

**Consultation Brief for the Government of India**

**In the matter of**

**Impending application for the imposition of dumping and countervailing duty in respect of Zinc coated (galvanised) steel exported to Australia from India and Vietnam and imposition of anti- dumping duty in respect of galvanised steel exported to Australia from Malaysia before the Australian anti-dumping Commission**

Members of the Commission,

The Government of the Republic of India (“**Gol**” in short) is in receipt of an intimation about the Institution of an application for Antidumping and Countervailing Duty Investigations concerning imports of “Zinc Coated (Galvanised) Steel” (“**PUC**”) from India & other countries as applicable dated back to August 2016. We understand that the application is instituted by BlueScope Steel Ltd (“**BlueScope**”) on behalf of the Australian Industry producing the like goods to the imported goods.

At the outset, we thank the Anti-dumping Commission of Australia (“**Commission**”) under the Department of Industry, Innovation and Science for intimating us about the institution of the application. The Gol is deeply concerned about the fact that the allegations of subsidy hoisted in the application instituted by BlueScope are, *prima facie*, ill-conceived as far as the policies of the Gol are concerned, misinterpreted and greater clarity on such allegations of subsidy can be provided by the Gol by way of a pre initiation consultation which may help the Commission to assess the factual position of such allegations without a full-fledged investigation as provided in Article 13.1 of the ASCM. Thus, without prejudice to our right to make submissions in the event of any initiation of countervailing duty investigation by the Commission, we urge the Commission to convene a pre initiation consultation in the matter at this stage so that the Gol would be able to highlight some of the major inconsistencies in the application by BlueScope regarding allegations of subsidy on policies of Gol qua the “PUC” and their factual position. We believe that such pre initiation consultation would bring only further clarity on the issues under consideration and no way

prejudice the legitimate interests of the Australian industry concerning the PUC represented by BlueScope and such consultation is mandated in the ASCM.

The Commission may consider the following aspects in justification of the need for a pre-initiation consultation in the given matter apart from mandatory nature of consultation set out in Article 13.1.

**The Application is inconsistent with Articles 11.1, 11.2, 11.3 and evoking 13.1 of the ASCM is essential.**

1. A *prima facie* perusal of the application shows that the subsidy allegations made by BlueScope in their application are unfounded and do not justify any initiation of a countervailing investigation against India by the Commission. The application is apparently insufficient and misleading in terms of evidences and such sketchy information would not enable the Commission to gauge the factual position of such allegations. Thus, a process of consultation as envisaged in Article 13.1 of the ASCM would be fair and just in the present matter. Text of Article 13.1 is reproduced for ready references;

*“13.1. As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, Members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution”. (Italics supplied)*

2. Article 11.2 of the ASCM requires, inter alia, that an application by a domestic industry under Article 11.1 must include sufficient evidence of the existence of: (a) a subsidy and, if possible, its amount; (b) injury within the meaning of Article VI of the GATT; and (c) a causal link between the subsidized imports and alleged injury. In terms of Article 11.1, simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this Article. Article 11.2 further requires the domestic industry to produce evidence with

regard to the existence, amount and nature of the subsidy in question, as may be reasonably available to the domestic industry.

3. Furthermore, Article 11.3 requires that an investigating authority must review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation. Therefore, Articles 11.1, 11.2 and 11.3 read together, imply that an investigating authority cannot initiate a countervailing investigation under ASCM unless the investigating authority has determined the accuracy and adequacy of the evidence as required to be submitted through an application under Article 11.2.
4. It can, thus, be fairly asserted that convening a pre initiation consultation to give effect to the condition set out in Article 11.3 which says the authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation would well be within the envisaged procedures which the authorities can contemplate and such process would only bring in much more clarity and compliance to Article 13.1.
5. In the present case, the application, *prima facie*, does not contain the following relevant information to enable the Commission to determine 'accuracy and adequacy of the evidence' under Article 11.3 of ASCM. This is borne out by following facts:
  - a. The application cites several domestic policies of the Gol as subsidies without providing any evidence as to its existence, or use of any of these schemes by any producer from India, or amount of benefit conferred on any of the producers. In fact, some of these policies which have been alleged as subsidies, as we will argue further, do not even exist. Clearly, BlueScope has not applied its mind to check the veracity of these allegations.
  - b. It may be relevant to note the obligation on Member States pursuant to Article 11.9 of the ASCM also, which reads, as follows:

*“An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of a subsidy is de minimis, or where the volume of subsidized imports, actual or potential, or the injury, is negligible. For the purpose of this paragraph, the amount of the subsidy shall be considered to be *de minimis* if the subsidy is less than 1 per cent *ad valorem*.” (Emphasis supplied)*

- c. On a bare reading of Article 11.9, it is clear that for an application to be accepted and an investigation to survive, there must be sufficient evidence with respect to amount of a subsidy and volume of subsidized imports. In absence of such evidence, the authorities cannot determine: (a) whether the amount of subsidized imports is above *de minimis*; and (b) whether the volume of subsidized imports or the injury is significant. However, since BlueScope has not even established if the alleged subsidies: (a) exist; or (b) have actually been used by a foreign producer/exporter, the Commission has no basis to institute the investigation and the same would established if a consultation is permitted. Further, BlueScope, by failing to provide any valuation for the alleged subsidies, cannot possibly establish if the value of the alleged subsidies is above *de minimis*. Therefore, the Gol is surprised how the Commission would even evaluate the case on merit on the basis of such a deficient application.
  - d. BlueScope merely submitted that the aggregate benefit of the identified subsidy programs as received by a recipient exporter are above negligible levels and therefore justify the imposition of a countervailing notice in respect of the Indian exporters of the goods, however, regrettably not even an iota of evidence is provided.
6. Therefore, for these reasons, the Gol urges the Commission to convene a pre initiation consultation concerning the allegation of subsidy qua Zinc coated

(galvanised) steel exported to Australia from India as per ASCM in keeping with its obligations under the WTO.

7. In view of the above, the Gol requests that:

- (i) A pre initiation consultation may be convened at the earliest in the case above; and
- (ii) No initiation should be notified before the obligations for a pre initiation consultation is exhausted.

8. The Gol reserves its right to make additional submissions in this connection. We are grateful to the Commission for the intimation and hopeful that the Commission will consider our views favourably and permit a pre initiation consultation.