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Ms Joan Fitzhenry
Member
Anti-Dumping Review Panel
C/o Legal Services Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Ms Fitzhenry

For Public File

Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel exported from the People's Republic of China

1. Introduction

I refer to the notice published on 19 September 2013 concerning an application for review by the Government of China ("GOC") in respect of decisions by the Attorney General to publish dumping notices and countervailing notices in relation to each of zinc coated (galvanised) steel and aluminium zinc coated steel exported from the People's Republic of China ("China").

The ground for review is that the decisions were not the correct or preferable decisions.

The applicant detailed various reasons in support of this ground that include the following:

- That the situation in the domestic markets for coated steel in China was not unsuitable for determining a price for normal value purposes (i.e. in WTO parlance, that there was no "particular market situation" in the Chinese domestic markets) for the coated steel products concerned;

- That the Minister determines that the costs of the Chinese exporters are the costs set out in their financial records, without exception; and

- That the alleged subsidy programs 1, 2 and 3 do not exist.

BlueScope Steel Limited ('BlueScope") is the applicant company that has sought and requested the application of anti-dumping and countervailing measures on zinc coated (galvanised) steel and aluminium zinc coated steel exported from China and takes this opportunity to specifically address each ground of review identified on behalf of the GOC.

2. BlueScope's representations concerning GOC's grounds for review

BlueScope notes that the GOC's response to the Government Questionnaire ("GQ") included some responses that were either "*incomplete*" or "*were answered inadequately*". Additionally, in "*some parts of the questions, where the GOC made certain claims, it did not provide supporting evidence*." The GOC was also provided with a Supplementary Questionnaire for completion in order to seek completion and/or additional information due to inadequate responses. Customs and Border Protection considered that for certain questions, the *"GOC did not answer fully".*

(i) Market situation finding

The GOC contests the Attorney General's decision of a particular market situation finding in China in respect of each of the zinc coated (galvanised) steel and aluminium zinc coated steel investigations. The GOC asserts that the conclusions are "*factually and legally incorrect*".

The GOC further states that there is "*no valid rationale*" for the particular market situation finding.

Trade Measures Report No. 190 ("Report No. 190") details Customs and Border Protection's findings concerning a particular market situation for zinc coated (galvanised) steel and aluminium zinc coated steel sold in China. Customs and Border Protection determined that the GOC exerted "*numerous influences on the Chinese iron and steel industry that substantially distorted competitive market conditions in the iron and steel industry in China*". The identified influences that were evident in the Chinese iron and steel industry in Investigation No. 177[1] (and according to the GOC none of the policies/catalogues/plans have changed since then) included:

(i) The National Steel policy ("NSP");
(ii) A Blueprint for Steel Industry Adjustment and Revitalisation;
(iii) Directory Catalogue on Readjustment of Industrial Structure; and
(iv) The 12th Five Year Plan for the Iron and Steel Industry.

The GOC did not identify any changes to the policies and programs identified in Investigation No. 177. Customs and Border Protection remained satisfied that the GOC continued to exercise influence over the Chinese iron and steel industry via the policies and programs identified.

In addition to the policies and programs identified in Investigation No 177, Customs and Border Protection examined the impact of the GOC's import and export policies on zinc coated (galvanised) steel, aluminium zinc coated steel and the key raw material industries in China.

The key raw materials used in the manufacture of galvanised steel and aluminium zinc coated steel are hot rolled coil ("HRC") and cold rolled coil ("CRC"). CRC is produced by further manufacturing HRC. The main raw materials used in the production of HRC are:

(i) Coke;
(ii) coking coal;
(iii) iron ore; and
(iv) scrap metal.

[1] Hollow Structural Sections exported from China, Trade Measures Report No. 177.

A fully integrated coated steel manufacturer produces galvanised steel and/or aluminium zinc coated steel from the identified main raw materials (i.e. coking coal, iron ore and scrap metal). A partially integrated producer may purchase coke (rather than manufacture itself) and iron ore as raw materials. A non-integrated producer will purchase HRC from a steel manufacturer and further value-add to produce coated steel products. Investigation No 177 confirmed that HRC was sold at less than adequate remuneration in China. The GOC's response to the GQ confirmed that its policies and programs for the iron and steel industry had not changed since Investigation No. 177, hence HRC continues to be sold at less than adequate remuneration in China during the investigation period applicable to the galvanised steel and aluminium zinc coated steel inquiries (i.e. 1 July 2011 to 30 June 2012).

Customs and Border Protection analysed the impact of import and export taxes on the main raw materials used in coated steel production. Customs and Border Protection stated that in respect of coke (of which China is the largest producer in the world) the "*GOC's policy of imposing a high export tax; providing no VAT rebates on exports; applying export quotas; and imposing no import taxes; restricted the supply of coke to the international market*[2]". The policies of the GOC created an oversupply of coke in China and drove the domestic price of coke downwards. Customs and Border Protection determined that the domestic price of coke in China in the investigation period was approximately 38 per cent lower than the export price. The Chinese export price was comparable to the export prices of other exporting countries even though predominantly of a lower quality or grade.

China is one of the largest producers of coking coal globally. The impact of export taxes, no VAT rebates on exports; and no import taxes on coking coal caused the domestic price of coking coal in China to be approximately 8 per cent below the Chinese export price throughout the investigation period.

In respect of iron ore, Customs and Border Protection concluded that the 10 per cent export tax impost restricted the export of iron ore from China. As China accounts for 60 per cent of global demand for iron ore, it is not surprising that no import duties apply to iron ore imported into China.

Customs and Border Protection confirmed a 40 per cent export tax applies to scrap steel, no VAT rebate on exports, and no import duty, indicating that the GOC restricts the export of scrap steel.

Customs and Border Protection found that the price of HRC (from its Investigation No 177 and by the GOC's confirmation that nothing had changed over the intervening period) and the Chinese domestic prices for the major raw materials coke, coking coal, iron ore and scrap steel, has been influenced by the GOC during the investigation period. The intervention by the GOC was evident via the imposition of taxes, tariffs, export quotas, selective VAT on export exemptions and "*other indirect measures including the GOC's overarching macroeconomic policies and plans*" which "*impacted on the supply and distorted the cost of the raw materials coke, coking coal, iron ore and scrap metal, which in turn has distorted the price of HRC*", the intermediate substrate for galvanised steel and aluminium zinc coated steel. HRC represents approximately 60-70 per cent of the cost of galvanised steel and aluminium zinc coated steel.

Relevantly, Customs and Border Protection considered the following:

> *"…the most influential factors were the: 40% export tax on coke and scrap metal; and the 0% VAT rebates on HRC, coke, coking coal and iron ore. These factors have led to increase in the domestic supply of those goods, moving the supply curve to the right by*

[2] Refer Trade Measures Report No. 190. P.152.

> *distorting the costs of upstream raw materials to produce HRC. As such the price of HRC used in the production of galvanised steel and aluminium zinc coated steel in China was also distorted*[3]."

To assess the impact of the GOC's intervention on Chinese domestic HRC prices, Customs and Border Protection contrasted the price of domestically produced HRC in China with prices in Korea and Taiwan (from cooperating exporters in the investigation). The comparison indicated that Chinese HRC prices were approximately 15 per cent below the prices paid for HRC by galvanised steel and aluminium zinc coated steel producers in Korean and Taiwan.

The comparative analysis of HRC prices in China with those in Korea and Taiwan affirmed Customs and Border Protection's assessment that the GOC's influence on raw material costs used in HRC manufacture had contributed to the prices of HRC being lower than it otherwise would have been but for the GOC's influence. Similarly, the suppressed prices for HRC in China (brought about by GOC influence) has also contributed to the domestic selling prices in China for galvanised steel and aluminium zinc coated steel being lower than they would have been without the GOC's intervention.

Customs and Border Protection concluded that because of the GOC intervention and that domestic prices for galvanised steel and aluminium zinc coated steel were lower than they otherwise would be, Chinese domestic selling prices for galvanised steel and aluminium zinc coated steel were "unsuitable" for normal value purposes (in accordance with s.269TAC(2)(a)(ii).

In its application for review, the GOC states that it "*finds no evidence about the impact of tariffs on coated steel prices in REP 190*", that Customs and Border Protection's analysis cannot show that the price of raw materials or the prices for coated steel in China were artificially low, and that the GOC rejects the comparison of HRC prices in China with HRC prices in Korea and Taiwan. These statements are denials of the available evidence that is supportive of Customs and Border Protection's assessment. The GOC was provided with a number of opportunities throughout the investigation to <u>demonstrate</u> that the GOC's policies and taxes did not influence raw material and HRC prices. As indicated by Customs and Border Protection, the GOC did not adequately answer a range of questions in the GQ and supplementary questionnaires.

BlueScope rejects the GOC's contentions that the Attorney General has not made the correct decision in his positive finding of a particular market situation finding for galvanised steel and aluminium zinc coated steel in China. The available information is supportive of the positive finding. The European Union's most recent decision in its investigation into certain organic coated steel where it also found that hot rolled steel and cold rolled steel prices in China "are not determined by market forces free from the GOC's interferences" is also supportive of Customs and Border Protection's assessment and the Attorney General's decision.

The Attorney general has made the correct decision with regards to a particular market situation for galvanised steel and aluminium zinc coated steel exported from China and it is the preferred decision.

(ii) Reasonably reflect competitive market costs

The GOC contends that Customs and Border Protection did not "*make any assessment or any proper assessment as to the competitiveness of the market relating to the 'costs associated with production or manufacture of like goods' for the Chinese exporters of coated steel, or whether the*

[3] Trade Measures Report No. 190, P. 161.

cost records of Chinese exporters of coated steel 'reasonably reflected' that cost in a competitive market.[4]"

BlueScope respectfully disagrees with this assertion.

As indicated, Customs and Border Protection compared HRC prices in China (for cooperating exporters) with prices for HRC in Korea and Taiwan. The Chinese HRC prices were approximately 15 per cent below the prices for HRC in Korea and Taiwan.

Customs and Border Protection also contrasted the Chinese domestic selling prices for the raw materials coke and coking coal and found that the Chinese domestic selling prices for coke were 38 per cent below Chinese export prices (a level similar to the export prices of other exporting countries). For coking coal, the Chinese domestic selling prices was approximately 8 per cent below the Chinese export price for coking coal.

Customs and Border Protection's analysis indicated that the domestic selling prices in China for the major raw materials were influenced by the GOC. The GOC influence impacts the Chinese exporter's costs and Customs and Border Protection has correctly surrogated the HRC cost from an appropriate benchmark (in this instance the HRC costs for producers in Korea and Taiwan) in order to overcome the GOC influence on the Chinese coated steel manufacturer's costs.

The GOC's assertions that the Chinese exporters costs reasonably reflect competitive market costs cannot be sustained. Customs and Border Protection has demonstrated that the Chinese producer's costs for coated steel are **not free** from GOC influence. The Chinese producer's costs therefore, cannot be considered to reasonably reflect *marke*t costs (that is, costs established free of GOC influence).

The Attorney General has made the correct and preferred decision in respect of the assessment of the Chinese producers costs for galvanised steel and aluminium zinc coated steel.

(iii) Substitution of HRC costs

It has been argued by the GOC that Customs and Border Protection could not "surrogate" a HRC cost for a Chinese cooperative exporter "*because the producer does not buy that raw material on the market*".

Whilst BlueScope recognises Customs and Border Protection's comments that refer to sales of HRC by integrated producers to non-integrated producers and the inference that the selling prices of the HRC by the integrated producers do not reflect competitive market costs, the compelling reason for using a surrogate HRC selling price in the integrated producer's costs is that the cost of the intermediate HRC feed is tainted by the GOC's influence on raw material costs (coking coal, coke, iron ore and scrap steel).

It is for these reasons that the integrated producer's HRC cost must be surrogated to overcome the influence of the GOC on the raw material costs.

Additionally, BlueScope would also highlight the findings of other administrations in relation to HRC prices in China – the USA, EU and Canada have all concluded that HRC in China is not determined in a competitive manner due to government interference.

[4] GOC Application for Review, P.17.

BlueScope considers that the Attorney General has made the correct and preferred decision as it relates to the treatment of the HRC costs for the integrated producer in China.

(iv) Public Bodies (GOC reference Findings 4 and 5)

Customs and Border Protection referred to the GOC's submission in response to SEF No. 193 concerning the preliminary public body findings. As quoted by the GOC, Customs and Border Protection did not base its determination on public bodies solely on the reinvestigation of the original HSS case (Trade Measures Report No. 203).

Customs and Border protection used the *indicia* contained in WTO Appellate body in DS379. Appendix 1 to Report No 193 confirms that Customs and Border Protection addressed the three *indicia* identified in DS379. The indicia were addressed in Report No 203 as HRC was the key raw material substrate in HSS manufacture where a positive finding on HRC producers as public bodies was made. In the current investigations – where HRC is also the main substrate used in galvanised steel and aluminium zinc coated steel, Customs and Border Protection extended the public body findings on HRC to also apply to the coated steel inquiries and also stated that the evidence and reasons in Report No 203 as it applies to HRC "*are equally applicable to SIE producers and suppliers of coking coal and/or coke*".

Report No 203 referred to the three indicia of DS379, namely:

- where a statute or other legal instrument expressly vests government authority in the entity concerned;
- where there is evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority; and
- where there is evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

Customs and Border Protection was satisfied that the GOC submissions and evidence that the HRC suppliers in China are "*constrained by, and abiding by, GOC policies, plans and measures*" and was satisfied that *indicia* 2 and 3 were satisfied and supportive of the public bodies finding.

BlueScope agrees with Customs and Border Protection's assessment that the available information is supportive of a positive determination that HRC suppliers in China (as well as suppliers of coke and coking coal) are influenced and constrained, and abide by, the GOC's policies, plans and measures.

It is BlueScope's view that the Attorney General has made the correct and preferred decision on public bodies in Report No. 193.

(v) Countervailable benefit conferred

The GOC has suggested that the Attorney General's decision concerning the conferring of a benefit for Programs 1, 2 and 3, was incorrect. The GOC has referred to the Trade Measures

Review Officer's finding in the Review of Report No. 177 where the Review Officer suggested that an adequate return on investment would be a valid consideration as to the benefit received.

BlueScope disagrees with this assertion (and the Review Officer's comments).

A benefit can be derived by the receipt of a good at less than a prevailing selling price. In a competitive market, prices for a good are relatively similar. In the coated steel inquiries, Customs and Border Protection has established that the Chinese producers have received key raw materials (HRC, coke, coking coal, and scrap steel) at less than market prices (i.e. at less than adequate remuneration).

The Attorney General has made the correct and preferred decision concerning raw material goods at less than adequate remuneration in Report No. 193.

(vi) Specificity

The GOC has focused on suggesting that the provision of HRC to enterprises cannot be described as "specific" as it does not exclude any enterprises from receiving it. It is further suggested *"that all downstream producers of anything for which HRC is used benefit from the subsidy, thereby establishing the universality of the subsidy and contradicts the alleged specificity of the subsidy*".

BlueScope submits that the GOC is seeking to falsely broaden the categorisation of the HRC benefit.

The benefit of HRC at less than adequate remuneration flows to only participants in the Chinese steel industry. It is a steel-industry specific benefit. The benefit does not extend beyond the Chinese steel industry. The benefit aids the Chinese steel industry in offering lower prices against global competitors. The HRC benefit is specific to the Chinese steel industry only.

Similarly, the specificity associated with the provision of coke and coking coal at less than adequate remuneration also provides a specific benefit to the Chinese steel industry producers of coke (that consume the coking coal) and Chinese steel manufacturers (that use coke in steel manufacture).

BlueScope considers the Attorney General has made the correct and preferred decision as it applies to specificity for programs 1, 2 and 3 as identified in Report No. 193.

3. Conclusions

The GOC has sought a review of certain of the Attorney General's decisions as contained in Reports No. 190 and 193. These include:

- (i) The positive finding of a market situation for galvanised steel and aluminium zinc coated steel in China (Report No. 190);
- (ii) Whether the exporters costs represent competitive costs (Report No. 190);
- (iii) The substitution of market HRC costs for Chinese HRC costs (Report No. 190);
- (iv) Whether Chinese entities that supply raw materials (HRC, coking coal and coke) are public bodies (Report No. 193);
- (v) Whether countervailable benefits were conferred in respect of the raw material inputs (Report No. 193); and

(vi) The specificity of countervailable benefits (Report No. 193).

BlueScope has examined the grounds for review of each matter identified by the GOC. BlueScope submits that in each matter the Attorney General has made the correct and preferred decision, and that the Attorney general's decisions should be affirmed.

If you have any questions concerning this submission or would like to discuss further, please do not hesitate to contact me on (02) 4275 3859.

Yours sincerely

Alan Gibbs
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