

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

Public File

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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

**Alleged Dumping of Coated Steels: Response to Statement of Essential Facts
No.190 (SEF)**

Coil Coaters submits that in respect of unchromated, aluminium zinc/zinc coil with widths of greater than 600mm (**unchromated coated coil**) some of the inclusions in the SEF do not reflect the realities of the market in Australia and the significance of this market issue to this case and, in particular, the position of domestic manufacturers such as Coil Coaters. Accordingly, Coil Coaters submits that the SEF requires significant amendment in this regard before being presented as a final report to the Minister.

The first issue in the SEF which Coil Coaters submits needs review is the following statement by Customs and Border Protection (**Customs**):

*"Customs & Border Protection advises that it is not possible to amend the wording of the goods description after an investigation is initiated ..."*¹

There are no authorities for this proposition and yet there are good reasons why in appropriate circumstances, such as the present case, amendments to the goods description should be made. 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 with meeting those objectives it must be modified or changed, as Customs itself has done in the past² and as the Appellate Body of the WTO has implicitly recognized³.

The significance of chromation of coil products is that it is a chemical treatment to the coil which identifies that the coil product has reached the final stage in its processing (other than roll forming) and is ready for end user use. Thus, the unchromated coated coil which Coil Coaters imports is an intermediate product unfit for any commercial purpose other than as the key feed product for paint line facilities established to produce painted coil products. Consequently, unchromated coated coil is quite separate from the market for the range of other products included in the original goods descriptions formulated by the applicant. Of the three domestic manufacturers in this discrete painted coil market, one is the applicant's own paint line facility which purchases unchromated coated coil produced by its own upstream business, and the remaining two purchasers of unchromated coil, including Coil Coaters, are obliged to source imported material. While both locally sourced and imported unchromated coated coil are like goods,

¹ SEF 190: p.33

² for example: REP 41

³ EC-Bed Linen: DS 141/AB/R: para 62

they are neither identical to, nor do they closely resemble, other classes of goods included in the application. In addition, most importantly, unchromated coated coil is, in the terms set out in ss.269TG(2) and (3) and 269TAE(1) and (3) of the Act, 'goods of a kind' different from the other kind(s) of goods falling within the applicant's broad product descriptions.

The significance of this statutory terminology is that it emphasises that the assessment of material injury and its causes must be limited to a fair and realistic comparison of goods of the same kind and that it recognizes that a broader basis of comparison involves a substantial risk that exported goods that are not the cause of any material injury may be captured by the terms of a dumping notice.

In the present case there is also a substantial risk of applying anti-dumping legislation in a manner that results in the application of duties to goods that the applicant itself has implicitly identified as not causing injury. The applicant is a very substantial Australian manufacturing operation that can be assumed to be capable of identifying a course of action that optimizes commercial returns. As can be seen from our market analysis below the applicant has chosen to forego sales of unchromated coated coil on the basis of a commercial judgment that any consequences of this action will be more than compensated for by increased returns from sales of painted coil. Leaving aside any issues of competition law, this is a choice that the applicant is entitled to make but it cannot then claim that import demand resulting directly from the exercise of that choice is the cause of any injury.


In the present circumstances our primary submission is therefore that there must be a redefinition of the goods under consideration that excludes unchromated coated coil and we further contend that there are no grounds for continuing a separate anti-dumping investigation into exports of that product. The claim by Customs that it

"...has assessed material injury at macro and micro level (sic) ..." ⁴ 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 very limited examination made by Customs in relation to unchromated coated coil is clearly insufficient to reach a conclusion that dumping duties should be imposed on that product. Accordingly any continuing investigation of allegations of dumping of coated steels should exclude imported unchromated coated coil.

Our secondary submission is that even if Customs conducts a separate dumping investigation of the unchromated coated 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 unchromated coil – are satisfied. Before considering specific issues related to those criteria it must be noted that all the evidence before Customs supports the conclusion that the applicant has not seriously pursued - in a commercial sense - the opportunity of supplying unchromated coil to Coil Coaters or other Australian users of these goods. We have previously supplied Customs with ample evidence to demonstrate this point and now attach a copy of the applicant's latest uncommercial offer dated 27 March 2013. This offer is in some respects even less attractive than the applicant's previous uncommercial offers to supply in 2011 and 2012.

The full context of the applicant's latest offer dated 27 March 2013 can be seen summarized in the following table which compares the key prices applicable in the Australian market:

⁴ SEF 190; p.82

	BlueScope's latest <i>unchromated</i> coated coil supply offer to Coil Coaters for 0.42 x 938 G550 AZ 150 product	BlueScope's <i>chromated</i> coated coil supply offer to distribution businesses in the Arrium/OneSteel Group of Companies (other than Coil Coaters) for 0.42 x 938 G550 AZ 150 product	BlueScope's supply offer to the Australian market for its similar finished painted coil products
Cost AUD	\$ [REDACTED] /t	\$ [REDACTED] /t	\$ [REDACTED] /t to \$ [REDACTED] /t
Value add			

Notes to above:

- Prices are for the product specified only and are by way of example. The other unchromated coated coil products prices are different but conceptually similar.
- The progressively increasing value add in the manufacture of the coated coil is demonstrated by the last row in the table above.
- If the proposed trade measures for unchromated coated coil are implemented then Coil Coaters' total Cost to Make and Sell for its finished painted coil products using imported unchromated coated coil (including all trade measures and manufacturing conversion costs, as well as other costs) will be [REDACTED] [Confidential cost comparisons] [REDACTED]
- Coil Coaters' actual costs are available upon request. BlueScope's offered prices are, to the extent not provided above, available from BlueScope.

It is obvious that this latest offer by the applicant confirms the observations made by Customs in the SEF⁵ that the applicant is not only purporting to seek higher prices than those transfer prices charged to its own paint line facility but is also purporting to obtain a higher price for a manufacturing input than it charges to end

⁵ Ibid; p.38

users for the finished manufacturing output. The response by Customs to these observations demands to be quoted in full:

*"While the quote is higher than [for] chromated product lines that have undergone further processing, the increase in price despite less manufacturing process can be explained by market demand for the product and the fact that it is used to produce a much higher priced product (being painted aluminium zinc coated steel). That is, BlueScope has priced supply of the product according to its value in the market rather than the cost of production. This is an acceptable commercial practice."*⁶

Maximising sale prices is indeed a normal commercial sales practice in the context of a genuine seller seeking to conclude a sale. The clear evidence, however, is that the applicant is deliberately proposing a price and other terms and conditions that it knows are completely uneconomic from the perspective of a potential purchaser. The applicant is not seeking the highest price that the market will bear, it is proposing a price that it knows is more than the market can bear. That the applicant has not priced its unchromated coated coil product according to its value is demonstrated by the fact that it has not realized a single external sale of unchromated coil within Australia (apart from the single isolated incident identified in the SEF⁷). That the applicant is pricing in this deliberate way for this market is also demonstrated by the fact that its prices for *chromated* coil to other businesses within the Arrium Group are substantially less than the prices for *unchromated* coated coil to Coil Coaters.

The apparent rationale for the applicant's uncommercial price offers to Coil Coaters for unchromated coated coil is that the applicant considers this course of conduct to be in its overall economic interests - presumably because potential purchasers may compete with the applicant in the downstream market for finished

⁶ Ibid; p.38

⁷ Ibid; p.38

painted materials. It is Coil Coaters' submission that this is not a course of conduct that entitles, warrants or justifies trade measures support in respect of unchromated coated coil.

Material Injury

Both injury and the materiality of injury are relative concepts. In the case of unchromated coil steel, however, there is no relativity benchmark for assessment of injury because, both before and throughout the injury investigation period, the applicant has not supplied Australian manufacturers with unchromated coated coil. Consequently there is no relative detriment, a position which is reinforced by evidence presented to and gathered by Customs that illustrates a static market situation. There has been no significant change in the volume of exports of unchromated coated coil from nominated sources during the investigation period and the applicant enjoys a market share of about █% of all such products used in Australia. In the market for the finished product (painted coil), which the applicant has excluded from the description of the goods under consideration, the market share of the two producers other than the applicant is around █% and any market share growth in this segment is attributable to imports of pre-painted product which now account for about █% of the segment.

The applicant's claim of injury is inconsistent with this portrait of the market for unchromated coated coil and even if, contrary to the evidence, some detriment was conceded or found it could never be reasonably assessed as 'material'.

Causation

In the first place, it is clear that the applicant's overall claims in relation to causation in this inquiry and in other recently concluded and concurrent inquiries depend on its Import Parity Pricing (IPP) approach. Customs has emphasised this IPP policy as the alleged primary support for many of its recent causation findings

(excluding, significantly, the automotive sector in the recent hot rolled coil case) and has done so again in this SEF. Manifestly, however, the application of that IPP strategy cannot be extended to the market for unchromated coated coil as even Customs concedes in the passage quoted above that the pricing that the applicant presents to potential Australian customers such as Coil Coaters bears absolutely no relationship to import prices for unchromated coated coil. In this context it is also noteworthy that the applicant has declined to respond to a recent request from Coil Coaters for unchromated coated coil price quotations based on IPP.

Secondly, Customs has failed to consider any 'other factors' that may have caused any alleged detriment to the applicant's performance as a producer of unchromated coated coil. In addition to such obvious factors as the economic downturn, the restructure of the applicant's operations and the appreciation of the Australian dollar, Customs must have regard to such critical elements as the impact of imports of pre-painted product and the trade restrictive practices of the applicant. The former issue is referred to above and the data required for a full assessment is accessible by Customs. The latter issue is covered by s.269TAE(2A) of the Act which stipulates that *...the Minister must consider whether any injury to an industry...is being caused or threatened by...restrictive trade practices of...Australian producers of like goods.* This provision reflects the requirements of Article 3.5 of the Anti-Dumping Agreement and - as the many parties to that agreement have diverse competition laws - the phrase 'restrictive trade practices' in the Australian context is to be given its common or ordinary meaning and is not restricted to any actual or implied construction of those words in national competition law. Thus, what clearly appears to be a constructive refusal by the applicant to supply unchromated coated coil to Coil Coaters is a practice that patently restricts trade and causes self-injury to the applicant in its production of goods of that kind. For the purposes of dumping legislation this self-injury must not be attributed to exports and after the application of the non-attribution principle there is no remaining ground on which any link between exports and alleged injury to the applicant can be based.

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Conclusion

Even if Customs does not accept our primary submission to immediately cease any further investigation in so far as it relates to unchromated coil, there is no evidence of either material injury or causation sufficient to sustain a recommendation to the Minister that a dumping notice be published in respect of that unchromated coil. In the event, however, that contrary to all evidence such a dumping notice is published, Coil Coaters may exercise its right to petition the Minister for an exemption from any dumping duties.

Yours truly,

A black and white image of a handwritten signature, which appears to read "Matt Condon", on a dark background.

Matt Condon

Manager Trade Measures

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Encl. Confidential Attachment