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**COMMENTS ON INJURY, CAUSATION AND PUBLIC INTEREST
IN THE COUNTERVAILING INVESTIGATIONS NOS 193A AND 193B
CONCERNING IMPORTS OF ZINC COATED (GALVANIZED) STEEL
AND ALUMINIUM ZINC COATED STEEL
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

ON BEHALF OF

**THE CHINA IRON AND STEEL ASSOCIATION (CISA) AND ITS
MEMBERS**

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1 INTRODUCTION

- [1.] By way of Consideration Report No. 193 of 22 November 2012, the Australian Customs and Border Protection Service (Australian Customs) initiated countervailing investigations concerning imports of zinc coated (galvanized) steel and aluminium zinc coated steel exported from the People's Republic of China.
- [2.] The investigations are proceedings based on applications for countervailing duties lodged by BlueScope Steel Limited (“BlueScope” or the “Applicant”). The Applicant is the sole producer of the goods under consideration (“GUC”) in Australia, although it appears that it does not produce all products covered by its applications.
- [3.] Accordingly, the present document submitted on behalf of the China Iron and Steel Association (CISA) and its members is a submission responding to the Applicant’s allegations by covering the following principal elements of the case:
- Multiple investigations concerning steel products
 - Product exclusions
 - Lack of injury
 - Lack of causation
 - Competition law concerns
 - Australian public interest
- [4.] Based on these elements, CISA and its members maintain that the Applicant’s applications lack sufficiently concrete and credible evidence of subsidized imports of the relevant products from China causing any of the injury alleged by the Applicant.
- [5.] CISA and its members hereby reserve the right to present further evidence and arguments throughout any of the later stages of the investigations. This includes responding to material subsequently submitted by other interested parties.

2 MULTIPLE INVESTIGATIONS CONCERNING STEEL PRODUCTS

- [6.] Firstly, CISA noticed that there are parallel anti-dumping investigations concerning imports of the same products exported from China, Korea and Taiwan, while the countervailing investigations are against China only. However, since BlueScope is the sole producer of the GUC in Australia, and the investigation periods are the same in the anti-dumping and countervailing investigations, the injury analysis performed in the parallel anti-dumping investigations are very much relevant to those in the countervailing investigations. For this reason, CISA maintains the any comments on injury

aspects put forward by interested parties should be taken into account in both proceedings.

- [7.] Secondly, in each anti-dumping and countervailing proceeding, BlueScope has in fact lodged two separate applications (i.e., against zinc coated (galvanized) steel and aluminium zinc coated steel). This means in total there have been four applications. It is important for Australian Customs to ensure that the analysis for each product, including the material injury and causation analysis, must be completely separate during the investigation process.
- [8.] Thirdly, since there are parallel anti-dumping investigations concerning two steel products, disciplines in the WTO Anti-dumping Agreement (ADA) have to be respected in the current investigations. For example, Article 2.1 of the ADA requires that an investigation should only cover *one product*, and the imported product must be a *like product* to the one sold in the domestic market of the exporting country.
- [9.] In terms of the issue of “one product”, CISA noticed that zinc coated steel and aluminium zinc coated steel have different physical characteristics and are entered for customs purposes under different tariff codes. In particular, aluminium zinc coated steel:
- has ideal forming properties on manufacturing lines;
 - has a thinner metallic coating to achieve an appropriate corrosion resistance and is in turn lighter in terms of weight; and
 - offers a better corrosion resistance with a cathode edge protection.
- [10.] In terms of the issue of “like product”, CISA and its members submit that there are fundamental differences between the goods under consideration exported from China and those produced in Australia. One factor that has a significant impact on the cost of the goods under consideration is the metallic coating mass in g/m² of substrates.
- [11.] A major part of the Chinese exports of zinc coated and aluminium zinc coated steel are provided at a lower level of metallic coating mass. However, the coating level in Australia is commonly higher: for example Z275 and Z350, which means 275g or 350 g per m² of substrates, respectively.
- [12.] As the quantity of coating material has a direct impact on the cost of zinc coated and aluminium zinc coated steel, a simple comparison between Z100 and Z275 is inappropriate. Therefore, CISA and its members hereby request Australian Customs to consider adjustments on physical characteristics where applicable.

3 WARRANTED PRODUCT EXCLUSIONS

3.1 Exclusion of certain products which are not produced by the applicant

[13.] CISA understands that a variety of interested parties have brought to the attention of Australian Customs that the broad description of the GUC includes certain products that the Applicant does not produce. Many parties have referred to the fact that BlueScope does not or cannot produce certain sizes of the GUC (particularly the larger widths). CISA does not intend to verify the detailed figures (e.g. whether Bluescope's maximum widths are 1400 mm or 1525mm) as this is a matter for Australian Customs to investigate. However, CISA wishes raise the legal issue that if an applicant is not producing certain types or sizes of products at the time it presents its application, it is not a 'producer' of such products, and thus cannot constitute the 'domestic industry' for the full range of products. It is incumbent upon Australian Customs to ensure that there is no prospect of countervailing duties being imposed upon products not produced in Australia.

3.2 Exclusion of certain products which are not sold or offered for sale by the applicant

[14.] In addition, CISA noticed that interested parties (in particular, Ace Gutters) have raised special concerns with regard to GALVALUME steel produced by BlueScope. In particular, BlueScope has not provided evidence that:

- BlueScope has *sold* GALVALUME steel to any third party other than its related entities;
- BlueScope has *offered to sell* GALVALUME steel to any unrelated entity on commercial terms;
- BlueScope has ever published a price list for GALVALUME steel.

[15.] If BlueScope's GALVALUME steel products are produced only for its captive use, they are not competing with imports on a commercial basis. If there is no meaningful competition between each other, no material injury can be found and no causation can be linked to that material injury. Australian Customs must investigate the prices attributed to GALVALUME steel. At the very least, proper commercial prices should be determined for GALVALUME steel and once this is determined it may be appropriate to exclude these products taking into account their real value.

3.3 Exclusion of certain products which are supplied for specific markets

[16.] CISA further noticed that the applicant identified three market sectors to which the GUC are supplied, which are:

- the building and construction industry;
- the automotive and transport primary markets, and

- the general manufacturing market.
- [17.] CISA noticed that certain interested parties (e.g. GM Holden Limited) have raised the argument that there should be separate market assessments as to the material injury, in particular, for goods supplied to the automotive industry.
- [18.] CISA maintains that, should Australian Customs find that there is no evidence of injury to the Applicant in a specific market, the goods supplied to that market should be excluded from the investigation. CISA refers to the SEF of the HRC case, where the Customs found that there is no evidence of injury to the Applicant in relation to its supply of HRC to the automotive industry and that injury in relation to the automotive sector for HRC is likely have been caused by a reduction in the Australian market for locally manufactured vehicles and not due to any dumping.

4 LACK OF INJURY

- [19.] Based on a review of the main indicators of injury, it becomes apparent that imports of the products under investigation from China are not the source of material injury to the Applicant. The global economic crisis, a resulting decrease in demand domestically and internationally, the Applicant's extensive restructuring efforts and corporate structure are all elements resulting in the injury alleged by the Applicant.
- [20.] In addition, the period of time immediately preceding the global economic crisis does not constitute a valid starting point for any injury analysis in this context. Especially with respect to prices and profits, comparisons between current conditions and the highpoint of 2008 will necessarily yield a declining trend. Given the persistently soft recovery, it may be a very long time before the profitability levels enjoyed in 2008 and before can be achieved again. While the Applicant relies on nominal profit of 6 percent, profitability of between 2 and 3 percent is the new norm for global steel producers today. Similarly, the high prices obtained in 2008 in the overheated market that existed before the global economic crisis are unlikely to be obtained any time soon in the context of a still very soft recovery.
- [21.] Based on the application and other publically available documents, it is apparent that BlueScope is also a major producer of painted coated steel, which is a downstream product of the GUC, the possibility of cost and profit shifting between these business units has to be examined. CISA notices that certain interested parties (in particular, POSCO) have submitted that COLOBOND (a type of downstream product) is a highly profitable product in the Australian market and the Applicant seems to focus on the more profitable products (such as COLOBOND), at the expense of other less profitable products.
- [22.] In this regard, CISA requests that Australian Customs examine if the Applicant indeed sells the GUC at a lower price, and absorbs the loss of revenue through the premium available to it on the downstream products.

CISA hereby requests that Australian Customs conduct a complete assessment on the overall financial situation of the Applicant along the production line. Without doing so, the alleged injury might be exaggerated and the true financial position of the Application might not be disclosed.

- [23.] At present, there are no trade remedy measures in force against the goods under consideration imported from China into any third country. As Australian Customs has correctly noted, the European Commission terminated the anti-dumping proceeding concerning hot-dipped metallic-coated iron or steel flat-rolled products on 7 February 2009.
- [24.] Similarly, the Brazilian investigating authority DECOM terminated its proceeding concerning galvanized, galvalume and pre-painted flat steel products from Australia, China, India, Korea and Mexico in September 2012. However, it is interesting to note that the Applicant in the present proceedings, BlueScope Steel, was assigned a dumping margin of 50.5 percent in this Brazilian proceeding, the highest dumping margin of any of the exporting producers targeted.
- [25.] CISA and its members maintain that in the absence of trade remedy measures imposed by a third country, there is no threat of diversion of Chinese exports from third-country markets to the Australian market.
- [26.] CISA also noticed that, the Customs stated in its Visit Report (in the anti-dumping investigation) of the Australian Industry that “BlueScope’s market share fell in 2009-2010 but has remained stable since.” This directly contradicts BlueScope’s claim and is an important factor in determining that there is no material injury.

5 LACK OF CAUSATION

- [27.] A causal link is lacking between subsidized imports from China and the situation of the Applicant. There has been no negative impact from the allegedly subsidized imports from China. Any difficulties experienced by the Applicant are due to other factors.
- [28.] For example, BlueScope confirms itself that due to the financial crisis, demand for the GUC has been impacted, reducing sales volumes and consequently increasing the cost-to-make, which is likely to be a major cause of any injury. BlueScope’s restructuring efforts and corporate structure have also further contributed to the alleged injury.
- [29.] Alternative causes for the injury alleged by the Applicant include a lack of investment in its plant and equipment, a lack of economies of scale, exchange rate movements and the restructuring of its business in 2011. In regards to the restructuring of its business we refer to a media release dated 22 August 2011, which on page 2 notes the closure of a number of production facilities (*see <http://www.abc.net.au/rural/news/content/201208/s3566761.htm>*).

- [30.] Whilst the press release refers to these facilities being involved in the exporting of products, query whether the restructuring has artificially increased the cost to make and sell of BlueScope Steel's products. In addition, the press release refers to the decline in Australian domestic steel demand in the wake of the global economic crisis, as a result of which steel producers worldwide have suffered.
- [31.] In accordance with the elements above, a causal link cannot be established between any injury alleged by the Applicant and allegedly subsidized imports from China. Accordingly, CISA and its members respectfully request that Australian Customs terminate the present proceeding on the basis of the absence of such causal link.

6 COMPETITION LAW CONCERNS

- [32.] BlueScope Steel is the sole producer of zinc coated (galvanized) steel and aluminium zinc coated steel in Australia. BlueScope Steel also retains an overwhelming majority of the market share (approximately 60 percent) in Australia for these products. This is verified in sections 8.7.2 of Consideration Report No. 190, which confirms that BlueScope Steel's market share of aluminium zinc coated steel has remained relatively constant since 2009-10. There has been some decline in the market share of BlueScope Steel for Galvanised Steel since 2009-10, but this decline is relatively modest. Ultimately, the fact that BlueScope Steel is a monopoly producer and retains a majority market share raises some very important competition law issues.
- [33.] In the event that countervailing duties are imposed, there is a strong likelihood that competition in the Australian market for these products will be substantially reduced. Vigorous import competition is essential to ensure that a monopoly producer does not in the future take advantage of its market power, by, for example, raising prices or taking steps to prevent the development of competitors in the market place. There may also be less incentive for producers to improve productivity and invest in domestic plant and equipment. Such adverse consequences may also affect downstream businesses (particularly small and medium sized enterprises) and ultimately consumers.
- [34.] In addition to the abovementioned factors, any substantial lessening of competition in the form of reduced imports may result in a reduction in the reliability of supply of galvanised steel and Aluminium Zinc coated steel, which are used in so many other industrial and consumer markets.
- [35.] CISA notices that interested parties have already reported their difficulties in conducting business with the Applicant in the parallel anti-dumping proceedings. For example:
- B & B Enclosure Pty Ltd acknowledged that BlueScope is unable to provide the full extent of the requirement of the Australian market for steel coils;

- One Steel Coil Coated Pty Ltd submitted that they have sought to source raw coils from BlueScope, but BlueScope has not entered bona fide supply negotiations. One Steel further submitted evidence of frustrated negotiations for the supply of products by BlueScope.
- BlueScope refused to provide products on a reasonable commercial basis to Ace Gutters, forcing the latter to source products from overseas.
- BlueScope has not offered to sell GALVALUME steel on commercial terms to any competitor or unrelated party in Australia.

[36.] The structure of the market and competition considerations are important in the analysis of whether any occurrence of dumping has caused material injury to the Australian industry. It is also a relevant factor in the exercising of Ministerial discretion to impose countervailing duties. In this particular case, it is an important factor given the dominant role of BlueScope Steel in these markets.

7 AUSTRALIAN PUBLIC INTEREST

[37.] In addition to the risk noted above of significantly reducing competition within Australia, the imposition of countervailing measures in the present cases is highly likely to impact negatively a number of Australian users of the two products, representing much larger and broader interests than those of the Applicant. Consequently, it would not be in the wider Australian public interest to pursue these proceedings.

[38.] The user industries in Australia, tend to be fragmented and to consist of smaller companies. These users may fear retaliation from a single dominant domestic producer supplying them, if they criticize current market conditions. Given tight supply and limited competition in the Australian market, the Applicant is likely to be in a position of strength in relation to many of its customers. Imports from China (and the other countries targeted in the parallel AD proceedings) appear to be the only serious source of competition in this context.

[39.] However, Australian users, who are in fact competing directly with the affiliate business of the applicant, will be adversely impacted by an increase in their input costs due to the countervailing duties. The imposition of duties in this context is unlikely to pass on throughout the production chain. Australian users will have to absorb the additional cost due to the countervailing duties. CISA observed that similar claims have been raised by several interested parties such as GM Holden Limited (“Holden”) and the Australian Steel Association Inc in the anti-dumping proceedings.

[40.] While Chinese imports of the GUC have increased moderately in recent years, their increased market share has been gained at the expense mostly of other

exporters, especially with respect to aluminium zinc coated steel. However, the Applicant's significant and remarkably steady market share consistently above 60 percent for zinc coated (galvanized) steel and always nearly 60 percent for aluminium zinc coated steel is more striking throughout the relevant years. Such market shares clearly evidence the extent of the Applicant's control of the Australian market.

- [41.] For many end-users, reliance on the Applicant as their sole supplier is simply not commercially feasible and/or wise. Australian users have expressed their concerns about the availability of sufficient quantities and particular qualities of the products supplied by BlueScope. In this context, CISA particularly notices that one of the manufacturers of enclosure products (B&B Enclosure Pty Ltd) acknowledged that BlueScope is unable to provide the full extent of the requirements of the Australian market for steel coils.
- [42.] The increase in the usage of Chinese products is also partly based on the uniform product sourcing requirements of certain major construction globally. Many of these companies have already been buying from China to satisfy requirements outside of Australia, where the Applicant does not supply the relevant products. Therefore, these end-users will have to turn to imported products for their projects within Australia.
- [43.] The elimination of that necessary source of competition on the Australian market as a result of the imposition of any anti-dumping and/or countervailing duties against imports from China would have a seriously deleterious effect on Australian users of the goods under consideration. Ultimately, the Applicant's actions are fundamentally anticompetitive and contrary to the Australian public interest.

8 CONCLUSION

- [44.] Based on the elements presented above, CISA and its members maintain that the countervailing proceedings initiated against imports of zinc coated (galvanized) steel and aluminium zinc coated steel from China should be terminated without the imposition of any duties given serious like product concerns, a lack of causation and injury, serious competition law concerns and the fact that it would not be in the Australian public interest to impose such measures.
- [45.] In the meantime, pending Australian Customs' detailed review and analysis of all the issues identified in this submission, the imposition of provisional measures would be entirely unwarranted in the present proceedings.

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