

4 June 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
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By email: itrops2@customs.gov.au

Dear Sir or Madam

**Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel exported from the People's Republic of China
Investigation into alleged subsidisation
Submission by GM Holden Limited to Statement of Essential Facts No. 193
Non-Confidential Version**

We refer to our previous correspondence and confirm we act on behalf of GM Holden Limited ("**Holden**"). We have now been instructed to make the following submission in relation to the SEF.

For the purposes of this response, all defined terms have the same meaning as set out in the Schedule of Definitions.

1. Executive summary

Having reviewed the SEF, Holden's views can be summarised in the following main themes.

- (a) Holden welcomes and endorses the approach by Custom's approach to recognising the many grounds for the potential grant of exemptions for Galvanised Steel products for use in the automotive sector, as referred to in the SEF and as referred to in the Dumping SEF. The existence of current TCOs and current applications for TCOs (to which BSL has not objected) and the acknowledgment by BSL that it does not produce certain types of Galvanised Steel for use in the automotive industry recognises that there should be no dumping or countervailing duties imposed for such products used in the automotive industry.

This is also consistent with findings by Customs in the HRCS Investigation that BSL suffered no injury in its sales of HRCS to the automotive sector and, indeed, offered no proof as to such injury. Given that HRCS is an important raw material for Galvanised Steel then, taken with the TCOs which have been and will be granted, it becomes clear that the approach of Customs to alleged dumping and subsidisation of goods exported to the automotive industry needs specific and separate attention.

As a result, Holden endorses the approach that Customs will consider the potential grounds for exemption and include them in its report to Minister at the time of recommending whether there should be interim countervailing duties imposed on exports of Galvanised Steel. For these purposes, we note the comments in section 7.2 of the SEF that "Customs and Border Protection proposes to recommend to the Minister

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that, if the Minister decides to exempt certain goods from dumping duty, the Minister exempt those same goods from countervailing duty".

- (b) Holden notes with concern that, unlike in the HRCS Investigation, Customs' analysis of material injury in the SEF does not specifically address the automotive sector. Given the various submissions by the Applicant stating that the production of HRCS is fundamental to the production of the Galvanised Steel and AZCS and the suggestions in the HRCS Investigation that the Applicant produces in several separate and distinct markets (as also referred to in the Dumping SEF), then there appears to be no reason why there should not have been a separate analysis undertaken as to the effect of the alleged subsidised goods on each of those separate markets of the Applicant. Holden is firmly of the view that any such analysis would have found that the Applicant suffers no injury in its sales to the automotive sector arising from any alleged subsidisation of the Galvanised Steel or the AZCS and the absence of such a proper analysis detracts from the value of the SEF.
- (c) The commentary in the SEF on the impact of proposed measures does not specifically take into account the significant adverse effect of the imposition of countervailing or dumping duties on exports of Galvanised Steel (and indeed HRCS) to the automotive sector. As discussed with Customs on many occasions, the adverse effects are considerable and are unnecessary and inappropriate given that BSL has not provided any evidence as to injury in its sales to the automotive sector arising from exports of such products.
- (d) As set out in the Dumping Submissions and in the HRCS Submissions, Holden encourages Customs to take note of the outcomes of these issues relating to the automotive industry as part of its continuing investigations, and in respect of any future investigations, of other steel products which may have an impact on the automotive industry. By way of example, Customs should not merely accept descriptions of goods under consideration proposed by applicants which could potentially cause the application of dumping and countervailing duties in the automotive industry even when there is no injury to the applicant in that market. We would suggest that Customs adopts descriptions of goods under consideration which enable the separate review of goods being provided to the automotive industry. This will allow for separate investigations as to whether there has been any injury to the automotive industry that would support the imposition of any countervailing and dumping duties affecting products used in the automotive industry and avoid any automatic imposition of such measures just because injury is found in other sectors, but not in the automotive industry.
- (e) In the Dumping Policy Statement (paragraph 6.2), the Federal Government announced that a "Ministerial Direction" would be issued to direct Customs as to consideration the effect of proposed measures to enable the Minister to make a fully informed decision when exercising its discretion whether to impose measures. However, that Direction has yet to be issued nearly 2 years after the Dumping Policy Statement. This is extremely disadvantageous to parties like Holden who are affected by measures being enforced without a proper analysis of the likely effect of measures on parties using the GUC. Accordingly, the Minister will not be fully advised on the adverse impact of measures before exercising its discretion.
- (f) Two important issues in the ARW Investigation, the HRCS Investigation, the Dumping Investigation and this Investigation have been;

- (1) the effect of the strong Australian dollar on the demand for the Applicant's goods here; and
- (2) the negative effect of reduction in demand for Australian-made vehicles in the OEM market on the demand for the GUC, ARW and HRCS.

Holden requests that Customs take into account the effect of the recent (and likely long-term) depreciation of the Australian dollar which is likely to assist the Applicant and increase its advantage of being "local". Holden also requests that Customs takes into account the announcement of Ford closing production in Australia which further affects the Australian OEM industry and is not related to alleged dumping and subsidies.

Holden believes that both developments mitigate against the imposition of measures by the Minister and the recommendations to the Minister should be adjusted accordingly.

- (g) Notwithstanding the comments above, Holden remains of the view that there are a number of other errors in the way in which Customs has conducted the Investigation and come to conclusions and recommendations as set out in the SEF. These have been outlined in the Holden Submissions and will be reiterated in this Submission. Holden is concerned to ensure that those errors are addressed so that they will not lead to any incorrect conclusion as to the imposition of duties on the automotive industry in the first instance.

2. Earlier Holden submissions

This Submission should be read together with the earlier Holden Submissions. This Submission should in no way be seen as derogating from those earlier Holden Submissions.

3. Exemptions

As described above, Holden endorses and supports the approach of Customs to recommend to the Minister that the Minister ought to grant exemptions for products used in the automotive industry at the same time as it recommends the imposition of measures for other sectors as set out in section 7 of the SEF. This will avoid the need for those parties who would be adversely affected, such as Holden, to have to incur the time and expense of making a separate, subsequent application for exemption. For these purposes, Holden wishes to request that Customs recommend to the Minister that the following exemptions be granted at the same time that any measures are imposed (if they are to be imposed) for other non-auto sector products/markets.

- (a) All goods the subject of current TCOs.
- (b) All goods which are the subject of TCOs which are in the process of being considered (and to which BSL has not objected).
- (c) All future goods the subject of TCOs which may be applied for by our client and to which BSL does not object.
- (d) Tailor-welded steel as referred to in section 6.6.1 of the SEF.
- (e) Zero spangle steel referred to in section 6.6.2 of the SEF.

For these purposes we note that in section 7.1 of the SEF, Customs has noted that there are reasonable grounds for the Minister to consider an exemption for duty for these goods

- (f) Galvanised Steel outside of the dimensions capable of being produced by the Australian Industry, as set out in section 6.7 of the SEF.

Holden has previously provided extensive information to Customs of the basis for seeking these exemptions.

Holden appreciates that there may be some need for Customs to update procedures to allow for exemptions by way of an "end use qualifier" relating to goods destined for automotive manufacture only.

For these purposes, we refer to paragraph 3.3 of our letter to Customs of 23 October 2012 in relation to the HRCS Investigation and in paragraph 3(b) of our letter of 17 May 2013 in relation to the HRCS Reinvestigation which sets out a mechanism which could be adopted to achieve this aim.

4. Further exemption

Holden requests that Customs further adopts an approach that it remain "on notice" of the issues associated with exemptions so that at the time of granting any TCO in respect of the GUC, it automatically initiates a request of the parties affected by this Investigation to determine whether they wish to apply for an exemption from the application of dumping or countervailing duties in respect of the goods the subject of the new TCO.

5. Grounds of objection to the reasoning and conclusions in the SEF

(a) Approach to the GUC

As set out above and as referred to in section 6.7 of the SEF, Holden remains of the view that Customs has accepted a description of the "Goods under Consideration" which is entirely too broad and should have adopted an approach to "Goods under Consideration" which recognises the use of goods in the 3 different industries where relevant goods are used and allowed for separate investigations into alleged dumping and alleged material injury in each of those 3 industries. In the HRCS Investigation, the failure to undertake this separate investigation and consideration of injury for each relevant industry has led to the imposition of measures on goods being exported to the automotive industry where there is no injury found by Customs, which end result is inconsistent to all relevant governing legislation.

Holden hopes that in relation to future investigations, Customs only accepts a descriptions of goods under consideration that appropriately identify and distinguish the separate markets into which relevant goods are sold, to allow for separate investigation and consideration to be given as to whether the imposition of measures is warranted in any particular market based on the specific factors applying to that particular market.

(b) Reliance on the HSS Reinvestigation

Notwithstanding that Customs has found in the HSS Reinvestigation that certain programs supported the imposition of countervailing duties, Holden

remains of the view that the assessment of the TMRO in the TMRO HSS Report were correct and that the findings on the HSS Reinvestigation are incorrect and not supported by evidence so that the programs the subject of the TMRO HSS Report should still not be subject to countervailing duties.

(c) **Section 8 – Australian Market**

As with the HRCS Investigation, both BSL and Customs have identified that there were 3 separate markets for Galvanised Steel in Australia. Again, Holden reiterates that it believes there should have been 3 separate investigations as to the existence of dumping (or subsidisation) of sales of products into, and relevant consideration given to whether any injuries had resulted in, each of those 3 different markets.

(d) **Section 10 – Injury Assessment**

Holden has a number of concerns regarding this aspect of the SEF.

- (1) As stated above, Holden is firmly of the view that there are, in fact, 3 separate and distinct markets for exports of Galvanised Steel. Accordingly, it would have been appropriate to have undertaken 3 separate market analyses on a "micro analysis" basis (consistent with the approach in the HRCS Investigation) rather than undertaking one macro investigation. Customs should then recommend the imposition of measures based on the analysis arising from such separate micro analysis.
- (2) In addition, Holden remains of the view that the cumulation of injury by Customs as set out in section 10.5 of the SEF is inappropriate in the circumstances. It is not mandatory. Separate assessments of injury should be made relating to products being exported from each of the exporting countries.

(e) **Section 11 – Material Injury**

The acceptance of an unreasonably wide description of the "goods under consideration" and the unwillingness by Customs to undertake separate market analysis and adopt separate measures relevant to the factors affecting the industry has unduly biased the investigation towards the imposition of countervailing duties where there is no injury to the relevant automotive market sector. While Customs claims (in section 11.2.2 of the SEF) that it has undertaken a micro analysis, no details have been provided in the SEF in a manner consistent to the HRCS Investigation.

(f) **Section 11.4.1 – Import Parity Pricing (IPP)**

Holden remains of the view that the approach adopted by BSL towards pricing ("**import parity pricing**") almost automatically pushes BSL into a situation of price undercutting and price suppression at any time that prices for the exported products should reduce for any reason. Accordingly, as set out in the Holden Submissions, Holden remains of the view that the import parity pricing approach significantly contributes to BSL's situation and is not evidence of the existence of alleged dumping.

(g) **Section 11.7 – Injury caused by factors other than subsidisation**

As with previous Holden Submissions and submissions by Holden in the HRCS Investigation, Holden is of the view that the injury caused by factors other than subsidisation has not been properly assessed by Customs and is not properly included in its analysis.

(h) **Section 11 – Will subsidisation and material injury continue?**

We note that Customs has not included a provision which refers to whether subsidisation and material injury are likely to continue. Accordingly, we do not believe that Customs should find that there is a prospect of subsidisation and material injury continuing that would support the imposition of measures.

(i) **Section 12 – Non-Injurious Price**

Holden agrees with the conclusions by Customs in section 12.5 of the SEF as to the means to establish a non-injurious price.

(j) **Absence of referral to discretionary factors**

We note that in paragraphs 6 and 6.2 of the Dumping Policy Statement, the Minister is described as having an unfettered discretion not to impose measures and in reporting findings to the Minister, Customs is now required to include an assessment of the expected effect that any measures might have on the Australian market for the goods subject to the measures and like goods manufactured in Australia and in particular any potential for significant impacts on this market. This includes an assessment of the expected effect of the measures on market concentration and domestic prices and would also require Customs to report on any claims regarding impacts on downstream industries. However, we note that the SEF does not include any such assessment. As a result, Holden does not believe that the SEF provides proper advice to the Minister as contemplated by the Dumping Policy Statement and that any proper assessment will demonstrate that the likely adverse effective measures far outweighs any benefits to the Applicant from the imposition of measures.

6. Section 14 – Customs' Preliminary Affirmative Determination

Holden remains of the view that there is no basis for the imposition of either dumping or countervailing securities. Notwithstanding that Customs has determined that there is no need for the present imposition of securities on account of the alleged subsidies due to the existence of the securities in respect to the alleged dumping, Holden hopes that no such securities will be imposed on account of alleged subsidies until final resolution of all matters has been completed.

7. Other submissions made by other interested parties

In making this Submission, Holden also refers to the following submissions made by other interested parties:

- (a) letter dated 15 February 2013 on behalf of Union Steel China;
- (b) letter dated 11 March 2013 on behalf of the Ministry of Commerce of the Government of the People's Republic of China; and

(c) letter dated 7 March 2013 on behalf of Chung Hung Steel Corporation.

Having reviewed those other submissions, Holden is of the view that these other submissions are consistent with this Submission and recommends their reasoning and conclusions.

8. Dumping Investigation

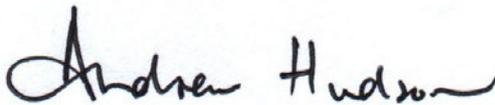
Please note that many of the comments above apply equally to the Dumping Investigation and should be taken into account by Customs in relation to that Investigation.

9. Conclusion

Based on the comments above, Holden remains of the view that the Investigation and the SEF should not have endorsed the application of countervailing measures on certain exports of Galvanised Steel destined for use in the automotive sector in the manner contemplated by the SEF. However, to the extent that such measures are imposed, our client is of the view that the exemptions referred to as potentially applying (as described in the SEF and described above) should be granted by the Minister at the time he makes his determination as to the application of measures on the whole.

We would be pleased to discuss further.

Yours faithfully
Hunt & Hunt



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Schedule of Definitions

- (a) "**ACDN**" means Australian Customs Dumping Notice No. 2012/56 in relation to the Application.
- (b) "**Act**" means the *Customs Act 1901* (Cth).
- (c) "**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.
- (d) "**ARW**" means aluminium road wheels as described in the ARW Investigation.
- (e) "**ARW Investigation**" means Investigation Number 181 by Customs into alleged dumping and subsidisation of aluminium road wheels exported from the People's Republic of China.
- (f) "**Australian Industry**" has the same meaning as in the Application and in the Consideration Report.
- (g) "**AZCS**" means aluminium zinc coated steel.
- (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) "**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.
- (l) "**Dumping Investigation**" means the investigation into alleged dumping of Galvanised Steel and AZCS arising out of the Dumping Application.
- (m) "**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.
- (n) "**Dumping SEF**" means Statement of Essential Facts number 190 issued by Customs in relation to the Dumping Investigation.
- (o) "**Dumping Submissions**" means the submissions by Holden to the Dumping Investigation.
- (p) "**Galvanised Steel**" means zinc coated (galvanised) steel referred to in the Application and the Consideration Report.
- (q) "**GFC**" means the Global Financial Crisis.
- (r) "**GOC**" means the Government of the PRC.

- (s) "**GM**" means General Motors.
- (t) "**GUC**" means goods under consideration as described in the Application.
- (u) "**Holden Submissions**" means the following earlier submissions made by us on behalf of Holden in relation to the Investigation including:
 - (1) letter dated 13 December 2012 in response to Customs Visit Report on the Applicant;
 - (2) letter dated 7 January 2013 in response to the Consideration Report;
 - (3) letter dated 5 February 2013 seeking suspension or termination of the Investigation; and
 - (4) letter dated 7 March 2013 seeking suspension or termination of the Investigation following the issue of the PAD.
- (v) "**HRCS**" means Hot Rolled Coil Steel as described in the Application and the Investigation.
- (w) "**HRCS Investigation**" means Investigation number 188 by Customs into alleged dumping of HRCS exported from Japan, the Republic of Korea, Malaysia and Taiwan.
- (x) "**HRCS Final Report**" means Report to the Minister No. 188 by Customs to the Minister regarding the HRCS Investigation.
- (y) "**HRCS Reinvestigation**" means the reinvestigation being undertaken by Customs in relation to the HRCS Investigation.
- (z) "**HRCS SEF**" means Statement of Essential Facts number 188 issued by Customs in the HRCS Investigation.
- (aa) "**HRCS Submission**" means the submission by Holden to the HRCS Investigation and the HRCS Reinvestigation.
- (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 Ministerial Decision**" means the decision made by the Minister following consideration of the HSS Report.
- (ee) "**HSS Report**" means Customs Report number 177 to the Minister in relation to the HSS Investigation.
- (ff) "**HSS Reinvestigation Report**" means reinvestigation report number 203 issued by Customs in relation to the HSS Investigation.

- (gg) "**Investigation**" means the investigation by Customs in response to the Application being Investigation 193a relating to Galvanised Steel and Investigation 193b relating to AZCS.
- (hh) "**Korea**" means the Republic of Korea.
- (ii) "**Material Injury Direction**" means the ministerial direction on material injury dated 1 June 2012 published in Australian Customs Dumping Notice No. 2012/24.
- (jj) "**Minister**" means the Minister for Home Affairs or such other Minister who is provided with responsibility for making decisions on the imposition of measures in the Investigation or the Dumping Investigation.
- (kk) "**OEM**" means Original Equipment Manufacturer.
- (ll) "**PRC**" means the People's Republic of China.
- (mm) "**Public File**" means the public file maintained by Customs in relation to the Investigation.
- (nn) "**Record of Meeting**" means the Record of Meeting dated 10 December 2012 between Customs and BSL as contained on the Public File.
- (oo) "**SEF**" means Statement of Essential Facts number 193 issued by Customs in relation to the Investigation
- (pp) "**SEF ACDN**" means Australian Customs Dumping Notice No. 2013/37 in relation to the Application.
- (qq) "**SIEs**" means State Invested Enterprises as referred to in DS379 and the HSS Report.
- (rr) "**Submission**" means this submission.
- (ss) "**TCO**" means Tariff Concession Order.
- (tt) "**TMRO**" means the Trade Measures Review Officer.
- (uu) "**TMRO HSS Report**" means the Report by the TMRO in response to application by parties for review of the HSS Investigation and the HSS Ministerial Decision.