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**onesteel**  
australian tube mills

RECEIVED

17 DEC 2012

14 December 2012

Ms Joanne Reid  
Director Operations 2  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
5 Constitution Avenue  
CANBERRA ACT 2601

Dear Joanne,

**Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel**  
**- Exported from the People's Republic of China, the Republic of Korea and Taiwan**  
**- Certain goods to be exempted from measures**

We refer to the subject investigation, our meeting on 7 November 2012 and recent developments in relation to the scope of Galvanised material supply issues from BlueScope Steel Ltd.

Since our recent submission of 27 November 2012, we have been successful in having two Tariff Concession Order (TCO) applications (refer Attachment A) accepted by Customs and Border Protection (CBP) as per the attached correspondence [REDACTED]  
[REDACTED]

Once our two TCO applications are reviewed, you will note that the goods the subject of our applications are compliant with the [REDACTED]  
[REDACTED]  
[REDACTED]

As both Bluescope Steel and CBP have accepted that these goods are not currently manufactured in Australia, we believe that both CBP and the Minister now have the necessary legislative support to exempt these goods described in the attached TCO applications (refer Attachment A). We further submit that should consideration of a Preliminary Affirmative Decision (PAD) be imminent, and given these circumstances of non supply, the foregoing goods should be exempted from any securities that may be applied.

Our analysis of the relevant legislative definitions that provide support for the Minister and CBP to consider our request, are further explained below.

## Ministerial Discretion

We refer to the legislative provision that the Minister has available vide the Customs Tariff (Anti-Dumping) Act 1975 - Section 8 Dumping Duties, wherein the following conditions apply:

### **8(7) [Minister may exempt goods from duty]**

*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;*
- (b) *that a Tariff Concession Order under Part XVA of the Customs Act 1901 in respect of the goods is in force;*
- (c) *that—*
  - (i) *where the goods are goods to which section 8 of the Customs Tariff Act 1995 applies — the item in Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and*
  - (ii) *suitably equivalent goods the produce or manufacture of Australia are not reasonably available;*
- (d) *That —*
  - (i) *the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Schedule 4 on the goods; and*
  - (ii) *suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or*
- (e) *that the goods, being articles of merchandise, are for use as samples for the sale of similar goods*

### **8(8) [Publication of exemption notice]**

*Where the Minister exempts goods from interim dumping duty and dumping duty under subsection (7) by reason of his or her being satisfied as to a matter specified in paragraph (7)(a), (c) or (d), the instrument of exemption shall be published in the Gazette*

Based on the foregoing provisions, we believe CBP and the Minister have the legislative support to initially exempt the goods the subject of the current Tariff Concession Order applications under 8 (7) (a), pending the approval of the current

applications that have been accepted by Customs and Border Protection and supported by BlueScope Steel.

Below we examine the definitions contained in Section 8(7) (a) of the Customs Tariff (Anti-Dumping) Act 1975, concerning the term of “like goods” versus “substitutable goods” contained in the Tariff Concession legislation in sections 269B, 269C and 269E of the Act, particularly given the two independent definitions.

1. *Eligibility criteria for Tariff Concession Order applications:-*  
**“Section 269B Interpretation**

***“substitutable goods”***, in respect of goods the subject of a TCO application or of a TCO, ***means goods produced in Australia*** that are put, or are capable of being put, to a use that corresponds with a use (including a design use) to which the goods the subject of the application or of the TCO can be put;” (our emphasis)

***“269C*** For the purposes of this Part, a TCO application is taken to meet the core criteria if, on the day on which the application was lodged, ***no substitutable goods were produced in Australia in the ordinary course of business.***” (our emphasis)

***“269E(1) [Where goods deemed produced in ordinary course of business]***

*For the purposes of this Part, other than section 269Q, goods (other than made-to-order capital equipment) that are substitutable goods in relation to goods the subject of a TCO application are taken to be produced in Australia in the ordinary course of business if:*

- (a) they have been produced in Australia in the 2 years before the application was lodged; or*
- (b) they have been produced, and are held in stock, in Australia; or*
- (c) they are produced in Australia on an intermittent basis and have been so produced in the 5 years before the application was lodged;*

***and a producer in Australia is prepared to accept an order to supply them.***” (our emphasis)

2. “Like Goods” definition under section 269T of the Customs Act 1901:  
***“like goods”***, in relation to goods under consideration, means 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. Interpretation is of this definition is also further considered in various Trade Measures Issue Papers (TMIP's) as follows:*

**28/1 - Ammonium Nitrate from Russia - Like Goods**

**50/1 - Sodium metabisulfite from China - like goods**

**2008/144 - The Goods and Like Goods-Certain Hollow Structural Sections from China and Malaysia**

**2009/148 - Goods Under Consideration – Certain Aluminium Extrusions Exported from the People's Republic of China**

**2012/181 - Aluminium Road Wheels from the People's Republic of China**

Based on our review of these definitions and the foregoing documents, in particular sections 8(7)(a) and (b) of the Customs Tariff (Anti-Dumping) Act 1975:

- (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;*
- (b) *that a Tariff Concession Order under Part XVA of the Customs Act 1901 in respect of the goods is in force.*

Therefore, in the absence of manufacture by Bluescope Steel, we comply with both of these sections of the said Act, also sections 269B, 269C and 269D of the Customs Act relating to Tariff Concessions and the relevant administrative policy definitions covering like goods. Hence, all of these provisions and policy provide the necessary support for the Minister and CBP to exempt our goods from falling within the ambit of the current investigation.

OneSteel ATM believe these goods are effectively outside the legal boundaries of the current investigation and should not be included in any future dumping duty/countervailing duty assessments or the application of any securities.

Although the [REDACTED]  
[REDACTED]  
[REDACTED]. Should this [REDACTED] be in a position to accept an order for our galvanised product to our specifications and supply requirements in the future, we believe that [REDACTED]  
[REDACTED],  
[REDACTED].

Given that the TCO applications in Attachment A have been accepted by CBP and the legislation support is provided by section 8(7)(a) and (b) of the Customs Tariff

(Anti-Dumping) Act 1975, we seek your confirming advice that the goods the subject of these current TCO applications are outside the parameters of the current investigation.

Please do not hesitate to contact the undersigned if you require any further information or assistance.

Yours truly,

Matt Condon

Manager Trade Measures

OneSteel

## Attachment A

### TCO Applications

### Confidential