

Canberra
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
ACT 2609 Australia

Telephone +61 2 6163 1000
Facsimile +61 2 6162 0606
Email: info@moulislegal.com
www.moulislegal.com

9 April 2013

Ms Nicole Platt
Case Manager
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
Canberra
Australian Capital Territory 2601



commercial+international

By email

Received
09 April 2013

Dear Nicole

Dongbu Steel Co., Ltd – alleged dumping of coated steel products Response to Statement of Essential Facts 190

We refer to the publication of the Statement of Essential Facts No 190 ("SEF 190") in this matter on 18 March 2013.

Our client Dongbu Steel Co., Ltd communicated directly with you in relation to the material injury allegations of the Australian industry producing the subject coated steel products ("BlueScope Steel") under cover of its letter dated 20 December 2012.

In light of those submissions, and the thinking emanating from SEF 190, our client has instructed us to provide the following comments on its behalf for your further consideration.

In its 20 December letter, Dongbu Steel drew attention to restrictive trade practices of the Australian industry. It did so under headings referring to allegations that the Australian industry had refused to supply unchromated coated steel to Australian customers, and that it had attempted to obstruct the market entry of a competitor to its painted steel business. In relation to the first of these claims, SEF 190 notes:

BlueScope's sales data shows a one off sale of a small quantity to an independently operated related entity during the investigation period, which BlueScope explained was to assist when its regular supply failed. No other sales of unchromated aluminium zinc coated steel to domestic customers were recorded during that period.

We believe this confirms that BlueScope Steel refuses to supply to certain Australian customers. However, SEF 190 suggests that this failure to supply can be explained by the fact that the price at which BlueScope offered unchromated coated steel to those customers was its value in the market, as follows:

The quote for supply has been examined by Customs and Border Protection. The quoted price has been compared to the manufacturing cost to produce the chromated unpainted product and the internal transfer price of the unchromated product from BlueScope to its paint line facility. The quote was also compared to the end user third party sales of the painted product by BlueScope to its customers. While the quote is higher than chromated product lines that have undergone further processing, the increase in price despite less manufacturing process can be explained by

NON – CONFIDENTIAL

market demand for the product and the fact that it is used to produce a much higher priced output 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.

By accepting that supply of unchromated coated steel is to be priced according to its value in the market, rather than the cost of production, SEF 190 is in express agreement with the submission made by Dongbu Steel in its 20 December letter, viz:

If valued at other than cost, unpainted coated steel which is internally transferred to BlueScope's painted steel lines should be valued at a level which reflects the proportionate profitability of the product for which it is the substrate.

BlueScope produces – on some reports¹ – 600,000MT of unchromated coated steel which, despite being goods under consideration in this investigation, is not reported as part of its production of the goods under consideration. By not selling any of that production into the market, it either deprives itself of income on unchromated coated steel sales, or boosts its profitability on painted coated steel sales. If it chooses the latter, it has deprived itself of income - a factor causing injury which is unrelated to dumping. The amount of the deprivation should be valued and offset against any claimed financial harm. Conversely, if that production of unchromated coated steel is converted into highly profitable painted coated steel, then the market value of the internal transfer must be reflected in BlueScope's financial accounts for the goods under consideration.

As a final comment, Dongbu Steel believes that the application of the Australian industry, and the procedures and administration of the investigation which followed initiation, have contributed to a confused approach towards margin calculation and injury analysis. It appears self-evident that there are different types of coated steel, with different applications and markets, and with quite distinct price points. Overlaid on that variety of products and markets is a demonstrated inability of the Australian industry to produce certain types of coated steel, or to produce beyond certain dimensions. The indiscriminate nature of the application has masked differential impacts in different sectors, and (we would assume) has also heavily distorted margin analysis, in random ways. As a result, the investigation very unfortunately presents as a broad industry protection exercise, rather than as a dumping investigation into the impact of specific goods in specific markets to which those goods relate.

The public record demonstrates that there is a large amount of dissatisfaction amongst interested parties about the way in which the Australian industry framed its "like goods" claim, and the way that Customs responded to that claim. Dongbu Steel believes that this dissatisfaction is understandable in the circumstances.

Yours sincerely



Daniel Moulis
Principal

¹ "The point we wish to make about this is that the combined Applications appear to fall short of including the actual production of coated steel by the Complainant by 600,000 MT – a whopping 110% less than its true production level. This is coated steel which is transferred to the Complainant's paint lines. These production volumes of coated steel – whether GI or GL – cannot be excluded from the respective investigations into those products." (POSCO submission dated 15 December 2012, pages 14 and 15)