

OneSteel Australian Tube Mills Pty Ltd
ABN 21 123 666 679

Level 40, 259 George St, Sydney NSW 2000
GPO Box 536, Sydney NSW 2000, Australia

P 02 9239 6666
F 02 9251 3042



8th April 2013

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

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09 April 2013

Public File

Dear Joanne,

Alleged Dumping of Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel Exported from the People's Republic of China, the Republic of Korea and Taiwan

Statement of Essential Facts No 190

This submission is made on behalf of OneSteel Australian Tube Mills (ATM) to highlight several significant concerns with the Statement of Essential Facts (SEF) 190 that was published by Australian Customs and Border Protection Service (CBP) on the 18th March 2013.

ATM sets out its concerns as below

1. Customs proposed recommendation for the treatment of products covered by Tariff Concession Orders

ATM submits that CBP's current proposition

*"not to recommend to the Minister that an exemption be granted for goods detailed in TC 1243148....because TC1243148 will expire on 31st May 2013".....so it is **likely** [our emphasis] the TCO will no longer be in force by the time any measures are imposed*

However, customs and Border Protection is proposing to recommend to the Minister than an exemption be granted for goods covered by the

description in TC 1242989 as it does not have an expiry date and will still be in effect at the time of any measures being imposed”¹.

ATM supports CBP’s position that TC 1242989 be exempt from any dumping measures but argues that not recommending an exemption for TC1243148 is flawed for a number of reasons;

- (a) The proposition is based on an assumption that the TC 1243148 is **likely** to be no longer in force by the time measures are applied. This is incorrect.

- The expected expiry date of TC1243148 is the 31st May 2013 which is after the last date that the Minister is due to make his decision which is the 30th May 2013.

- Even if the Minister delays his decision beyond the 30th May 2103, the note at the bottom of TC1243148 references an expected operative period from the 13 November 2012 to the 31 May 2013.

- In addition there is no legal provision for a TCO simply expiring. The relevant legislation is S269(3) which provides that:

Subject to the operation of s.269SA(1)_ a TCO continues in force until it is revoked under s269SC or s269SD

Both of these provisions require certain procedures to be followed including providing interested parties with an opportunity to make submissions opposing revocation.

- (b) The proposition is unjust and punitive on the basis that if an exemption is not granted for TC1243148, dumping measures will apply back to the 6th of Feb 13. This is well before the expected expiry date of the 31st May 13 and imposes dumping measures on products that are clearly identified as having no domestic substitutable alternative. As a logical consequence there could have been no material injury to the Australian Industry.
- (c) The proposition is inconsistent with the treatment proposed for all other TCOs that are either currently operative or under application. Revocation

¹ SEF 190 p37

applications for TCO's can be lodged at any time, yet CBP are proposing to recommend that they be exempt from dumping measures and that an existing TCO with an expected expiry date not be exempt.

ATM's primary submission is that Customs recommends that the Minister exempt from dumping measures the galvanised hot rolled coil products that are covered by both TC 1243148 and TC 1242989.

2. Custom's Assessment of Like Goods

ATM submits that CBP have erred in their finding that Zinc Coated Hot Rolled Coil (HRC) and Zinc Coated Cold Rolled Coil (CRC) are like goods. The basis for our submission is that they are not like goods because they fail to meet the criteria of all four of the tests for like goods;

- i. Physical Likeness
- ii. Commercial Likeness
- iii. Functional likeness
- iv. Production likeness

as outlined in both SEF190 p 23 and Customs Dumping and Subsidy Manual² ;

ATM outlines below key areas where galvanised hot rolled coil and galvanised cold rolled coil differ in all four criteria.

i. Physical likeness:

Galvanised HRC and Galvanised CRC products are not physically alike due to the temperatures at which they are rolled creating a difference in their grain structures, strain hardening and residual stress.

To ignore this difference would be akin to arguing that graphite and diamond are physically the same as they have the same chemical composition.

These physical differences of the grain structure between galvanised HRC and galvanised CRC result in different mechanical properties and this affects the way the steel performs.

- BlueScope's glossary on its website states that Cold Rolling

² CBP Instructions and Guidelines – Dumping and Subsidy Manual August 2012 p 9&10

“distorts the grain structure of the steel significantly and therefore a loss of ductility results.”³

This loss of ductility and /or subsequent heat treatment makes cold rolled coil and cold rolled annealed coil, unsuitable for the majority of Structural tube applications.

The Australian Structural Tube Standard AS/NZS 1163:2009⁴ stipulates that only Hot Rolled strip is suitable (steel shall be fine grained and made from fully killed, continuously cast steels. The coil shall be produced on a hot strip mill). This is required to meet the structural ductility requirements of Australian Design Standards and maintain public safety.

A comparison of the mechanical properties of the BlueScope manufactured galvanised cold rolled product and grades used for the production of the higher grade AS/NZS1163:2009 C450L0 tube will show a substantial difference in the mechanical properties and that the goods are materially different.

Other physical differences between HRC and CRC include:

- The coil radius of galvanised HRC is generally larger than galvanised CRC.
- The inner coil diameter of galvanised HRC is larger than galvanised CRC.
- Cold rolled galvanised coil thicknesses are generally thinner than galvanised Hot rolled coils.

ii. Commercial likeness:

HRC and CRC are not commercially alike, a fact not disputed by BlueScope.

This is largely due to the fact that CRC has additional production steps that add to the cost and the fact that it has different end market applications.

International benchmarks price reports such as SBB and CRU show separate prices for CRC and HRC because the goods are not alike. The difference in the benchmark prices is approximately US\$80-\$100/t.

iii. Functional likeness :

The different physical properties of HRC and CRC result in them having different functional uses.

³ <http://www.bluescopedistribution.com.au/steel-guide/glossary>

⁴ Refer attachment 1

The thinner gauges, higher tensile and lower ductility of galvanised CRC means that it is ideally suited for roofing and wall cladding, guttering, signs, the manufacturer of home appliances, car parts, equipment to store and transport materials, and packing implements.

Galvanised HRC is used in Australia for the manufacture of structural tube applications where the combination of strength and ductility is required. Some galvanised CRC can be used in tubing for furniture or if annealed and softened for lower grade applications but this is a very small segment of the market and doesn't apply to higher grade structural applications.

iv. Production Likeness:

Whilst HRC is a feed material for galvanised CRC the subsequent production steps that cold rolled coil undergoes means that their production is fundamentally different.

For galvanised hot rolled coil, the rolling occurs at temperatures above the recrystallization temperature of the steel, whereas cold roll coils are rolled at temperatures below the recrystallization temperature.

The [REDACTED] of cold rolled galvanised steel that have been used for [REDACTED] applications have required a further annealing⁵ process to overcome the lower ductility. This annealing renders it unsuitable for the bulk of the Structural Hollow section market [REDACTED] which requires a higher strength.

Having set out the reasons why galvanised HRC and galvanised CRC should not be classified as like goods ATM disagrees with Customs assertion that

Customs & Border Protection advises that it is not possible to amend the wording of the goods description after an investigation is initiated ...

There are no authorities' given for this proposition and yet there are good reasons why such amendments to the goods description should not only be available in all cases, but also certainly should be in some cases, such as here. A goods description in an application for dumping duties is no more immutable than any other material contained in that document. The central purpose of Division 2 of Part XVB of the Customs Act 1901 (Cth) (Act) is to examine, analyse, investigate, verify and otherwise assess all aspects of the application to ensure that such key objectives as fair price comparisons and persuasive causation analyses are achieved. If the goods description put forward by the applicant is incompatible

⁵ The annealing process softens the material and improves the properties of this strip making it more suitable for use in tubular applications but reduces the strength

with meeting those objectives it must be modified or changed, as Customs itself has done in the past⁶ and as the Appellate Body of the WTO has implicitly recognized⁷.

The assessment of material injury and its causes must be limited to a fair and realistic comparison of goods of the same kind. Any broader basis of comparison involves a substantial risk that exported goods that are not causing any material injury may be captured by the terms of a dumping notice.

ATM's secondary submission is that if Customs fails to recommend to the Minister that both TC1243148 and TC 1242989 be exempted from dumping measure then there must be a redefinition of the goods under consideration that excludes galvanised hot rolled coil.

3. Material Injury and Causation

ATM further contend that there are no grounds for continuing a separate anti-dumping investigation into galvanised hot rolled coil.

The claim by Customs that it ...has assessed material injury at macro and micro level⁸ ... appears to be an aspirational statement rather than an accomplished fact as there is no evidence of micro causation assessments in the SEF. In any event the limited examination made by Customs in relation to galvanised hot rolled for the pipe and tube sector is insufficient to reach a conclusion that dumping duties should be imposed on the product.

Accordingly any continuing investigation of allegations of dumping of coated steels should exclude galvanised hot rolled coil.

⁶ for example: REP 41

⁷ EC-Bed Linen: DS 141/AB/R: para 62

⁸ SEF 190; p.82

ATM submits that BlueScope has not suffered material injury as a result of imports of galvanised HRC during the injury or investigation period. BSL has been and to this date is still, unable to supply commercial quantities of galvanised coil product suitable for the majority of the Hollow Structural Sections market sector.

In fact ATM was the only Australian producer of galvanised HRC during both the injury and investigation period.

The graph below shows ATM's quarterly internal production of hot rolled galvanised coil.

Confidential – graph

Clearly there was no material injury to BlueScope from imported galvanised hot rolled coil as ATM was a domestic producer during that time.

Furthermore BSL have not suffered material injury in the period from the end of the investigation, 30th June 2012, to the publishing of the SEF on the 18th March 2013, as evidenced by two operative Tariff Concession Orders.⁹

Our third submission is that if Customs conducts a separate dumping investigation of the galvanised hot rolled coil there are no grounds on which Customs can reasonably conclude that two of the criteria essential for the publication of a dumping notice – the existence of material injury and a causal link between any such injury and the export to Australia of galvanised hot rolled coil – are satisfied.

⁹ TC 1242989 & TC1243148 on p 129 SEF 190

In Conclusion

ATM reiterates its three key submissions:

1. That CBP must recommend to the Minister that galvanised hot rolled coil products that are covered by TC 1243148 and TC 1242989 be exempt from dumping measures as they are currently operative and it would be unjust and inequitable to do otherwise as there was no material injury to BlueScope.
2. That if Customs fails to recommend to the Minister that both TC1243148 and TC 1242989 be exempted from dumping duties then there must be a redefinition of the goods under consideration that excludes galvanised hot rolled coil as they are not like goods to the galvanised cold rolled goods that BlueScope produce.
3. That if Customs does conducts a separate dumping investigation of the galvanised hot rolled coil there are no grounds on which Customs can reasonably conclude that two of the criteria essential for the publication of a dumping notice – the existence of material injury and a causal link between any such injury and the export to Australia of galvanised hot rolled coil – are satisfied as ATM manufactured its own hot rolled galvanised coil during the injury and investigation period.

Please contact me if you have any questions in relations to the above submissions for ATM.

Yours truly

Matt Condon

Manager Trade Measures

OneSteel

P +61 2 8424 9880

M +61 409 861 583

E condonm@onesteel.com

Enclosed; Attachment 1 – AS/NZS1163:2009

3.12 Transverse direction

Direction at right angles to the longitudinal weld seam.

3.13 Unit

Length of hollow section.

4 NOTATION

The symbols used in this Standard are listed in Table 1.

5 DESIGNATION

All grades shall be designated in the format shown in the following example:

AS/NZS 1163–C350L0

where

AS/NZS 1163	=	number of this Standard
C	=	cold-formed sections
350	=	minimum yield strength in MPa (see Table 6)
L	=	guaranteed impact properties of the material (when applicable)
0	=	low temperature impact test at 0°C (when applicable)

6 MANUFACTURING PROCESS—STEEL FEED

The steel shall be made by the basic oxygen process or an electric process at the steel manufacturer's option. The steelmaking process shall be shown on test certificates.

Additional refining by vacuum arc remelt, electroslag refining or secondary steelmaking practices such as vacuum degassing or calcium injection, or both, is permitted.

The steel shall be fine-grained and be made from fully killed, continuously cast steels. The coil shall be produced on a hot strip mill.