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17 April 2018

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

By email

Dear Director

Dongbu Steel Co., Ltd Continuation inquiry concerning aluminium zinc coated steel

As you know, we represent Dongbu Steel Co., Ltd (“Dongbu”) in this matter.

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A Introduction

The application for this continuation inquiry (“the Application”) attempts to establish a narrative to support the proposition that the measures should continue beyond their five years of operation. Such continuation should not occur as a matter of course, rather, only in extraordinary circumstances. As a matter of law, the Commissioner can only recommend the continuation of measures where he is satisfied that:

...the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.¹

From this we note:

- The “anti-dumping measures” referred to here is the “publication of a dumping duty notice”, being a notice published by the Minister under subsection 269TG(1) or (2).²
- The “injury”, therefore, is the injury caused by dumping that required the publication of the Section 269TG(1) and (2) notices in the first place, being material injury caused by dumping from the subject exporters.
- It has been established that it is not sufficient that a recurrence or continuation of injury be possible or plausible but, rather, such an outcome needs to be probable.³
- Any decision to continue the measures must be demonstrable on the basis of positive evidence.⁴

One implication of this is that injury caused by any other factors – injury that in an original investigation *must not be attributed* to the goods subject to the investigation under Section 269TAE(2A) – cannot be a motivating factor for the continuation of the measures. This is for the simple fact that such injury cannot be used to justify the imposition of measures in the first place, and therefore cannot be a basis for considering that there is a need to continue the measures.

The narrative in Application lodged by BlueScope Steel Limited (“BSL”) confuses this – focussing on broad trends that are relevant to the global market rather than specific factors relevant to the goods subject to measures. Indeed, the Application does not even reflect the fact that there are currently large volumes of the goods available in the Australian market from exporters that are not subject to the measures.

In this submission, Dongbu will address the following points:

- Dongbu’s history of exports to Australia;
- export volumes to Australia;
- the impact and relevance of other dumping investigations;
- BSL’s sales volumes since the measures were introduced; and

¹ See Section 269ZHF(2) of the *Customs Act 1901* (“the Act”).

² See Section 269T of the Act.

³ See *US – Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan* (WT/DS244/AB/R), at para 111.

⁴ See *United States — Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from Korea* (WT/DS99/R); at para 6.42.

- BSL's pricing practices.

B Dongbu's history of exports to Australia

The Application spends a significant portion of time discussing variable factors reviews and communicates a degree of cynicism and suspicion regarding exporters who have availed themselves of their legal right to have their variable factors reviewed. BSL's concerns in this regard are well documented, having formed the basis of a number of Anti-Dumping Review Panel ("ADRP") appeals, including an appeal of the decision arising out of Dongbu's most recent variable factors review. That concern appears to be:

The foregoing highlights that where variable factors are reviewed and exporters are able to achieve 'zero' margins of dumping based upon a period with no exports to Australia and, where the variable factors reflect levels substantially below contemporary levels, then in the event the anti-dumping measures are allowed to expire, it is unquestionable that exporters will again dump in the Australian market and cause further material injury to the Australian industry manufacturing like goods.⁵

Dongbu completely and unambiguously rejects the proposition that it acted improperly when exercising its legal right to seek variable factor reviews. The proposition that an exporter would forgo making profitable exports for twelve months in order to apply for a variable factors review with the ultimate goal being to dump on the Australian market belies all logic.⁶ Dongbu cannot speak for other exporters, but in its case it would point out the following:

- Dongbu's initial review (covering the period 1 October 2013 – 30 September 2014) found that Dongbu was not dumping. Accordingly, the Commission set the AEP to ANV.⁷
- That review took nine months to complete. By the end of that review, the price of HRC had [CONFIDENTIAL TEXT DELETED – change in price] from the levels it was during the original review period.
- As documented in Dongbu's application for its second variable factors review, the price of HRC [CONFIDENTIAL TEXT DELETED – change in price] by [CONFIDENTIAL TEXT DELETED – number]%. This had a flow on effect in the Australian market, in which Dongbu considered that prices for the goods under consideration [CONFIDENTIAL TEXT DELETED – change in price] by [CONFIDENTIAL TEXT DELETED – number]%.⁸
- Because of this, and again, as documented in the application, the AEP applied to Dongbu was significantly higher than the market price common in Australia. As the AEP effectively acted as a floor price, Dongbu's product was not competitive compared to other sources of aluminium zinc coated steel, including BSL's. As a result, Dongbu [CONFIDENTIAL TEXT DELETED – Dongbu trading history] to Australia following the outcome of its first review.⁹

⁵ See Application, at page 11.

⁶ Dongbu notes the recent passing of the *Customs Amendment (Anti-Dumping Measures) Act 2017*, which appears to have been done in rapid and direct response to BSL's concerns. The explanatory memorandum supporting that Bill does not appear to be objective, but rather, puts forward a fanciful argument in support of the law changes. To be frank, Dongbu is shocked that a modern, democratic nation such as Australia would bow to industry pressure so quickly, and embrace a law that is patently inconsistent with WTO rules.

⁷ See EPR 272 Doc 014 – *Report 272 & 273 Aluminium Zinc Coated Steel & Zinc Coated Galvanised Steel*, at pages 16 and 21.

⁸ See EPR 386 Doc 001 – *Application for review of anti-dumping measures by Dongbu Steel Co Ltd*, at page 7.

⁹ *Ibid.*

- Accordingly, Dongbu applied for its second review of the variable factors, as it was entitled to under Australian law.

There is no artifice here. There were no conniving choices or underhanded motives. Dongbu simply exercised its rights under law. The fact it has done so is entirely irrelevant to the continuation inquiry.

It is important to recall that the anti-dumping system is not supposed to operate as an impenetrable wall of protection for BSL. It is an impartial system that is meant to correct instances of injurious dumping. Nothing more than that. The variable factors review system reflects the fact that circumstances faced by a manufacturer can change rapidly, and therefore allows for measures to be altered if evidence establishes the measures now over-protect the domestic industry. The Australian industry is equally able to apply for reviews in circumstances where it concerned that the measures are no longer sufficient to protect it.¹⁰

Since the outcome of its second review on 20 July 2017, Dongbu has begun exporting to Australia [CONFIDENTIAL TEXT DELETED – Dongbu trading behaviour]. These were [CONFIDENTIAL TEXT DELETED – Dongbu sales decision] which Dongbu only made if it considered [CONFIDENTIAL TEXT DELETED – Dongbu trading behaviour].

C Export volumes to Australia

The Application provides the following data regarding export volumes to Australia:

YE-July	China	Korea	Taiwan	Japan	Other	Total
2014	23,702	388	30,107	3,379	2,564	60,140
2015	18,510	1,098	35,319	2,781	3,184	60,892
2016	13,573	3,399	31,846	4,435	2,648	55,901
2017	8,593	3,114	21,698	3,449	1,813	38,667

The following trends are notable from this data:

- The overall volume of imports from all sources – which are the only form of competition for BSL - have fallen by 36% between 2014 and 2017.
- The majority of exports to the Australian market were consistently from countries to which the measures relevant to this inquiry do not apply. Taiwanese aluminium zinc coated steel, again not subject to measures, represented more than 50% of exports each year. At most, exports from Korea represented 8%.
- However, Dongbu does not believe that this export volume from Korea is representative of exports subject to measures. Dongbu notes that it is the only cooperative exporter from Korea for the purpose of the review, and its sales volumes [CONFIDENTIAL TEXT DELETED – Dongbu sales information]. Dongbu considers it likely that the above Korean volumes represent exports from **manufacturers** not subject to measures, such as Dongbuk.

What is relevant to the question under Section 269ZHF(2) of the Act is the fact that there are substantial quantities of the like goods in Australia that are not subject to any measures. The exporters of these goods have long established distribution channels in Australia, and their prices

¹⁰ As was done for Reviews 456 and 457.

and volumes are dictated via supply and demand in Australia. It is not apparent, given this, that there can be any basis for concluding that the expiry of the measures would have any impact on BSL's sales volume or price.

D Impact and relevance of other dumping investigations

The Application cites a number of anti-dumping investigations undertaken by other jurisdictions into the goods as evidence that exporters in China and Korea *"have exported at dumped prices resulting in material injury to a domestic industry in the specified countries"*.¹¹ The Application further states that this would result in *"increased incentive for exporters the subject of measures to resume dumping in the Australian market"*.¹²

However, when the details of these investigations is understood, it is apparent that this line of reasoning is simply not applicable to Dongbu. The relevant details of these measures is as follows:

Investigation	Relevance to Dongbu
US Department of Commerce AD/CVD measures regarding corrosion-resistant steel from China, India, Italy, South Korea and Taiwan	Dongbu was not selected as a mandatory respondent for this investigation. As a result, the dumping measures imposed do not reflect Dongbu's pricing behaviour. Dongbu is currently undertaking an administrative review, which will establish that it is not dumping. Moreover, the decision in this matter was made in 25 May 2016, so any impacts on Dongbu's sales processes would be apparent in the period of review.
Taiwanese investigation regarding hot dipped galvanised coil/sheet ("HDG") from China and South Korea	HDG is not a significant part of Dongbu's product mix, and Taiwan has never been a significant market for Dongbu.
Vietnamese investigation regarding HDG and coated sheet from China and South Korea	Vietnam is a small market for Dongbu, as there is no a lot of demand for high-spec product such as that produced by Dongbu in the Vietnamese market. As a result, Dongbu decided not to participate in this investigation.
Thai investigation regarding HDG and coated sheet from China, South Korea and Taiwan	This investigation was terminated 7 March 2018.

Respectfully, we submit that these investigations have no relevance to the consideration of whether the measures should be continued against Dongbu, as either an indicator of future behaviour, nor as a guide to predicting future export volumes.

BSL considers that it can be inferred from the above findings that *should the measures be allowed to expire in Australia, there would be an increased incentive for exporters the subject of measures to resume dumping into the Australian market*.¹³ The reasoning for this is unclear. What is the imagined mechanism at play? What is the imagined incentive to dump? Dongbu notes the following:

- Any impact of these measures would be readily apparent in the information submitted by Dongbu. The information submitted by Dongbu establishes that Dongbu's capacity utilisation

¹¹ Application, page 5.

¹² *Ibid*, page 6.

¹³ *Ibid*.

is [CONFIDENTIAL TEXT DELETED – Dongbu capacity utilisation rate] during the POR. Why would Dongbu divert sales from other countries to “resume dumping” on the Australian market?

- In the period of review, Dongbu exported the goods to 47 different countries, including Australia. Only 4 of these – including Australia – have anti-dumping measures imposed upon them.
- In the circumstance that BSL’s logic was correct it is equally applicable to exporters not subject to the measures, including Dongkuk and all exporters from Taiwan.

Given this greater detail, it is clear that this information does little to assist the Commission in considering whether *sans* the measures, exporters subject to those measures would be likely to once again dump goods on the Australian market, or indeed, whether such dumping would be “injurious” in and of itself. At least insofar as Dongbu is concerned it has absolutely no probative value.

E BSL’s sales volumes since the measures were introduced

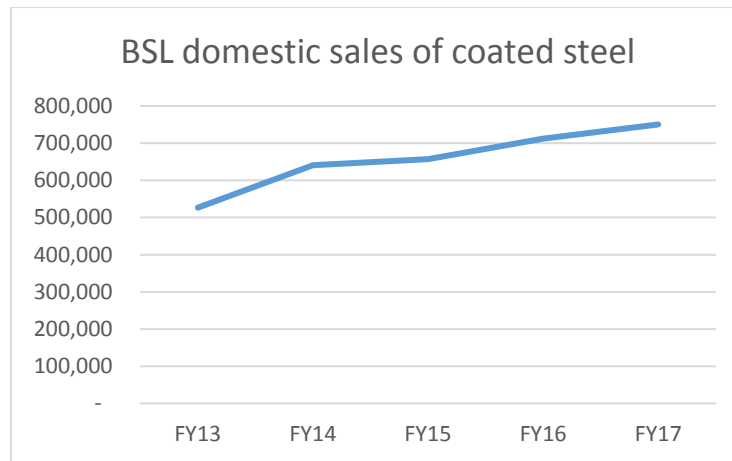
Obviously the question of whether BSL is likely to suffer a recurrence of injury is only answerable upon an objective review of BSL’s current performance. What is surprising about the Application, is the absence of any detailed information regarding the operations of BSL. This has been somewhat remedied by the publication of *Continuation 449 and 450 and Reviews of Measures 456 and 457, Inquiry into the Continuation and Review of Anti-Dumping Measures Applying to the Zinc Coated (Galvanised) Steel Exported from the people’s Republic of China, The Republic of Korea and Taiwan and Aluminium Zinc Coated Steel Exported from People’s Republic of China and the Republic of Korea: Visit Report – Australian Industry – BlueScope Steel Limited* (“Industry Report”).

Of note, that report focuses on data from the period 2014 – 2017. The reason for this is unclear. The purpose of this inquiry is to determine whether there is a basis for continuing the measures. Surely in discharging that duty, it is important to consider the improvement in the Australian industry’s performance since the measures were first imposed, as this will better illustrate how robust it now is and therefore how likely it is to suffer injury in the future. Take for example the following sales volume analysis from the Industry Report:

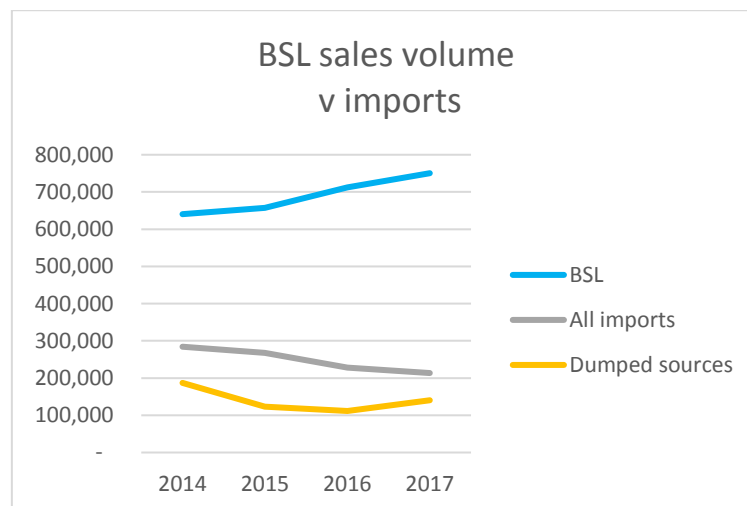


The accompanying commentary is that BSL’s domestic sales volume has grown steadily between 2014 to 2017.¹⁴ This growth happened at the same time, as there was a significant decrease in import volumes, as discussed above. However, the above is an incomplete picture of the Australian industry’s performance. Based on publically available information, it is apparent that BSL’s sales volume for coated product (both aluminium zinc coated steel and zinc coated (galvanised) steel), has increased significantly since the measures were first imposed:

¹⁴ See Industry Report, at page 11.



Since 2013, BSL's sales of coated steel have increased from 525,000 MT to 750,000MT (over 40%). This is equal to over 200,000 MT, close to the volume of all imports of the goods (210,658 MT based on the information in the Applications) in 2017. During the same period of time exports of coated metal have decreased by 25% (approximately 70,000MT. This is further illustrated in the below graph:



It is evident that there have been significant improvements in the Australian market and that BSL has been the primary beneficiary of those improvements. BSL is not in the same position it was in the period considered during the original investigation. It is stronger, and its sales volumes are vastly improved. However, even this does not fully capture the scope of the Australian industry's activity. As the Commission recently confirmed, the concept of the "Australian industry" is not limited to sales of the goods under consideration, but rather by production of the goods under consideration.¹⁵ In order to get a proper understanding of the performance of the Australian industry producing like goods,

The above information relates to BSL's sales, not its production. In this case, a significant portion of BSL's production of coated steel is used internally to produce pre-painted product, such as its "Colorbond" range. Dongbu understands that BSL sold approximately 500,000 MT of painted product in FY17 into the Australian market.¹⁶ Assuming there is a one-to-one conversion rate between coated steel and painted steel, this means that BSL's sold or converted some 1,250,000MT of coated steel in FY2017, representing a total increase of 30% since 2013.

¹⁵ See EPR 384 Doc 061 – Termination Report No. 384 – Alleged Dumping of Alloy Round Bar Exported from the People's Republic of China, page 22.

¹⁶ This volume itself up from 440,000MT in FY2013.

Based on the information from BSL, exports from the countries subject to measures were only 11% of BSL's total sales and internal transfers of the GUC. BSL is market dominant. It has supplanted imports from all sources since the measures were first imposed. On the facts before the Commission BSL is clearly less vulnerable to the injury that the measures were originally imposed on order to counteract.

F BSL's pricing practices

BSL alleges that it has been unable to raise prices to reflect cost increases caused by higher HRC input costs in 2016/17, because it was required to compete with offers for imported aluminium zinc coated steel from Korea and China at levels that reflected the low HRC costs of the 2015/16 year.¹⁷ BSL, considers this is a result of the outcome of variable review factors 367, 372, 375 and 385.

There are many issues with this narrative, in addition to those we have discussed above regarding BSL's mischaracterisation of exporters who have sought variable factors reviews:

- 1 Firstly, BSL considers this effect took place as of May 2017. This cannot be applicable to Dongbu, as the outcome of Review 285 was not made until July 2017. Moreover, Dongbu's [CONFIDENTIAL TEXT DELETED – Dongbu trading history] before the outcome of its variable factors review.
- 2 Dongbu considers the Application overplays the relationship between review outcomes and BSL's price. In the Application BSL provides the following graph to illustrate this relationship:



The Application goes on to states that [f]igure 1 demonstrates that following the review of measures outcomes (and indeed, immediately following the announced review outcomes) BlueScope's selling prices declined to match the variable factors determined based upon the earlier review period.¹⁸ Again, Dongbu [CONFIDENTIAL TEXT DELETED – Dongbu trading history] following the outcome of its first review, so any relationship between the outcome of that review and BSL's prices is either coincidence which BSL is dressing up as causal, or BSL is hysterically sensitive to the possibility of additional import competition.

We think it is the former. Dongbu notes that according to BSL's own Application, in the same year that Dongbu concluded its first variable factors review there was some 25 thousand tonnes of aluminium zinc from Taiwan and Japan in the Australian market. At the same time,

¹⁷ See Application, at page 12.

¹⁸ Ibid, at page 11.

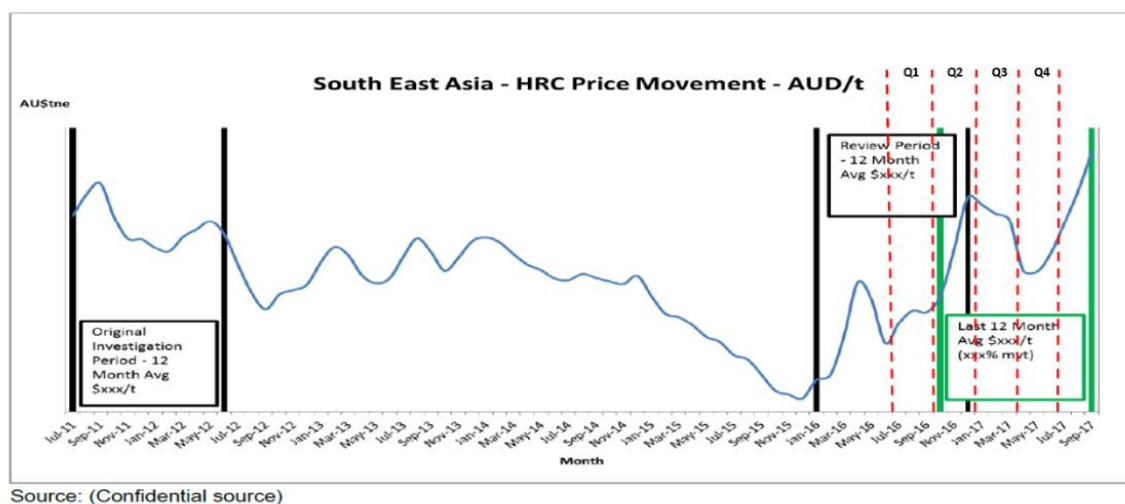
there was an additional 3 thousand tonnes of Korean product in the Australian market, which Dongbu believes is not subject to measures. Dongbu [CONFIDENTIAL TEXT DELETED – Dongbu trading history] to Australia during this year.

Similarly, and again to reiterate, in the year ending July 2017 Dongbu [CONFIDENTIAL TEXT DELETED – Dongbu export sales volume] of the GUC to Australia, and this was prior to the outcome of the most recent variable factors review.

Given this, is it really credible to believe that BSL lowered prices in response to review outcomes? Or is it simply the fact that BSL competes largely with goods not subject to the measures, which are produced by superiorly efficient mills and applies its prising methodology to those mills? If the latter – and it is the latter – the Application is attempting to gaslight the Commission. The Commission needs to treat such spurious claims, and those who make them, with a suitable amount of scepticism.

- 3 What is clear from the above graph is that BSL has managed to increase its price to the highest level they have been at any time since the measures were originally imposed. This indicates that there is no price depression or suppression.
- 4 Dongbu also disagrees with the proposition that, but for the exports of the goods subject to measures, BSL would have been able to raise prices to recover increasing raw material steel input costs. The Industry Report confirms that BSL still adopts its IPP policy for the setting of price.¹⁹ Dongbu understands that that this means that BSL's prices are set three months prior to sale. The basis for setting this price is not raw material costs, but rather prices from exporters. BSL has never indicated in any of the many investigations it has applied for, that it will alter its price to take into account subsequent raw material increases.

There can be massive variability in HRC costs in any three month period as indicated by the below diagram:



This graph has been sourced from BSL's Application for review of measures on HRC.²⁰ We have highlighted the three-month periods prior to each quarter of the POR. In three of four of those quarters the price of HRC was higher at the end of the period than it was at the start of the period. A price set in July-16 for sale in September-16 clearly would not have factored in the increase in HRC costs between July and September. So, the purported inability to

¹⁹ See Industry Report, at page 17.

²⁰ See EPR 454 Doc 002 – Review 454 – BlueScope Application, at page 7.

recover increased HRC costs is not a result of imports, but rather a result of the lagged nature of BSL's pricing mechanism.

Having said that, it is clear that BSL was able to increase its price for aluminium zinc coated steel throughout the POR, to the extent that in July 2017 BSL's price was higher than it had been at any point since July 2013. This indicates that there was no price suppression.

6 Finally, it is apparent that BSL is being undercut by goods not subject to the measures:

Due to the retrospective nature of anti-dumping measures – and the likely absence of requests for duty assessments by exporters in a rising market, BlueScope has experienced injury from the re-commenced dumping that occurred during the 2016/17 year. BlueScope was unable to raise its selling prices for aluminium zinc coated steel in the Australian market and, as a consequence, experienced price suppression injury contributing to reduced profits and profitability throughout 2016/17. In particular, BlueScope experienced price undercutting in 2016/17 from offers of imported aluminium zinc coated steel from Dongkuk of Korea.

The price-effect injury experienced by BlueScope in 2016/17 can be attributed to the reduction in the variable factors from the previous period (i.e. 2015/16) that did not reflect the rapid increases in HRC pricing evident from the last quarter of 2016. BlueScope was unable to pass on the HRC cost increases that it experienced in 2016/17 as it met the import parity prices driven by the Dongkuk offers for aluminium zinc coated steel.²¹

Dongkuk is not subject to the measures, and there is no evidence to suggest that it has dumped goods on the Australian market. This "undercutting" has nothing to do with goods subject to the measures nor the likely impact that the expiration of measures would have on BSL. If anything, it simply shows that the continuation of measures will have simply no beneficial impact for BSL and otherwise lessen competition.

So, the claims made by BSL should be disregarded. They simply do not provide any factual basis upon which to conclude that dumping and material injury will recur if the measures are allowed to expire.

What *is* relevant to the question posed by Section 269ZHF is the broader question of BSL's price setting mechanism. We know from previous investigations that BSL apparently targets an "effective threat" when setting its IPP each month. There is limited publically available information regarding this practice, although, it is apparent that BSL has regard to a supplier's volume, quality and the price of the product when determining if they are an "effective threat".²² Having said all of that we also note that, the original investigation made the finding that the benchmark IPP price "closely" matched the lowest quoted price.²³ It seems unlikely in the light of significant volumes of product available in the Australian market to which no measures apply that Dongbu would be considered to be an effective "threat" for the purpose of BSL's pricing mechanism.

In any regard, because of this mechanism, there is always going to be a limitation upon how much BSL will be able to increase its prices. There will also always be "undercutting" in the sense that BSL sets its prices by determining the IPP benchmark and then adding a premium with the result that the IPP benchmark will always be below BSL's price. This is not undercutting in the sense that exporters are trying to take sales volume from BSL, but rather BSL being guided by exporters as to where they should set their price. There is nothing injurious about this. It is merely a side effect of BSL's pricing

²¹ See Application, at page 10.

²² See EPR 370 Doc 106 – REP 370 – REP 370 - Galvanised Steel – India, Malaysia and Vietnam, at page 67.

²³ See EPR 190 Doc 142 – Report 190 Galvanised steel and Aluminium zinc coated steel – China, Korea and Taiwan April 2013, page 113.

practices. Ultimately, continuing the measures for fear that BSL may consider newly unrestrained exporters to be an “effective threat” at some point in the future will simply distort the market with no beneficial impact for BSL.

G Other comments

In addition to the above, the Application also mentions the following as being relevant to BSL’s claim that measures should continue:

- exporters having maintained distribution links;²⁴ and
- steel industry overcapacity.²⁵

In that regard, Dongbu notes that its capacity was [CONFIDENTIAL TEXT DELETED – Dongbu capacity utilisation rate]. What is the relevance of overcapacity to an entity [CONFIDENTIAL TEXT DELETED – Dongbu capacity utilisation information]? In any regard, Dongbu feels that this issue has been overplayed in recent years. Indeed the only evidence that BSL has provided to support its contention is references to a 2016 report put together by the Anti-Dumping Commission itself. There is no actual evidence to suggest this has impacted the Australian market. Indeed, if things were as dire as BSL contends, then surely exports of the GUC from sources not subject to measures would have been similarly impacted and increased sharply. There is no evidence that this has occurred. Imports into Australia from all sources have decreased dramatically. BSL’s sales have increased dramatically. There is simply no evidence that this is relevant.

Finally, Dongbu’s sales have [CONFIDENTIAL TEXT DELETED – Dongbu trading behaviour]. It is [CONFIDENTIAL TEXT DELETED – Dongbu trading information] that have “distribution links” in Australia. If Dongbu’s exports are subject to measures, [CONFIDENTIAL TEXT DELETED – Dongbu trading information] will simply find other sources not subject to the measures. Again, this is an irrelevant consideration for Section 269ZHF(2).

H Conclusion

There is little positive evidence before the Commission that would lead it to find that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

Specifically, with regard to Dongbu, the only basis put forward for continuation are baseless allegations that are almost immediately proven to be incorrect. Baseless allegations are not fact. They are not a basis to continue the measures.

Accordingly, we respectfully request that the Commission recommend to the Assistant Minister that expiry of the measures as they relate to Dongbu would not lead, or be likely to lead, to a continuation or recurrence of injurious dumping, and so that the measures expire, at least insofar as they relate to Dongbu.

²⁴ *Ibid.*

²⁵ *Ibid*, page 9.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bridges', enclosed within a thin black rectangular border.

Alistair Bridges
Senior Associate