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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 exported from the Republic of Korea and Taiwan and
Aluminium Zinc Coated Steel exported from the Republic of Korea**

1. Introduction

I refer to the notice published on 19 September 2013 concerning applications for review of decisions by the Attorney General to publish a dumping duty notice in respect of the following:

- (i) for zinc coated (galvanised) steel exported from the Republic of Korea ("Korea") and Taiwan, appeals have been made by POSCO and OneSteel Australian Tube Mills Pty Ltd ("ATM"); and
- (ii) for aluminium zinc coated steel exported from Korea, an appeal has been made by OneSteel Coil Coaters Pty Ltd.

The grounds for review are that the decisions were not the correct or preferable decisions.

The reasons enunciated by the applicants for the review of the Attorney General's decision to impose anti-dumping measures on *Zinc Coated (Galvanised) Steel* include the following:

- POSCO's cold-rolled galvanised steel exported to Australia was a particular kind of product which, as well as being particular, was not dumped at actionable levels;
- POSCO's zero-spangle galvanised steel exported to Australia was a particular kind of product which, as well as being particular, was not a "like good" to the goods produced by the Australian industry and did not cause material injury to the Australian industry;
- like or directly competitive goods to POSCO's zero-spangle galvanised steel for any uses, or its zero-spangle steel for automotive industry uses, are not offered for sale in Australia to all purchasers on equal terms under like conditions having

regard to the custom and usage of trade, being considerations which should have led the Attorney-general to decide to exempt those POSCO goods under Section 8(7) of the Customs Tariff (Anti-Dumping) Act 1975;

- coated steel produced by BlueScope and internally transferred by BlueScope to its paint lines to be sold as painted coated steel was relevantly “like goods” produced by the Australian industry and the financial performance of the Australian industry were considerations which should have led the Attorney-General to decide that the Australian industry had not suffered material injury or that material injury was not caused by dumped goods;
- BlueScope’s pricing policy, and the analysis and presentation of that price policy in Report No. 190 (sic) could not be taken to have been establish (sic) that dumped goods caused price depression, suppression or price undercutting to the industry producing like goods, being a consideration which should have led the Attorney-General to the conclusion that these propositions were not established;
- there were no reasonable grounds for the Attorney’s expression of satisfaction that the exported goods imported by ATM had caused or were causing material injury to an Australian industry producing other categories of products included within the GUC;
- the Attorney’s expressed satisfaction in relation to the possibility of future injury does not provide any basis for a lawful conclusion that there is a threat of material injury which is the only ground provided in the Act for a finding of future injury;
- there is no finding, and there cannot be any reasonable finding, that Galvanised HRC steel has characteristics closely resembling those of Galvanised CRC steel; and
- the Commissioner’s failure, in recommending Ascertained Export Prices (“AEPs”) to the Attorney, to take account of significant price reductions after the end of the investigation period has resulted in the determination by the Attorney of inflated dumping margins and the preferable determination would be one that takes account of more recent price data.

The ground for review in relation to Aluminium Zinc Coated Steel is that the decisions were not the correct or preferable decisions. The application sets out various reasons in support of this ground that include the following:

- in circumstances where, during the relevant periods, the Australian industry producing unchromated steel did not sell the product to unrelated parties and did not offer the product for sale to unrelated parties on commercial terms, there were no reasonable grounds for the Attorney’s expression of satisfaction that the exported goods imported by Coil Coaters had caused or were causing material injury to the Australian industry;
- the Commissioner’s failure, in recommending Ascertained Export prices (“AEPs”) to the Attorney, to take account of significant raw material price reductions after the end of the investigation period, has resulted in the determination of inflated

dumping margins and the preferable determination would be one that takes account of more recent price data; and

- the decision to express AEPs in US dollars rather than Australian dollars results in an increase in the floor price of GUC imports if the value of the Australian currency depreciates; the preferable decision would be to express AEPs in Australian dollars.

As the applicant company that has sought and requested the application of anti-dumping measures on Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel, BlueScope Steel Limited ("BlueScope") takes this opportunity to specifically address each ground of review identified by the aggrieved parties.

2. Zinc Coated (Galvanised) Steel

(i) POSCO

- *Cold rolled galvanised steel*

It is not contested that POSCO exported both hot rolled galvanised steel ("HRGS") and cold rolled galvanised steel ("CRGS") to Australia during the investigation period. BlueScope manufactures galvanised steel from a cold rolled coil ("CRC") substrate. Section 6.6.4 of Trade Measures Report No. 190 ("Report No. 190") examined the issue as to whether hot rolled coil ("HRC") substrate galvanised steel and aluminium zinc coated steel are like goods to galvanised steel and aluminium zinc coated steel made from a CRC substrate. It should be remembered that the issue relates to the **coated** galvanised steel and aluminium zinc coated steel, not the intermediate substrate.

In its application for review POSCO has sought to differentiate HRGS and CRGS and to further suggest CRGS cannot be used for the same purposes as HRGS.

Customs and Border Protection has assessed the claims of interested parties (including POSCO) concerning galvanised steel made from the two different substrates. Importantly, Customs and Border Protection was satisfied that BlueScope had demonstrated in relation to galvanised steel and aluminium zinc coated steel (i.e. the goods under consideration, as distinct from the substrate that the goods are manufactured from)¹:

- *physical likeness* – the primary physical characteristics of imported and locally produced goods are similar (both are manufactured to achieve the required mechanical properties as designated by Australian and International Standards. The Japanese International Standard "JIS 3302 Hot-dip zinc coated steel sheets and strip" clearly demonstrates within "Section 8.3 Tensile Test Characteristics" Tables 11 and 12 that the required mechanical properties of each grade of CRGS is identical to the same grade of HRGS (i.e. CRGS grade SGC340 has identical mechanical property requirements as its HRGS grade equivalent SGHC340, SGC400/SGHC400, SGC490/SGHC490 etc.);
- *commercial likeness* – the imported and locally produced goods are commercially alike, directly competitive and are sold to common customers;
- *functional likeness* – the imported and locally produced goods are functionally alike as they have the same end-uses; and

¹ Refer Trade Measures Report No. 190, P.37.

- *production likeness* – the imported and locally produced goods are manufactured in a similar manner.

On this basis, Customs and Border Protection was satisfied that BlueScope produces like goods that are identical to, or have characteristics closely resembling, the imported goods. BlueScope agrees with this finding and reiterates that it is the coated galvanised steel and aluminium zinc coated steel that are the subject of the application (and the 'like goods' assessment) and not the intermediate substrate.

POSCO has further submitted that *“the differential in the cost to manufacture each of the products necessitated that a separate ascertained export price (“AEP”)”* was necessary. BlueScope does not agree with this proposition. Whether the imported goods may be produced from a different substrate again is not the issue. The like goods are the galvanised steel and aluminium zinc coated steel, and where the former is manufactured via the CRC or HRC substrate is no different to the like goods taking the form of one or more grades. Where there exists one or more grades of imported goods, Customs and Border Protection's practice is to determine a single dumping margin applicable across the different grades.

BlueScope does not consider that separate AEPs are warranted for HRGS and CRGS as this would result in the exporter shifting its export focus of like goods to the “grade” of like goods to which no interim anti-dumping measures apply, resulting in a recurrence of injury to the Australian industry.

BlueScope endorses the application of a single AEP to like goods exported by POSCO to Australia for galvanised steel. The Attorney General's decision to apply anti-dumping measures to POSCO's exports to Australia of CRGS was the correct and preferable decision.

- *zero-spangle galvanised steel is not a 'like good'*

POSCO has sought a review of the Attorney General's decision asserting that BlueScope does not manufacture like goods to zero-spangle galvanised steel and that the imported zero-spangle galvanised steel should not be the subject of measures.

BlueScope manufactures reduced spangle galvanised steel. POSCO has asserted that the “majority” of its zero spangle galvanised steel is made to specification that BlueScope's is not. However, BlueScope would highlight that the “majority” does not distinguish zero spangle and reduced spangle galvanised steel from being assessed as 'like goods'. BlueScope does sell galvanised steel to the automotive industry and its product is considered to be adequate for the desired purposes. Reduced spangle galvanised steel is substitutable in certain applications and it is therefore incorrect to conclude that a blanket exemption from inclusion in the goods coverage is warranted.

Customs and Border Protection's comments in Report No. 190 are supportive of this position, particularly in its assessment of a requested exemption from measures under S.8(7) of the Dumping Duty Act. Specifically, Customs and Border Protection stated that it *“does not recommend that an exemption be granted for all zero spangle products as many zero spangle automotive products are currently covered by existing TCOs and there are issues of substitutability to consider on a case by case basis”*.

BlueScope fully endorses Customs and Border Protection's findings that reduced spangle galvanised steel is a like good to imported zero spangle galvanised steel. BlueScope also

considers that exemptions from anti-dumping measures for zero spangle galvanised steel must be considered on a case by case basis to address substitutability concerns. The Attorney General's decision that BlueScope produces like goods to imported zero spangle galvanised steel is the correct and preferable decision.

- *POSCO's exports of zero spangle galvanised steel could not have injured the Australian industry*

POSCO has further submitted that its exports to Australia of zero spangle galvanised steel could not have caused injury to the Australian industry manufacturing like goods, and has requested the Anti-Dumping Review Panel ("ADRP") to review whether the measures should cover its zero spangle exports. POSCO acknowledges BlueScope manufactures substitutable products suggesting that the production is "quite limited".

The claim to exempt POSCO's exports of zero spangle galvanised steel from anti-dumping measures must be dismissed. The provisions require the Attorney General to examine whether the Australian industry manufactures 'like goods' to the imported goods. Customs and Border Protection has demonstrated that it is satisfied that the Australian industry manufactures like goods to imported galvanised steel (including zero spangle galvanised steel). In examining whether the Australian industry has suffered injury as a result of exports of the goods under consideration at dumped prices, an assessment is made of the economic performance of the Australian industry manufacturing like goods and whether a causal link is apparent (between the dumped exports and the material injury experienced by the Australian industry).

In the current circumstances Customs and Border Protection established that the Australian industry producing like goods had suffered material injury as a result of exports of the goods under consideration (including the zero spangle galvanised steel exports by POSCO). The Attorney General has therefore made the correct and preferred decision to apply measures to the dumped exports of zero spangle galvanised steel exported by POSCO. Following this assessment, an application can be made for an exemption under s.8(7) of the Dumping Duty Act for a specific exemption from the measures. As indicated, Customs and Border Protection has indicated that the exemption assessment can only be conducted on a case by case basis.

- *POSCO's zero spangle galvanised steel for any use should have been exempted*

For the reasoning enunciated above, BlueScope does not consider that POSCO's request for the review of the Attorney General's decision to exempt POSCO's zero spangle galvanised steel for any end-use should be exempted from the measures on galvanised steel. POSCO has also suggested the "domestic industry does not produce like or directly competitive goods which are offered for sale in Australia to all purchasers on equal terms under the conditions having regard to the custom and usage of trade" as per the conditions of s.8(7) of the Dumping Duty Act.

Respectfully, BlueScope disagrees with this proposition.

Customs and Border Protection has concluded in accordance with the legislative requirements of the assessment of like goods (and this has been accepted by the Attorney General) that BlueScope does manufacture like goods to the imported goods (including zero spangle galvanised steel). This assessment was made irrespective of the end-use application and, hence, applies equally to POSCO's claim in each of its grounds for review in 7B to 7D in its application.

POSCO's request for review of the Attorney General's decision not to exempt zero spangle galvanised steel exports irrespective of the end use must be dismissed as the Attorney General's decision on this issue is the correct and preferred decision.

- *the Attorney General's decision that the Australian industry producing like goods had suffered material injury was not based upon a proper analysis of the total performance of the like goods produced by the Australian industry*

POSCO has requested the ADRP to review the Attorney General's decision in respect of the economic performance of the Australian industry producing like goods. Customs and Border Protection was aware that BlueScope transferred internally galvanised steel and aluminium zinc coated steel for further processing (i.e. for painting application) and sale. The production of these goods contributes to an overall reduction of BlueScope's fixed costs for like goods the subject of the application. POSCO's assertions that the internal transfers were produced and sold at "*highly profitable levels*" is incorrect, as are the claims that "*injury in the form of lost volume or price depression had been exaggerated by a strategy to divert production and/or profits to BlueScope's painted products*".

POSCO's assertions cannot be substantiated and are inaccurate.

The lost sales volumes and price depression examined by Customs and Border Protection across the injury analysis period are for the goods that were sold as galvanised steel and aluminium zinc coated steel (i.e. excluding painted product). The determinations of injury for the like goods are based upon the economic performance of the like goods (and not the painted product) and reflect actual performance across the injury period. BlueScope has not exaggerated the economic performance of its galvanised steel and aluminium zinc coated steel businesses through the separate process of converting some of this material to pre-painted steel via its painting lines (and not "*a strategy to divert production and/or profits to BlueScope's painted products*")².

The Attorney General has made the correct and preferred decision in respect of the assessment of material injury to the Australian industry manufacturing like goods.

- *the imports could not be found to have caused price injury to the Australian industry*

It is submitted by POSCO that the Attorney General has erred in his assessment of price effect injury to the Australian industry as POSCO considers "*it seems more logical that it is not the dumped imports that have caused this injury, but rather that the injury has been caused by BlueScope's own import parity pricing ("IPP")*"³.

POSCO correctly identifies that BlueScope has adopted its IPP methodology as a means of maintaining its market share. To achieve the desired result and maintain production and sales volumes, BlueScope seeks to match competitive offers for imported goods. POSCO has incorrectly assumed that BlueScope determines its benchmark price according to "*the lowest available quote*" and this conclusion is based upon POSCO's assessment that "*there is a close relationship between the lowest quote and the IPP benchmark price*".

BlueScope does not seek to enter into a public debate about its sales strategies for the like goods. BlueScope would highlight that there are a number of variables that are considered in determining

² POSCO Application for Review, P.24

³ POSCO Application for Review, P.26.

a benchmark price under its IPP strategy, including the prices of imports in sufficient quantities to warrant consideration. In the absence of full disclosure of the scale of the graph to which POSCO refers that contrasts import prices with BlueScope prices, no discernible conclusions can be made from the price graph referred, other than BlueScope's IPP strategy tracks import prices. This would be expected of a business that is a price-taker and is seeking to maintain market share.

It is BlueScope's assessment that POSCO's assertions concerning price-effect injury are misguided and rely upon assumptions that lacks full information disclosure. As such, BlueScope requests the ADRP to reject POSCO's assertions and affirm that the Attorney General has correctly determined that the Australian industry has suffered price-effect injury and that this is the preferred decision.

(ii) OneSteel Australian Tube Mills

- *the galvanised steel imported by ATM did not cause material injury to the Australian industry manufacturing like goods; there existed a foreseeable and future threat of material injury from future imports*

BlueScope does not dispute that it did not produce galvanised hot rolled coil steel during the investigation period (i.e. 1 July 2011 to 30 June 2012). Post the investigation period, however, BlueScope commenced production of galvanised hot rolled coil steel following discussions with OneSteel ATM to supply its galvanised hot rolled coil steel requirements.

Discussions with OneSteel ATM commenced in October 2012, with an agreed process put in place for the supply of galvanised hot rolled coil steel for pipe and tube production. Commercial quantities were supplied to OneSteel ATM commencing in April/May 2013 in accordance with the October 2012 agreed timeframe. Throughout this period, BlueScope had agreed that a Tariff Concession Order ("TCO") for the subject goods could apply. A replacement TCO was operational from 1 June 2013 and was revoked by notice published on 28 August 2013. With the revocation of the TCO, the Attorney General's exemption from interim measures also expires.

Customs and Border Protection was informed of BlueScope's production timetable for the galvanised hot rolled coil steel during the investigation. Customs and Border Protection examined the quotes for supply of the "trial" product being produced and "*compared the price to export prices of hot rolled coil substrate galvanised coil during the investigation period*". In Report No. 190, Customs and Border Protection refers to OneSteel ATM's "*established export supply chains*" for the galvanised hot rolled coil steel. Following its examination of the supply quotes and OneSteel ATM's supply chains, Customs and Border Protection concluded:

"there is a foreseeable and imminent threat of injury to BlueScope from imports of hot rolled coil substrate galvanised coil in the future".

BlueScope fully endorses Customs and Border Protection's assessment that there is a foreseeable and imminent threat of injury to BlueScope from future imports of galvanised hot rolled coil steel by OneSteel ATM and others. The Attorney General has also accepted this recommendation and applied the anti-dumping measures to imports of the nominated goods on the basis that BlueScope at the time of signing the Report and Recommendations was a producer of galvanised hot rolled coil steel.

The Attorney General has made the correct and preferred decision in respect of injury and a foreseeable and imminent threat thereof in respect of the exported goods. BlueScope requests

the Member to affirm the Attorney General's decision in this regard and reject OneSteel ATM's assertion that *"there is no valid determination in relation to future injury"*.

- *Like goods - galvanised hot rolled coil steel and galvanised cold rolled coil steel*

BlueScope has addressed the like goods issue concerning galvanised hot rolled coil steel and galvanised cold rolled coil steel above (under comments re POSCO's grounds for review). As indicated, the substrate from which the galvanised steel is made is not for consideration – it is whether the locally produced finished (i.e. coated) galvanised steel is a like good to the imported galvanised steel.

In Report No. 190 Customs and Border Protection stated (at Section 6.6.4) that it was satisfied *"that the imported and locally produced coated steel are broadly like goods regardless of the hot rolled or cold rolled nature of the substrate used in production"*. BlueScope concurs with Customs and Border Protection's assessment and further considers that following the completion of the production trials BlueScope supplies galvanised steel from both the cold rolled coil and hot rolled coil substrates into the Australian market.

The Attorney General has therefore correctly concluded that galvanised coated steel made from either substrate are like goods, and this is the preferred decision.

- *Ascertained export price level and currency*

OneSteel ATM has asserted that the ascertained export price ("AEP") determined for the investigation period was based upon prices that were achieved at "the peak of the price cycle" that occurred during the investigation period. It was further argued that in the twelve month period following the investigation period, benchmark prices declined. It is submitted by OneSteel ATM that the preferred approach to the calculated AEP for the purposes of imposing measures is one that involves addressing the AEP for the investigation period by an average price in the following 12 month period following the investigation period.

BlueScope rejects this proposal.

Pricing in the steel industry is fluid. Steel industry prices are influenced by a number of variables. Export prices for galvanised hot rolled coil steel exported to Australia in the twelve months immediately prior to the investigation period would have differed to the export prices upon which the AEP for the investigation period has been determined. In the referred Hot Rolled Coil investigation (Report No. 188) where the Minister for Justice and Customs varied the AEP by reference to prices immediately following the investigation period, BlueScope challenged the AEP adjustment. Following review, the Trade Measures Review Officer has recommended that the adequate benchmark be reinvestigated.

Where export prices decline in a relatively short timeframe immediately following an investigation period, the AEP should not be adjusted for the purposes of applying interim measures. Rather, the most appropriate means of adjusting the AEP is via a review of variable factors inquiry that takes full account of export prices over a prescribed investigation period (and allows interested parties to comment on changes to each of the variable factors). In Inquiry No. 188 the so-called "adjustments" to the AEP that were based upon a relatively short period post the investigation period were not offered for consultation prior to the Minister accepting the proposal by the then Customs and Border Protection.

OneSteel ATM has also argued that it is aggrieved by the Attorney general's approach to denominate the AEP in U.S. dollars rather than in Australian dollars. It is stated in OneSteel ATM's application for review the decline in the value of the Australian dollar has meant that the "floor price" established by the AEP has increased. OneSteel ATM also acknowledges that the reverse occurs where the Australian dollar increases – as is apparent in the most recent few months.

Customs and Border protection has assessed the AEP in US dollars presumably on the basis that the contracts for the imported galvanised hot rolled coils steel are also designated in US dollars. It would seem illogical to determine the AEP in Australian dollars when the contracts are in US dollars. BlueScope rejects the assertion that the floor price is set in Australian dollars – the coined "floor price" is merely a weighted average export price for the investigation period – nothing more or less.

It is BlueScope's view that the AEP as determined by Customs and Border Protection and accepted by the Attorney General is correct and preferred decision and should not be adjusted for changes in prices post the investigation period or denominated in Australian dollars. The ADRP is requested to affirm the Attorney general's decision in this regard.

3. Aluminium zinc coated steel

(iii) OneSteel Coil Coaters

- *sale of unchromated steel to unrelated parties*

It is asserted by OneSteel Coil Coaters ("OCC") that the impact of the Attorney General's decision to apply anti-dumping measures to imported aluminium zinc coated steel (that includes unchromated steel) is "*grave because there is no Australian source of its essential manufacturing input at commercially realistic prices*". It is further argued that the then Customs and Border Protection did not exercise care in scrutinizing the available evidence, nor did it establish positive evidence in support of its finding.

OCC has submitted that BlueScope has not incurred injury in its sales of unchromated steel as it has not supplied unchromated steel to external third parties during the injury period. OCC has also contended that BlueScope has responded to the occasional request from OCC to provide quotations for supply and that the quoted prices were "completely uneconomic". Customs and Border Protection, however, disagreed with OCC and stated that:

"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."

It is OCC's assessment that BlueScope cannot claim injury from dumped imports of unchromated steel. BlueScope would highlight that the unchromated steel is included within the goods the subject of investigation, the Australian industry manufactures like goods to the imported goods, and it has been determined that the exported goods were at dumped prices during the investigation period. The imported goods are wholly interchangeable with locally produced unchromated steel and the dumped imports have prevented the Australian industry from selling locally produced unchromated steel to OCC.

OCC also refers to a “constructive refusal” by BlueScope to supply it with unchromated steel. The evidence available to Customs and Border Protection during the investigation would suggest otherwise, as evidenced by the quotations for supply to OCC from BlueScope.

BlueScope does not consider that the Attorney General has made the incorrect decision in imposing anti-dumping measures on the dumped and injurious exports to Australia of aluminium zinc coated steel (including unchromated steel). Additionally, BlueScope is firmly of the view that it is prevented from supplying OCC with unchromated steel due to the availability of imported unchromated steel at dumped prices.

BlueScope requests the ADRP to affirm the Attorney General’s decision as the correct and preferred decision in respect of including unchromated steel within the coverage of the anti-dumping measures.

- *Ascertained export price level and currency*

BlueScope has addressed these grounds for review as also submitted by OneSteel ATM. Please refer to BlueScope’s comments above in this regard.

4. Conclusions

BlueScope does not consider that the decision of the Attorney General is not the correct or preferable decision in each of the grounds of review identified by POSCO, OneSteel ATM or OCC. BlueScope requests the ADRP to affirm the decisions of the Attorney General to impose anti-dumping measures on galvanised steel and aluminium zinc coated steel exported from Korea and Taiwan.

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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