

20 February 2013

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

Received
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Public Version

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 Preliminary Affirmative Decision (PAD) measures

On behalf of Australian Tube Mills (ATM), we seek your consideration for an exemption from the current PAD security measures that apply to goods that ATM import from [REDACTED] and are covered by Tariff Concession Orders [REDACTED].

On the 4 February 2013, the Tariff Concession Orders became legally effective on and from 9 November 2013 and 13 November 2013 respectively, as per the attached letters (refer confidential attachment A) and as per publication the Commonwealth of Australia Gazette Number [REDACTED]

Based on the foregoing acceptance that substitutable goods are not manufactured in the ordinary course of trade in Australia and that they are covered by Tariff Concession Orders, these goods should be considered exempt from the current investigation and PAD measures vide Section 8(7)(b) of Customs Tariff (Anti-Dumping) Act 1975.

(7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:

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

We also refer to our letter of 14 December 2012, wherein we requested confirmation that these goods would not form part of the current investigation as the complainant, BlueScope Steel, acknowledged in writing the validity of our TCO application (refer confidential attachment B- [REDACTED])

[REDACTED] on the basis that BlueScope steel does not currently manufacture substitutable goods in Australia in the normal course of business.

In addition, based on this acceptance and support from the complainant we proceeded to order this material for our pipe and tube manufacturing facility to enable continuity of supply for this vital input for our pipe and tube manufacturing operations in Australia.

We also refer to the following extract from page 138 of the “*Dumping and Subsidy Manual - August 2012*” which states the following:-

“Provisional measures

*The CEO **may apply** (our emphasis) provisional measures in order to prevent further injury, or threat of injury, to the Australian industry while the investigation is proceeding to finalisation. Customs and Border Protection **may require** (our emphasis) and take provisional measures in the form of securities under ss 42 to 45 of the Act in respect of any interim duty that may become payable on the goods.....*

*The Regional Director may refuse to deliver the goods pending receipt of the required security. Dumping securities **may be taken** (our emphasis) at the time of entry of the goods and can be held for a period of up to 6 months (or up to 9 months if the exporter requests). Countervailing securities can be held for a period of up to 4 months. Securities are collected on an individual shipment basis. Where securities have been imposed to protect the Australian industry during the remainder of an investigation they will be collected until the Minister has made a decision in relation to the application.”*

As mentioned in the above administrative directive, securities “may be taken” or imposed to protect the Australian industry during the remainder of an investigation.

Therefore, as the two TCO’s demonstrate that the goods are not providing any deleterious effect on Australian industry (BlueScope), no security measures should be imposed.

In addition, as per Section 269TD of the Customs Act 1901 the following legislative provisions appear relevant:-

“269TD(2) Considerations

Subject to subsection (3), in deciding whether to make such a preliminary affirmative determination, the CEO:

(a) must have regard to:

- (i) The application concerned
- (ii) Any submissions concerning publication of the notice that are received by Customs within 40 days after the date of initiation of the investigation

(b) **may have** (our emphasis) regard to any other matters that the CEO considers relevant

As mentioned in 269TD(2)(b), the CEO **may have** regard to any other matters considered relevant on whether or not to apply or extend a PAD determination.

We believe that this discretion should also extend to exempting goods that are not substitutable with those produced by the Australian industry when made TCO’s exist.

Summary

Based on the;

■ current made and operative Tariff Concession Orders ■
■

- above mentioned supportive administrative procedure and legislation,

ATM seek your urgent consideration for the goods subject to the current TCO’s to have

■ a ‘nil’ security amount programmed into the Integrated Cargo System (ICS)
for this material that is being ■
■

- be excluded from the goods under consideration in the broader investigation.

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

Yours truly

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