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6 February 2018

Mr R Piper  
Director  
Anti-Dumping Commission  
Operations 1  
55 Collins Street  
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Victoria 3000

By email

Dear Rhys

## **POSCO Continuation inquiry concerning zinc coated (galvanised) steel**

As you know, we represent POSCO in this matter.

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### **A BlueScope's application for this inquiry**

POSCO has reviewed the application lodged by BlueScope Steel Limited ("BlueScope") that caused the initiation of this continuation inquiry.

That application was required to provide reasonable grounds for asserting that the expiration of the anti-dumping measures might lead to a continuation, or recurrence, of the material injury that the

measures were intended to prevent.<sup>1</sup> The material injury that the measures were intended to prevent is material injury caused by dumping. Thus, the legislation requires an application to provide grounds, being grounds that are reasonable, for an applicant to confidently and forcefully state that if the measures expire material injury caused by dumping would continue or recur.

We offer the following observations.

First, the test infers that it is the expiry of the measures that would cause the causation of material injury by renewed dumping to take place. In other words, it must be because of the expiry that those things would happen.

Secondly, the way in which the Anti-Dumping Agreement has been interpreted makes it clear that, ultimately, it is the *probability* of these things happening, and not merely the broad *possibility*, that must be established to the satisfaction of an investigating authority:

*This language in Article 11.3 makes clear that it envisages a process combining both investigatory and adjudicatory aspects. In other words, Article 11.3 assigns an active rather than a passive decision-making role to the authorities. The words 'review' and 'determine' in Article 11.3 suggest that authorities conducting a sunset review must act with an appropriate degree of diligence and arrive at a reasoned conclusion on the basis of information gathered as part of a process of reconsideration and examination. In view of the use of the word 'likely' in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated - and not simply if the evidence suggests that such a result might be possible or plausible.<sup>2</sup> [underlining supplied]*

Thirdly, a live consideration when it comes time for a decision to be made at the end of such an inquiry is whether the circumstance of renewed dumping and injury that would be caused thereby is not applicable to one or other exporter. This is because the Minister has the power *inter alia* to:

*...secure the continuation of the anti-dumping measures... by... determining... that the notice continues in force... but that... the notice ceases to apply in relation to a particular exporter or to a particular kind of goods<sup>3</sup>*

We now turn to a consideration of what is said by BlueScope in its application against these criteria, and to an explanation of POSCO's position with respect to the matters at issue.

## **B BlueScope's assertions about dumping are unsafe**

The application focusses largely on whether or not "dumping" is likely to continue or recur. It discusses factors such as anti-dumping measures applied by other jurisdictions, "underutilised" capacity, and exporters seeking variable factors reviews.

Mindful of the Minister's power to cease the application of a notice, POSCO has not "dumped" this product into the Australian market in recent years, and has no intention of doing so in the future. If there is no evidence of dumping as a result of the review that accompanies this inquiry, and if the available facts are inconsistent with the conclusion that POSCO would probably engage in dumping if the measures were to be revoked, then that limb of the test – that it is *probable* that POSCO would "dump" and cause material injury to BlueScope – would not be satisfied. There would be no evidence

<sup>1</sup> Section 269ZHD(2)(b) of the *Customs Act 1901* ("the Act")

<sup>2</sup> See Appellate Body Report, *US - Corrosion-Resistant Steel Sunset Review*, para. 111. Also see Appellate Body Report, *US - Oil Country Tubular Goods Sunset Reviews*, para. 179.

<sup>3</sup> Paraphrasing Section 269ZH4(a)(ii).

of dumping upon which to arrive at the behavioural assumption that POSCO would probably dump the goods because of the expiry of the measures against it.

BlueScope's application cites a number of external factors in its assertion that dumping would recur. In particular the application focusses on:

- the imposition of measures to exports of galvanised steel “*variously from China, Korea and Taiwan*” by certain other administrations;
- competitive variable factors determined for exporters that took part in variable factors reviews;
- circumvention of the measures by certain exporters which BlueScope claims continued to cause the material injury that was found to have been suffered originally; and
- an inability on BlueScope's part to raise prices due to dumped competition.

## 1 Investigations by other countries

BlueScope's application refers to final measures in place against Korean exports of galvanised steel in the US and Taiwan, to provisional measures in Vietnam and to the opening of an investigation in Thailand. Closer analysis of those cases does not evidence a deliberate or recent propensity to dump or cause injury in any markets.

- (a) The US Department of Commerce announced an affirmative final finding with respect to corrosion resistant steel on 25 May 2016. POSCO was not a “*selected mandatory respondent*” and therefore no dumping margin was specifically determined with respect to its exports. We also note that the investigation period of 1 April 2014 to 31 March 2015 was almost a full three years ago.
- (b) POSCO did not participate in the Taiwanese investigation referred to by BlueScope. Therefore, the dumping margin determined by the investigating authority with regard to POSCO's exports was not based on POSCO's data.
- (c) POSCO maintains that the findings arrived at by the Vietnamese investigating authority referred to by BlueScope, and the procedures of that investigation, have been irregular. Whether that came about by reason of a protectionist bias on the part of the investigating authority, or an incorrect implementation and/or inexpert application of the anti-dumping rules under the Anti-Dumping Agreement, or simply by reason of administrative error, is not something that POSCO can reliably discern. The first thing to note is that the investigation relates to an investigation period of 1 October 2014 to 30 September 2015, which is almost as long ago as the US investigation referred to above, and which certainly is not related to recent trends. POSCO is also concerned by the findings in that case in light of this widely reported statement:

*Nguyen Van Sua, vice chairman of the Vietnam Steel Association (VSA), said imported steel from RoK accounted for a small portion of 4.57% during the investigation period in comparison with other imported products, including coated steel for high-end markets of automobiles and electronics. In addition, the price of coated steel imported from RoK was US\$85 per tonne higher than that of locally produced steel in Vietnam.<sup>4</sup> [underlining supplied]*

<sup>4</sup> <http://english.vietnamnet.vn/fms/business/175624/vn-imposes-anti-dumping-steel-tax-on-chinese-and-korean-coated-steel.html>

- (d) With respect to the Thai investigation, the investigating authority has recommended that the investigation be terminated against all countries.

**2 Incorrect conclusions drawn from variable factors reviews**

We have huge difficulty with the concept that an exporter exercising its legal right to seek a review of its variable factors, which is then conducted by the Australian Government and concluded by way of a decision by a Minister, is indicative of the predilection of the exporter to engage in dumping. It certainly has nothing to do with the separate question of whether BlueScope is vulnerable to material injury.

We note that BlueScope has cited, with enthusiasm:

*...the commentary in the Explanatory Memorandum accompanying recent proposed changes to Part XVB Section 269TAB of the Customs Act that apply to Division 5 reviews of measures.<sup>5</sup>*

BlueScope claims that the Explanatory Memorandum:

*...highlights the positive dumping margins that follow in the period after a review of measures investigation.<sup>6</sup>*

BlueScope sensationally draws attention to what it says are:

*[t]he alarming trends evident following the reviews of measures where exporters secure “zero” duty outcomes then resume exports to Australia with margins of dumping (at an average of 23.3 per cent as established by the Commission in the Explanatory Memorandum accompanying the Customs Amendment (AD Measures) Bill 2017)...*

POSCO has not been the subject of any of the reviews of which BlueScope complains, and cannot be “tarred with the same brush” as those other exporters. At the same time, we are concerned as to the authorship or origin of those parts of the Explanatory Memorandum to which BlueScope refers, and as to their factual sincerity. Indeed, the claim that BlueScope makes, relying on these statistics, is demonstrably wrong and misleading, and is easily debunked, as we now explain.

The extract from the Explanatory Memorandum to which BlueScope refers in its application is as follows:

Case	Initial margin (pre-review)	Post-review of low volume exporter	Subsequent review/continuation	Months low volume rate was in existence
1	29.3%	0.0%	60.2%	21
2	57.1%	0.0%	1.9%	24
3	56.0%	0.0%	9.2%	38
4	75.0%	0.0%	22.0%	38
<b>AVG</b>	<b>54.4%</b>	<b>0.0%</b>	<b>23.3%</b>	<b>30</b>

As can be seen in the above table, following the period in which they were subject to a zero percent margin, all the exporters were found to have a positive margin in the subsequent process. This indicates that dumping from those exporters resumed. On average, the dumping was determined to be at a rate of 23.3%. In 2016, the Productivity Commission noted the average anti-dumping duty was 17%. The gap between the zero margin and the new margin being determined is also significant,

We do not know why it was considered necessary to conceal the products concerned by referring to them as “1”, “2”, “3” and “4”. These are matters of public record. It is not difficult to identify the products, and that identification makes it possible to interrogate the conclusions reached.

<sup>5</sup> BlueScope’s application, page 5.

<sup>6</sup> *Ibid.*

“1” appears to relate to aluminium road wheels (“ARW”). The “pre-review” margin of 29.3% was the dumping margin assessed for “selected non-cooperating exporters” in the original investigation in 2013. The actual margins for the cooperating exporters were 8.3%, 19.9%, 5.8% and 9.9%.<sup>7</sup> Given the accuracy of actual rates determined for individual exporters, as compared to the largely made-up “selected non-cooperating exporter” rate, the actual rates would have been the more appropriate rates to have been used in the information provided to the Parliament.

The “subsequent review/continuation” margin of 60.2% is also a “non-cooperating exporters” rate, and therefore also subject to the unfavourable and inaccurate assumptions that accompany such “non-cooperating” rates.<sup>8</sup> The Explanatory Memorandum claims this high rate is evidence of the fact that the exporters (in this case, ARW exporters) renewed dumping after a variable factors review had re-established their normal values. But this is not the case. This is admitted by the Commission in its ARW continuation inquiry report, as follows:

*A normal value for uncooperative and all other exporters was established under subsection 269TAC(6) in accordance with subsection 269TACAB(1)(e). The Commission used the highest weighted average normal value for the entire inquiry period (inclusive of the aluminium cost substitute) established for the selected exporters.<sup>9</sup> [underlining supplied]*

On this basis the data for product “1” in the Explanatory Memorandum does not at all demonstrate the proposition for which it has been used.

When one considers the actual rates, for the named ARW exporters, for whom dumping margins had previously been determined, we see a different picture with respect to price comparisons:

	<b>Investigation dumping margin (July 2012)</b>	<b>Review dumping margin (Oct 2015)<sup>10</sup></b>	<b>Continuation inquiry margin (June 2017)</b>
Jinfei Kaida	5.6%	7.8%	7.8%
Zhejiang Yueling	9.9%	8.3%	3.2%
CITIC Dicastal	6.3%	8.4%	8.4%*

\* Note - measures were not continued as against CITIC Dicastal

This analysis shows that these exporters were not prone to increase or resume dumping. Zhejiang Yueling’s margins show a steady downward trend. Jinfei Kaida’s were static. CITIC Dicastal’s margins stayed static. Further, the measures were expired as against it.

Moving on to product “2” in the extract from the Explanatory Memorandum, this appears to refer to hollow structural sections (“HSS”). Again, the first quoted rate was the dumping margin assessed for “selected non-cooperating exporters” in the original investigation in 2012. The actual margins for

<sup>7</sup> <http://www.adcommission.gov.au/cases/Documents/182-NoticeoffindingsinGazette.pdf>

<sup>8</sup> <http://www.adcommission.gov.au/cases/EPR%20351%20%20450/EPR%20378/033%20-%20Notice%20-%20ADN%202017-75%20-%20Findings%20of%20the%20Inquiry%20regarding%20the%20Continuation%20of%20Anti-Dumping%20Measures.pdf>

<sup>9</sup> <http://www.adcommission.gov.au/cases/EPR%20351%20%20450/EPR%20378/032%20-%20Report%20-%20Final%20report%20-%20REP%20378.pdf> at page 51.

<sup>10</sup>

<http://adreviewpanel.gov.au/CurrentReviews/Documents/Aluminium%20Road%20Wheels/Public%20Notice%20FINAL.pdf>

cooperating exporters were much lower.<sup>11</sup> Even then, the 1.9% margin quoted as the subsequent “review/continuation” figure is not indicative of a predilection of an exporter to “dump” following a review which had arrived at a 0.0% rate for the exporter.<sup>12</sup> A 1.9% margin is *de minimis* in an original investigation. Dumping duties could not even be imposed against an exporter with such a low rate.

Product “3” in the extract from the Explanatory Memorandum appears to be a reference to consumer pineapple. The “Initial margin (pre review)” rate in the extract appears to have been derived by the author of the table from a September 2011 review in which no Thai exporters cooperated. This 56% rate is not based on any individual exporter’s price behaviour and is subject to the unfavourable inaccuracies that are common with respect to rates for non-cooperating exporters.<sup>13</sup> The “subsequent review/continuation” rate of 9.2% is also a non-cooperative exporter rate, for all Thai exporters.<sup>14</sup>

The difference between the 0.0% rate for an individual exporter (ie “Post review of low volume exporter”) and 9.2% for all exporters on a non-cooperative basis cannot serve as evidence that the individual exporter resumed dumping, or that any individual exporter resumed dumping. Indeed, the report referable to the “Subsequent review/continuation” rate of 9.2% disproves the alleged fact that the consumer pineapple exporters concerned increased dumping:

*In relation to consumer pineapple from Thailand:*

- *The original investigation in 2001 found that exports of consumer pineapple from Thailand were dumped in the range of 32 per cent to 74 per cent.*
- *A review of measures in 2006 on exports of consumer pineapples from Thailand found that exports of consumer pineapple were dumped.*
- *A review of measures in 2011 on exports of consumer pineapples from Thailand found that exports of consumer pineapple were dumped at 56 per cent.*
- *A review of measures in 2012 on exports of consumer pineapples from Thailand found that exports of consumer pineapple were dumped by all exporters other than Thai Pineapple Canning Industry Corp., Ltd, TPC and Kuiburi Fruit Canning Co., Limited, at a margin of 10 per cent.*

*As outlined further in Chapter 8, the Commission has reviewed the variable factors and calculated a dumping margin in the inquiry period of 9.2 per cent.*

Therefore, at the broad level, the rates continually trended downwards. Again, it can be seen that the data in the Explanatory Memorandum is misrepresentative.

Finally, moving on to product “4” in the extracted table from the Explanatory Memorandum, we believe that we have identified this as being referable to another pineapple case, this time with regard to food service and industrial (“FSI”) pineapple. The “Initial margin (pre review)” rate of 75% in the table we have extracted from the Explanatory Memorandum appears to be a non-cooperating exporter rate, quoted out of context from a report in which the actual rate for the only cooperative

<sup>11</sup> <http://www.adcommission.gov.au/cases/Documents/120607ACDN-HSS-FinalMeasures.pdf> pg2

<sup>12</sup> <http://www.adcommission.gov.au/cases/EPR%20351%20%20450/EPR%20379/071%20-%20Notice%20-%20ADN%202017-70%20-%20Findings%20of%20the%20inquiry%20regarding%20the%20continuation%20of%20anti-dumping%20measures.pdf>

<sup>13</sup> <http://www.adcommission.gov.au/cases/Documents/038-Report-No172d-FSI.pdf>

<sup>14</sup> <http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20333%20-%20archived%2015%20November%202016/022%20-%20Final%20Report%20333.pdf>



exporter was “in the range of 2% to 7%”.<sup>15</sup> The second column, which reports a “Post review of low volume exporter” rate of 0%, relates to a 2013 review. It fails to mention that there were five exporters treated as being cooperative, with:

- the exporter with no exports not being attributed any rate;
- three of the other four having exports, and not being found to have been dumping at all; and
- a fifth exporter having a dumping margin of 18%.<sup>16</sup>

The “Subsequent review/continuation” refers to a result in a 2016 continuation inquiry, with the 22% being the dumping margin attributed to the one exporter that had no exports in the 2013 review. What is not disclosed, and what is masked by the selective quotation of these numbers, is that the dumping margin for all exporters in that continuation inquiry were radically effected by significantly different market conditions in Thailand as compared to Australia. In Thailand the price of FSI pineapple had reached record levels in November 2015, due to adverse weather conditions which had reduced supply. In the Australian market, where the local producer’s ability to supply had not been similarly affected, prices were much lower.<sup>17</sup>

We do not mean to suggest that there was no dumping taking place, and technically speaking the investigating authority found that there was. However to claim that the exporter concerned somehow “gamed” the system, and intentionally dumped because it had achieved a 0% margin in a previous review, is unlikely in the extreme. The factor which caused there to be dumping in that case was a domestic price phenomenon caused by drastic supply change.

The point of this analysis is to demonstrate that the data in the Explanatory Memorandum is not a reliable demonstration of the behaviour of any exporter at all. It does not demonstrate any trend, given the randomness of the data that was used, and the mixture of rates for “uncooperative” and “cooperative” exporters that are reported. Indeed, our analysis with respect to the above four cases concludes that cooperating exporters behaved in exactly the opposite way than that which is contended by the Explanatory Memorandum.

The Minister can have no reliance on the general proposition that exporters increase dumping after reviews, because it is simply not true. BlueScope’s triumphal parroting of that data must be ignored. Further, in view of the Minister’s power to decide not to continue measures as against one or other exporter, or as against one or other type of product, the Commission must adopt a much more refined analysis of behaviour, injury and probability than BlueScope suggests in its broad “rounding up” of all exporters in its application.

Irrespective of the dubious nature of the data in the Explanatory Memorandum, the underlying accusation simply is not applicable to POSCO. POSCO has continued to export the goods under consideration to Australia subject to the measures as they were originally imposed and at non-dumped levels.

### **3 POSCO’s behaviour must be assessed on the basis of POSCO’s own information**

We wish to repeat the submissions made to the Commission officials at the time of their verification of POSC’s Exporter Questionnaire response.

*In Verification Note 1, we explained that the GI coil sold to the traders [CONFIDENTIAL TEXT DELETED –information regarding customers and products]. Nonetheless, during*

<sup>15</sup> <http://www.adcommission.gov.au/cases/Documents/039-Report-Mo172c-FSI.pdf>

<sup>16</sup> <http://www.adcommission.gov.au/cases/Documents/025-REP196.pdf>

<sup>17</sup> <http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20334%20-%20archived%2015%20November%202016/022%20-%20Submission%20-%20Exporter%20-%20Siam%20Agro-Food%20Co%20Ltd.pdf>

price negotiations with its customers POSCO does become aware (and requires that it be made aware) of the destination of any steel that its customers intend to export. This is a condition of negotiations with traders that is understood by all concerned.

In that context POSCO wishes to demonstrate its pricing behaviour with respect to that coil, which it sold **[CONFIDENTIAL TEXT DELETED – information regarding products]** destination was Australia. The following chart shows the price at which the HGI coil was sold to those traders (“AUS”) compared to the domestic price (“DOM”) and CTMS (“COM”) on a same specification basis (identical model):

**[CONFIDENTIAL CHART DELETED – information as per above paragraph]**

POSCO only sold HGI coil destined for Australia in the period from November 2016 to January 2017. At all times that HGI coil was sold at prices that were higher than POSCO’s domestic prices in the Korean market and also higher than the costs of manufacture and sale of the identical products in Korea. POSCO ceased selling HGI coil destined for Australia at the point in time at which the prices offered for that coil could potentially have fallen below Korean domestic prices.

Our client wishes us to emphasise that its business motivation is to maximise profitability and to participate in markets where that opportunity best presents itself. **[CONFIDENTIAL TEXT DELETED – confidential information regarding POSCO business system]**. In the above instance it can be seen that POSCO ceased making HGI sales destined for Australia when the downward trending price offers for those sales, if accepted, would have resulted in sales that were less profitable in comparison to the sales available in the domestic market.<sup>18</sup>

This is clear evidence of the proposition that POSCO is unlikely to “dump” galvanised steel in Australia if the measures are discontinued. Its past behaviour, as now verified by the Commission, demonstrates its profit-seeking behaviour and its disinclination to engage in “dumping”. Further, we refer the Commission to POSCO’s capacity utilisation rates for galvanised steel, at **[CONFIDENTIAL TEXT DELETED – number]**% for calendar 2016 and **[CONFIDENTIAL TEXT DELETED – number]**% for the review period. This is at our close to optimal level. Indeed as explained at the verification, the difficulties and risks of running a factory at higher rates than this outweigh the benefits. POSCO has no incentive to reduce its prices in order to increase its production throughput.

In this respect we are reminded of the ruling of the Anti-Dumping Review Panel, as agreed to by the Commission, in relation to the review of a decision by the Minister to continue the measures applicable to FSI pineapple exported by Kuiburi Fruit Canning Co., Ltd (“KFC”).<sup>19</sup> The Review Panel made the following finding:

*29. However, the ADC reviewed Kuiburi’s export volumes, export strategy, production capacity and export prices and concluded that Kuiburi does not appear to be pursuing an aggressive export pricing strategy to Australia and has not shown a propensity to dump FSI pineapple into the Australian market in recent years. The ADC indicated Kuiburi’s past export conduct is a reliable indicator of its likely future conduct, and that this does not support a finding that dumping is likely to recur, in the sense that it is more probable than not. Therefore, on balance, the ADC concluded it would not be satisfied that the expiration of the anti-dumping measures in relation to Kuiburi would lead, or would be likely to lead, to a continuation of, or recurrence of, the dumping that the anti-dumping measures are intended to prevent. As such, the ADC would not be satisfied that Kuiburi would contribute to the*

<sup>18</sup> Extracted from Verification note 2 as presented to the visit team, noting that the corrected chart that was handed over to the visit team has been substituted for the chart that was originally included in Verification note 2.

<sup>19</sup> [http://www.adreviewpanel.gov.au/CurrentReviews/Documents/2016-48%20Consumer%20FSI%20Pineapples/2016\\_50%20-%20FSI%20Pineapples%20-%20Attachment%20A%20-%20ADRP%20Report%20No%2050.pdf](http://www.adreviewpanel.gov.au/CurrentReviews/Documents/2016-48%20Consumer%20FSI%20Pineapples/2016_50%20-%20FSI%20Pineapples%20-%20Attachment%20A%20-%20ADRP%20Report%20No%2050.pdf)



*material injury (from dumped goods) sustained by the local industry. I agree with the new findings of the Commissioner made as a result of the re-investigation. In light of this conclusion I determine that the decision of the Parliamentary Secretary, on 12 September 2016, to continue the measures against Kuiburi was not correct and preferable.*

The Minister subsequently accepted the Review Panel's recommendation that the measures be discontinued as against KFC. We submit that the comments made with respect to KFC are equally apposite to the position of POSCO in this continuation inquiry.

#### **4 Claim that circumvention by certain exporters is a relevant factor**

BlueScope points to the outcome of an anti-circumvention inquiry concerning galvanised steel as evidence that “*absent effective trade measures*” exporters will “*seek to trade at dumped prices and cause injury*”.

In this regard POSCO notes that:

- the circumvention inquiry was with respect to goods that were not, at the time of their importation, subject to the notice concerned (being galvanised steel with an alloy substrate, when the measures applied to galvanised steel with a non-alloy substrate);
- determinations with respect to dumping are not required in circumvention inquiries of the type that were undertaken by the Commission, and were not undertaken.

Regardless of that, the accusation again ignores the fact that exporters are entitled to be treated in accordance with their own situation and on their own merits. Neither POSCO nor any other Korean exporter was found to have engaged in the circumvention practices that BlueScope refers to in its application, even if that behaviour is relevant to this continuation inquiry at all.

The circumvention inquiry is entirely irrelevant to the Commission's consideration of POSCO and Korea for the purpose of this inquiry.

### **C The likelihood that injury to BlueScope would recur is speculative**

POSCO's own facts demonstrate that there is no evidence to establish a probability of renewed dumping. That should be enough to dispose of BlueScope's accusations so far as they apply to POSCO.

Simultaneously, POSCO submits that BlueScope has not been injured by dumping in recent times. Indeed, BlueScope has steadily improved its financial, to an extent that suggests the likelihood of a recurrence of injury caused by dumping is remote and speculative rather than probable.

#### **1 BlueScope's claimed inability to raise prices due to dumped competition**

To reiterate, POSCO has not dumped the goods on the Australian market, as will be established during this inquiry and the review that was initiated in parallel. So, again, BlueScope's broad proclamations regarding “price undercutting” are irrelevant to POSCO.<sup>20</sup>

Having said that, POSCO has some additional comments with regard to this claim.

Generally, the claim that BlueScope was unable to raise prices does not appear to be supported by the information included in the public record version of the application, nor in the publicly available

<sup>20</sup> POSCO notes that this is implied from the Application, which states cites “*price undercutting from exports from China, Korea and Taiwan the subject of the revised measures*” as the issue. Again, POSCO has not sought, nor been granted revised variable factors.

information regarding BlueScope’s recent performance. Specifically, we point the Commission’s attention to the following:

- “Figure 1” in the application clearly and distinctly shows that BlueScope’s prices increased significantly over the period of review and that, for at least five months over that period, they were higher than they had been at any other time since the imposition of the measures;
- BlueScope’s 2016/17 annual report indicates that there was “*growth in Australian domestic coated product sales*” which would include the goods under consideration; and
- the appearance of price undercutting will be impacted by the pricing methodology adopted by BlueScope.<sup>21</sup> The appearance of price undercutting cannot automatically lead to a finding that BlueScope has continued to suffer injury as a result of the goods subject to the measures. This is particularly so in circumstances where the Australian industry has been able to increase prices to historically high levels and has increased its sales volume.

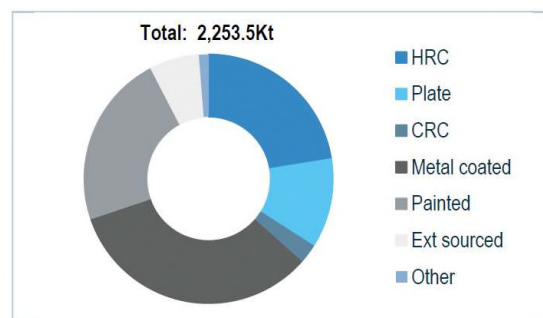
**2 BlueScope’s overall injury claim**

The continuation of anti-dumping measures beyond their five-year span is not something that happens as a matter of course, it should only occur in exceptional circumstances. BlueScope does not have a right to secure the continuation of the measures, it needs to put forward clear, cogent and most importantly, fact-based arguments to support its claims.

POSCO trusts that the Commission has written to BlueScope requesting it provide particularised and detailed information supporting its claims, as well as to seek sufficient information to ascertain, on the Commission’s own cognizance, whether the removal of the measures would result in BlueScope suffering a recurrence or continuation of the injury those measures were intended to prevent.<sup>22</sup>

To assist the Commission in its consideration of BlueScope’s performance, POSCO would like to emphasise the following:

- (a) BlueScope’s domestic sales volume during FY2017 is illustrated as follows:<sup>23</sup>



On this basis, POSCO considers that BlueScope’s sales of coated metal, including the goods under consideration, is some 745,000 MT. However, the question of injury is focussed around the “Australian industry producing like goods”. Much of the “painted” product – which POSCO estimates to have been an additional 495,000 tonnes – referred to in the above graph would be produced from BlueScope’s zinc coated (galvanised) steel. We submit that this internally transferred zinc coated (galvanised) steel is “like goods” and therefore is part

<sup>21</sup> *Statement of Essential Facts No. 400 – Inquiry Concerning the Continuation of Anti-Dumping Measures Applying to Hot rolled Coil Exported from Japan, the Republic of Korea, Malaysia and Taiwan*, page 48.

<sup>22</sup> Obviously, any such information would need to be subject to the 37 day rule under section 269ZHF(2)(a)(ii) and non-confidential version of that information would need to be placed on the public record.

<sup>23</sup> *BlueScope Annual Report 2016/17*, page 6.

of the “Australian industry producing like goods”. In order to ascertain whether the removal of the measures would cause a recurrence of injury to the Australian industry, these internal transfers must be carefully analysed.

- (b) The second thing of note is that BlueScope purports to source steel products “externally”. On POSCO’s analysis BlueScope sells approximately 157,000 tonnes of externally sourced steel.

In this context we note the following statement, from BlueScope’s FY2017 financial results presentations:

*BlueScope is a net purchaser of steel substrate and will continue to ensure options exist for competitive substrate sourcing<sup>24</sup>*

To the extent that BlueScope has sourced zinc coated (galvanised) steel from external sources and sold it on the Australian market, the Commission needs to investigate why this has occurred. If there are goods that BlueScope cannot produce, or does not have the productive capacity to produce, then they cannot cause BlueScope injury irrespective of whether or not they are dumped in the future. This needs to be factored into the Commission’s consideration.

- (c) Finally, POSCO notes that there are significant volumes of goods not subject to the measures in the Australian market:
- in the first investigation, Union Steel Co., Ltd, Sheng Yu Co., Ltd and Ta Fong Steel Co., Ltd all were found not to be dumping and presumably have continued to export to Australia ever since in large volumes; and
  - similarly, in the recent Vietnamese investigation, Hoa Sen Group and Nam Kim Steel Joint Stock Company were all found not be dumping.

Additionally, on the information in the application there are significant imports from Japan and other countries to which no dumping duties apply. It will not have escaped the Commission’s attention (and, if it has, we draw attention to it now) that BlueScope and Nippon Steel & Sumitomo Metal Corporation are partners in a coated products joint venture business which was valued at USD1.36 billion at its inception in 2013. The intention to collaborate with respect to steel products in general and coated steel in particular, as evidenced by this joint venture, the opportunities for such collaboration, and the realities of that collaboration, should also be an important line of inquiry for the Commission in this matter.

The application’s preoccupation with “dumping” is both predictable and telling. However the application was also legislatively required to focus on the question of “injury”, and the Commission’s inquiry must do so as well. It is these matters of which the Australian industry has first-hand knowledge and data. It is in command of that data, and in so far as the data is claimed to prove its weaknesses and vulnerabilities, such that it might demand continued protection (as it has done), it should have been presented to the Commission and to interested parties by BlueScope and rationalised in some way. To the extent that those vulnerabilities may necessitate further protection it is for BlueScope to make its case in the application and to provide interested parties with an understanding of those vulnerabilities, so that they may make relevant submissions to the Commission. At present, that has not been done by BlueScope, due to the inadequacies of its application.

<sup>24</sup> <https://s3-ap-southeast-2.amazonaws.com/bluescope-corporate-umbraco-media/media/2260/fy2017-investor-presentation-final.pdf> at page 21

**D Concluding comment**

The case put forward by BlueScope for the continuation of the measures applicable to zinc coated (galvanised) steel is not compelling. More than that, the considerations it presents to the Commission simply do not apply to POSCO.

POSCO contends that the Commission should recommend to the Assistant Minister that the measures expire insofar as they relate to POSCO. POSCO will maintain this contention unless cogent evidence and argumentation is presented to the contrary.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Moulis', with a long horizontal flourish extending to the right.

**Daniel Moulis**  
Principal Partner