client is a significant Australian OEM of motor vehicles and the purchase of Galvanised Steel forms a vital element of that manufacture. Details have been provided by Holden in the Dumping Submissions.

The arrangements are set in place well in advance of the production and delivery of the Galvanised Steel. In the majority of instances, the commissioning and ordering takes place 2 years prior to delivery. Accordingly, the potential application of countervailing duties would represent a significant commercial disadvantage for our client. Holden would have no ability to pass on those additional duties and the costs of monitoring and paying those duties. In particular, the imposition of interim measures (by way of securities or otherwise) at any stage prior to Customs' final report when Customs itself acknowledges there is significant, considerable, additional investigation and research to be undertaken, would cause substantial financial disadvantage to our client. Even if interim measures were revoked on a final determination, the administrative difficulties and the financial cost of ultimately recovering any duties paid would represent a considerable financial burden. The refund of duties or other measures would not fully relieve that financial burden.

2.4 *Holden purchase of Galvanised Steel*

In the course of its business, Holden has purchased Galvanised Steel from the Suppliers.

For these purposes, our client can identify that it has purchased Galvanised Steel from these companies. As part of the Dumping Investigation, our client has already provided details of quantities of Galvanised Steel purchased from these companies in the period under consideration together with indicative supply arrangements. Our client would also be pleased to provide additional information and answer questions during any further Verification Visit from Customs.

As a result, our client is of the view that it is well positioned to make this Submission.

3. An Interested Party

Based on the comments above, we are of the view that our client Holden is an "Interested Party" for the purposes of the Act and is entitled to make the Submission.

4. GUC and extent of Investigation

Holden has the following reservations regarding this issue.

- (a) Once again, Holden is of the view that Customs has accepted a description of "GUC" which is entirely too broad. In the recent HRCS SEF and the HRCS Final Report, Customs identified an absence of injury to the Applicant in the automotive *industry* and other markets. However, due to the unnecessary breadth of the description of the "GUC" in the HRCS Investigation and its consequence then in terms of application of the legislative provisions, Customs believes it was unable to terminate the HRCS Investigation in relation to specific goods from the specific exporter for those industries where no injury was found. This has led to securities being required and now dumping duties being imposed on HRCS which is sold to the automotive industry even though there is no injury to BSL in that industry – an outcome that is contrary to the intended application of the WTO principles, and the provisions of the SCM Agreement and the Act, and which further impedes the ability of the local Automotive OEMs to successfully compete with imported products in this market. That outcome could have been avoided by having a more specific definition of the GUC and applying the more appropriately framed definition to each relevant industry, as Holden had requested. This would have led to 3 industry-specific investigations being conducted, and any relevant remedial measures would have been able to be targeted only to those industries where injury had in fact occurred. We believe that a similar adverse, unnecessary and unjustified impact will also arise in this case, as a result of use of such a broad description of GUC as prepared by the Applicant in the Application. With respect, such a broad description should not have been accepted by Customs.
- (b) Customs has invited parties to provide details of goods which the Minister may exempt from any measures. In this case, Holden advises that:
 - (1) certain "tailor welded" Galvanised Steel is not produced by the Applicant and there are no facilities available in Australia for producing those goods. Furthermore, there is no capacity for otherwise taking plain steel and welding in the manner required. For these purposes, our client believes those goods should be excluded from the Investigation. Holden refers to the Dumping Submissions as evidence in support of the exclusion of these goods from the Investigation or any findings;
 - (2) the Applicant cannot provide certain widths and qualities of steel. Holden refers to the Dumping Submissions as evidence in support of the exclusion of these goods from the Investigation or any findings; and
 - (3) there are TCOs in place which apply to some of the GUC. BSL has yet to challenge those TCO's.

We note that the Record of Meeting confirms the submission and comments made above.

- (c) Further, Holden also believes that there should be different investigations for different exporters as some are fully integrated and certain findings regarding certain allegedly

countervailable subsidies would only apply to non-integrated exporters. Those integrated exporters should be excluded from countervailing duties that may be ultimately applied (if any) to subsidies provided to such non-integrated exporters.

- (d) The Applicant has brought two applications (one in relation to AZCS and one in relation to Galvanised Steel). Holden is particularly concerned that Customs should not make final determinations as to alleged subsidies and injury and impose measures based on findings for "both goods". **Holden reiterates that there are two applications and that any measures in relation to Galvanised Steel should be based on information provided and investigations undertaken in relation to Galvanised Steel only.** Imposing measures on Galvanised Steel because of alleged dumping or countervailable subsidies across AZCS and Galvanised Steel when the goods are taken together is entirely inappropriate.

5. Provision of other information

We note that Holden has also already provided completed Importer Questionnaires parts A and B and submitted those to Customs in relation to the Dumping Investigation.

6. General approach of Holden to the Application

- (a) Subject to the specific comments in paragraph 8 below, our client rejects the submission by the Applicant that the Australian Industry in the automotive sector has suffered material injury from exports of Galvanised Steel having been sold at artificially low prices through subsidies provided in the PRC which are contrary to the Act.
- (b) Further, our client believes that Customs' approach to the Investigation (ie that all industries to which the exporters supply are being considered together) could have the consequence that countervailing duties are applied to Galvanised Steel for the automotive industry even where there is no injury to the automotive industry arising from any alleged subsidies (in a manner analogous to the HRCS Final Report). Holden is of the view that this would be in direct contravention of the provisions of the SCM Agreement as well as contrary to the relevant provisions of the Act which only permit the imposition of a countervailing duty to the extent needed to remedy any alleged injury. The imposition of a duty to goods when they are being provided to an industry where there is no injury is contrary both to the SCM Agreement and the Act.
- (c) It would be inequitable for the automotive sector to have to bear countervailing or dumping duty where no injury to the Australian Industry (BSL) has been occasioned by the exports of the allegedly subsidised and/or dumped Galvanised Steel. Indeed, doing so would cause significant additional injury to the Australian automotive industry; and
- (d) The imposition of countervailing or dumping measures may lead to action at the WTO against Australia by Governments of countries of exporters of Galvanised Steel to the automotive sector. For these purposes, we refer to paragraph 3.3 of the letter dated 23 October 2012 from ourselves to Customs regarding the Dumping Investigation in which we set out means by which it would be possible for duties not to be applied to goods for the automotive industry where no injury has occurred. These approaches could also be adopted in respect of the Investigation.

- (e) We note that in section 6.5 of the Consideration Report, Customs states that it is "appropriate" to consider the cumulative effect of allegedly dumped goods and the alleged subsidisation of imports from China in determining the existence of material injury. However, Holden believes such an approach to be an error as:
- (1) section 269TAE (2C) of the Act only allows the cumulative effect of allegedly dumped goods to be considered not dumped and subsidised goods because the requirements of section 269TAE (2C) (b) of the Act have not been satisfied; and
 - (2) there is no alleged subsidisation in relation to countries other than the PRC.

In addition, as the terms of section 269TAE (2C) of the Act appear to go further than the provisions of Article 3.3 of the WTO Anti-Dumping Agreement by seeming to suggest that cumulation is mandatory rather than discretionary as stated in Article 3.3, Holden believes that the discretion to cumulate should not be exercised in this instance.

Accordingly, the only material injury that should be considered is that caused by the alleged subsidisation alone.

On this basis, our client does not support the imposition of countervailing measures such as those requested by the Applicant and as contemplated by the Consideration Report.

7. Concern as to data provided by the Applicant

At various stages, Customs has referred to BSL having relied on information and findings in the Dumping Investigation to apply to the Investigation. Accordingly, unless otherwise specified, to the extent relevant Holden also wishes to refer to its comments or objections to that information or those findings in its Dumping Submissions.

8. Commentary on specific aspects of the Consideration Report

Please see the comments below in relation to sections of the Consideration Report. References to sections are to sections in the Consideration Report.

8.1 Section 2.2.3(i)

Holden agrees that Customs needs to undertake further analysis of the relevant tariff classifications and Tariff Concession Orders which might apply in relation to the GUC. Holden made comment as to this issue in the Dumping Investigation and in its Dumping Submissions. However, Holden remains concerned that BSL has made no reference to the existence of those tariff concession orders in this Application.

8.2 Section 2.3.1(ii)

We note that the Consideration Report refers to the earlier HRCS Investigation and its importance given that the HRCS is the "major raw feed material" for Galvanised Steel.

We also note that Customs has now issued the HRCS SEF and the HRCS Final Report which was contemplated by the Consideration Report. Importantly, Holden notes that the HRCS Final Report has found that there is **no evidence of injury to the Applicant in relation to its supply of HRCS to the automotive industry** and that injury in

relation to the automotive sector for HRCS is likely to have been caused by reduction in the Australian market for locally manufactured vehicles and not due to any dumping. It is the position of Holden that a similar conclusion applies in respect of the alleged countervailable subsidies for Galvanised Steel used in the OEM market for automotive vehicles. For these purposes, our client has already provided details of the reduction in demand for automotive vehicles produced by our client which, Holden believes, better explains the alleged injury claimed by the Applicant and is consistent with the findings in the HRCS Final Report.

8.3 **Section 4.7**

According to section 4.7 of the Consideration Report, BSL identifies three market sectors to which Galvanised Steel products are supplied, which are as follows:

- (a) the building and construction industry;
- (b) the automotive and transport primary markets; and
- (c) the general manufacturing market.

We note that Customs contends that it is appropriate to consider the three separate markets together. The Consideration Report states that it is clear that both the Australian Industry and importers of Galvanised Steel products compete across each market segment in Australia via the same distribution channels. With respect, we submit that this is incorrect.

As set out in the Dumping Submissions, Galvanised Steel is sold through three very distinct and different market sectors which all have very different considerations when it comes to issues of pricing and material injury. For example, Holden only purchases Galvanised Steel for the automotive OEM market. Holden believes that the main focus of the Application is on the other sectors described in paragraphs **8.3(a) and (c)** above and that the Australian Industry is seeking the imposition of measures principally in those sectors. Further, we note (for example) that in the Application BSL provides examples of circumstances in which it has suffered "material injury" in different segments of the market for Galvanised Steel. This suggests that there is no one consistent approach to the market for the use of the Galvanised Steel in Australia. Accordingly, Holden is of the view that there should be three separate market assessments as to material injury for the Australian Industry. Such assessments will produce a more accurate reflection of the effect of any alleged subsidisation of Galvanised Steel (which is denied).

For these purposes, Holden notes that in the HRCS Final Report Customs identified that it was unable to separately recommend the termination of measures in relation to the automotive industry itself due to the nature of its legislation. Accordingly, we would strongly recommend that Customs adopt a separate approach to the Application and the Investigation and have separate investigations for each market which would then allow it to separately terminate an investigation in relation to exports of Galvanised Steel in relation to the automotive market and avoid any possible inequitable application of measures that may be determined by Customs as being appropriate to address injury found to have occurred in any of the other markets.

8.4 Section 4.7.2(iii)

The Applicant has identified a variety of factors that influence demand variability for Galvanised Steel within the Australian market. However, the Applicant does not appear to have undertaken a sensitivity analysis which would indicate how those factors have affected demand for the goods and suppressed demand, prices or employment (as opposed to such factors having been caused by alleged dumping). Holden would encourage Customs to do a proper analysis which identifies and takes into account these factors as they affect the business of BSL, in each of the 3 relevant markets.

8.5 Section 4.7.2(ii)

BSL has provided some imprecise details of the source of Galvanised Steel sales. It has indicated that "approximately one-third" of total Galvanised Steel sales are made directly to the domestic building product manufacturing industry and that the "balance of sales" are made "to either the local distribution market or direct to the general manufacturing and auto industries including auto component manufacturers, pipe and tube manufacturers and racking manufacturers". Holden is of the view that such claims are entirely too imprecise and that a proper analysis of the source of sales into each of those sectors is required to properly ensure that measures are imposed where (and only where) appropriate (if any).

8.6 Section 4.7.4(i)

BSL has appeared to have made claims that certain "inter-materials are also substitutable for Galvanised Steel depending on product and use". However, in the view of Holden, aluminium, plastics or advanced composites are not substitutable for Galvanised Steel for its automotive applications by Holden. This is indicative of a lack of understanding of the industry by BSL.

8.7 Section 5.3

Holden supports the comments and submissions by the GOC regarding the alleged subsidies and trusts that Customs will take time to properly review and consider those submissions including those which Customs did not have the opportunity to consider prior to the issue of the Consideration Report.

8.8 Section 5.4.1

Holden notes the following.

- (a) In this paragraph (as in many other sections of the Consideration Report), Customs has relied heavily on the findings in the HSS Report in establishing that there are reasonable grounds to undertake the Investigation. Holden trusts that Customs will not unnecessarily rely upon the findings in the HSS Report and will make a separate current and comprehensive assessment of relevant factors taking into account the situation as it now exists.
- (b) Holden would also draw attention to the reference to various programs in sections 5.4.2 and 5.4.2.1 which set out that certain programs are benefits that are only applicable to non-integrated producers of goods being exporters that purchase finished Galvanised Steel rather than produce their own Galvanised Steel. Holden would point out that the exporters to it are entirely integrated producers and, as a result, the benefits of any such programs would not apply

in respect of exports to Holden. Accordingly, this represents another basis upon which separate assessment should be taken in respect of separate exporters and separate industry and/or market groups.

8.9 Section 5.4.2

As stated above, the program examined under Section 5.4.2 is applicable to non-integrated producers of goods, while Holden's exporters are fully integrated producers that do not receive the benefits of that program. For this reason Holden requests that a separate assessment should be undertaken by Customs.

8.10 Section 5.4.3

As Customs would be aware, this section addresses the potential to apply countervailing duties in relation to raw materials provided at less than adequate remuneration. However, in all cases, this relies upon the assumption that much of the product is provided by SIEs, which needs to be separately determined. Further, in respect of all potential programs, the legal basis, the agency responsible for administering the program and an amount of subsidy was not provided. Both BSL and Customs proceeded on the basis that the subsidy programs were analogous to "*Program 20 (HRC at less than adequate remuneration)*" in the HSS Report to permit the investigation to proceed. Holden is concerned that Customs has relied on an analogy to another program in an earlier investigation in making a determination to proceed in this case and wishes to ensure that proper consideration is given to the relevant programs in the current context and secures full details of those programs before making any determinations whatsoever.

8.11 Section 5.4.3.1

Holden is concerned that in determining whether there are reasonable grounds for considering SIEs that produce and supply various raw materials to be public bodies, Customs solely relies on the findings in the HSS Report in relation to SIEs that produce and supply HRCS and/or narrow strip, and has not undertaken any independent and separate assessment of relevant factors that are specific to the current investigation.

Further, Holden disagrees with Customs' approach to the issue of "public bodies" in the HSS Report. In Holden's view, Customs' conclusion is premised on a misconception that achieving the objectives of the Chinese Government's industrial policies is a "government function". Unlike taxation, compliance with national policies for the purpose of achieving the objectives of such policies can be carried out by private actors, hence is not a "governmental" function in a narrow sense. SIEs in the HSS Report are complying with national policies, regulations and laws as market participants, and are not exercising governmental functions or governmental authority. Customs' findings in the HSS Report suggest that Customs has conducted its evaluation of the common features and relationship between SIEs and the Chinese Government in a broad sense, rather than in a narrow sense as required by the Appellate Body in DS379. On this basis, Holden considers the reasoning by Customs in the HSS Report is flawed and should not be followed or applied in any later investigations.

Accordingly, Holden requests separate investigations should be conducted on the issue of "public bodies" and should be conducted in a manner that is consistent with the Appellate Body's approach in DS379.

8.12 Section 6 - material injury

(a) ***Compliance with the Ministerial Direction***

It is the view of Holden that the type of material injury claimed by BSL does not represent the type of material injury for an Australian industry which would support the imposition of measures whether pursuant to the Act or in accordance with the Ministerial Direction. In particular, we note that the Minister has directed that a loss of market share should be considered with a range of relevant injury indicators before material injury may be established. In the view of Holden, there are a number of other relevant factors which have led to the loss of market share BSL has experienced in the year 2010/11 including, without limitation, the GFC, the factors set out in section 4.7.2(iii) of the Consideration Report, the decrease in demand for the end product using the Galvanised Steel and appreciation of the Australian dollar, increase in price for electricity and raw material prices, increases in iron ore and coal coking prices and a general reduction in demand for the entire steel industry. It is the submission of Holden that it is the combination of those factors which is the cause of material injury to BSL for the one year period rather than any alleged subsidies of Galvanised Steel.

(b) ***Public interest***

In addition to the means set out above, Customs could recommend to the Minister in the Final Report into the Investigation that he not impose countervailing duty on exports of Galvanised Steel to be used in the automotive sector. That could be a recommendation and a measure the Minister could invoke (in addition to the adoption of the procedures set out in our letter of 23 October 2012 as part of the Dumping Submissions) as the Minister has the ultimate discretion as to how any measures are imposed.

For these purposes, Holden refers Customs to the comments in the Dumping Policy Statement which refer to the requirement for the Minister to take into account the effect on downstream industry from any proposed measures (section 6). While Holden understands that Customs is still drafting a "Ministerial Direction on Public Interest", the consideration of the adverse effect on downstream industry (i.e the automotive industry) from the measures imposed and proposed by Customs must be taken into account by Customs and the Minister as a matter of Government policy. In Holden's view this would indicate against measures being recommended or imposed.

(c) ***General allegations of injury***

BSL alleges that it is has suffered material injury due to the subsidising of Galvanised Steel products as follows:

- (1) loss of sales volume;
- (2) reduced market share;
- (3) reduced revenues;
- (4) price undercutting;

- (5) price depression;
- (6) price suppression;
- (7) reduced profits;
- (8) reduced profitability;
- (9) reduced return on investment;
- (10) reduced ability to raise capital for re-investment; and
- (11) reduced employment.

(d) ***Other causes***

As described above, Holden is of the view that there are a variety of other causes which have contributed to any alleged material injury on behalf of BSL in its sales of Galvanised Steel. Without limitation, these include the following:

- (1) the decrease in demand for automotive vehicles as the end product using the imported Galvanised Steel;
- (2) post GFC re-structuring in the BSL business and associated costs;
- (3) the appreciation of the Australian dollar;
- (4) costs associated with the close of the BSL Westernport Plant;
- (5) loss of export markets by BSL;
- (6) increase in prices for raw materials;
- (7) other decrease in general demand in the Australian market for Galvanised Steel; and
- (8) increase in price for electricity and coking coal.

It is the view of Holden that each of these potential other causes needs to be carefully and thoroughly considered by Customs rather than merely accepting that the alleged one year financial loss by BSL represents sufficient evidence of material injury to warrant imposition of measures.

Holden is of the view that a proper consideration of these alternative causes for material injury in relation to the Galvanised Steel (for the one year period) will indicate that a number of previous decisions made by BSL arising from the GFC were the main cause of any alleged injury, not any alleged subsidised and or dumped sales.

Finally, it is also important for Customs to appreciate that Holden has purchased Galvanised Steel based on examination as to quality of the production and the price over a 2 year period. This would support the proposition that prices are not the sole determinant of decisions by Holden as to from whom to acquire Galvanised Steel.

Accordingly, Customs should perform a targeted injury analysis to confirm what (if any) injury it believes has occurred in specific market sectors because of the export of specific goods which Customs finds may be subject to the imposition of countervailing duties.

(e) ***Choice of import parity procedures***

We note that BSL has indicated in many places in its applications for the imposition of dumping and countervailing duties that it has undertaken pricing based on an "import parity" approach. It is the view of Holden that the adoption of such an approach does expose BSL to both increases in price and decreases in price depending on the international market for Galvanised Steel. It is BSL's commercial decision to adopt that approach. It is this commercial decision that has caused most of the injury for BSL. It is inappropriate for BSL now to attempt to recoup via its applications for dumping and countervailing duties any losses stemming from this commercial decision.

(f) ***Finding in the Investigation***

As mentioned in earlier comments, Holden refers to the fact that in the HRCS Final Report, Customs found there had been no injury to the Applicant in relation to sales to the automotive industry arising from any alleged dumping. Holden is of the view that a similar decision and conclusion should be found in relation to any alleged subsidies given that the conclusion which has been drawn is that any injury suffered to that sector of the market place by the Applicant arose from a lack of sales, not from any unfair selling practices. Further, it is important to note from the HRCS Final Report that, in fact, the Applicant has continued to make profits in respect of the automotive sector.

9. Application of interim measures

In a number of our comments above we have referred to the fact that Customs' Investigation is at a very early stage and that there are a number of significant differences between the parties about which further information is required. Some of these are set out below.

- (a) Customs has not had the opportunity to review all the source data provided by BSL and has expressed reservations regarding that information.
- (b) Customs has not had the opportunity to source direct verified data in relation to exports and imports of Galvanised Steel.
- (c) Customs has not had the benefit of reviewing material from our client or from other Australian importers.
- (d) The fact that the Australian market appears to have recovered and stabilised since the GFC suggesting no need for interim measures.
- (e) The fact that there are other reasons for alleged material injury (even if injury is found to have existed).
- (f) The likely absence of any injury to the Applicant in relation to production for the automotive market segment.

Accordingly, our client strongly believes there is no basis on which Customs should impose interim measures of any type. Any measures should wait until a full determination of all aspects of the Application, which can only be made after our client (and others), have had the full opportunity to respond.

10. Further submissions based on verified data

We note that this Submission is made at short notice and without the benefit of time to undertake a detailed and comprehensive analysis of the Application and associated provisions based on real and verified data and related information.

Accordingly, our client would be pleased to be afforded the opportunity to provide further additional information and to make further submissions to Customs, as Customs sees fit. In our view, our client should be afforded the opportunity of making additional enquiries and further submissions before Customs makes any determinations or decisions which would involve the imposition of measures (whether interim or otherwise).

Please note that this Submission is made without prejudice to any other submissions or commentary which our client might make and without prejudice to any arguments which our client may seek to make in any applications for review of any type.

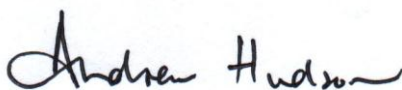
11. Conclusion and recommendation

As outlined above, our client does not support the Application and believes that the Australian Industry has not suffered material injury in the automotive sector due to the existence of alleged practices of providing subsidies that have benefited exporters referred to in the Application.

Our client is concerned to ensure that a viable Australian automotive manufacturing industry is allowed to exist in which all parties adopt fair practices. That outcome is not supported by the application of any countervailing measures in this matter.

In our view, given the complexities of the facts and issues associated with the Investigation, together with the fact that there is an absence of direct and verified data regarding the allegations by BSL, the interests of all parties would best be served by Customs creating "Issues Papers" on the issues at hand (especially a correct description of the GUC, like goods, export price, and material injury as between separate markets) and seeking commentary from the parties before advancing the Investigation and before even considering the imposition of any countervailing measures.

Yours faithfully
Hunt & Hunt



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