

Canberra
6/2 Brindabella Circuit
Brindabella Busines Park
Canberra International Airport
Australian Capital Territory 2609

Canberra +61 2 6163 1000
Brisbane +61 7 3367 6900
Melbourne +61 3 8459 2276

www.moulislegal.com

Brisbane
Level 4, Kings Row Two
235 Coronation Drive
Milton, Brisbane
Queensland 4064

Melbourne
Level 39, 385 Bourke Street
Melbourne
Victoria 3000

Australia



commercial + international

23 May 2018

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

By email

Dear Rhys

Dongbu Steel Co., Ltd Response to Statement of Essential Facts 450 and 456

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

Dongbu broadly supports the proposition in Statement of Essential Facts No. 450 ("SEF 450") that the measures be terminated insofar as they relate to aluminium zinc coated steel exported from Korea. We agree that the better view of the evidence is that the probability of both dumping and the recurrence of injury is not established. That said, Dongbu does not agree with the margin attributed to it in Statement of Essential Facts No. 456 ("SEF 456"), and in the way the issue was raised with Dongbu.

The margin that was attributed to Dongbu is based on the "proxy export price" methodology available under Section 269TAB(2B)(b) of the *Customs Act 1901* ("the Act"). While this is a methodology that is available under Australian law Dongbu does not believe it to be WTO compliant, nor does Dongbu consider the margin that has been attributed to it on the basis of this methodology to be one that can properly be described as a "dumping margin". Rather, it involves an arbitrary, indelicate and irrelevant selection of an export price achieved in a market that has nothing to do with Australia. The margin's worth, in the context of a review of variable factors regarding goods exported to Australia, and with regard to the question of whether measures should be continued, is nil.

Dongbu also disagrees with the way in which the use of this methodology was sprung upon it. The adoption of this methodology was only announced to Dongbu a week prior to the publication of SEF 456, and the calculations made in accordance with this methodology were provided even after that. No explanation as to why Belgium was considered to be an appropriate choice of export country for the purposes of the review was provided. Dongbu was advised that it could make a submission in response to the adoption of this methodology after the publication of the SEF 456.

Having said all of that, Dongbu also does not consider the proxy export price methodology has been properly applied under Australian law. It seeks to have this application reversed in the final report, despite the conclusion that the measures not be continued as against Korean exporters.

A There is no basis to adopt the proxy export price methodology

Section 269TAB(2A)(b) of the Act sets the threshold for the application of the proxy export price methodology as follows:

(b) the Minister determines that there is insufficient or unreliable information to ascertain the price due to an absence or low volume of exports of those goods to Australia by that exporter having regard to the following:

(i) previous volumes of exports of those goods to Australia by that exporter;

(ii) patterns of trade for like goods;

(iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

It is clear that the application of this methodology is not based on export volume alone. Indeed, (iii) suggests that there are circumstances where a small volume of exports will be appropriate for use in determining an export price where it has been brought about by factors affecting the patterns of trade that are not within the control of the exporter.

Having regard to the factors in Section 269TAB(2A)(b) Dongbu does not consider that there was insufficient information, or that the available information was unreliable, for the ascertainment of Dongbu's export price. In particular, Dongbu thinks the analysis of the "patterns of trade" in the SEF is materially limited. The Commission's conclusion appears to have been based on the conclusion that demand for aluminium zinc coated steel persisted in the Australian market, and that there does not appear to have been a marked decline in the overall volume of aluminium zinc coated steel exported to Australia.¹ Dongbu's concern is that the twin bases of this conclusion do not accord with the findings in SEF 450.

As to the first basis, SEF 450 concluded that imports from the subject countries - notably not just subject exporters - "*dropped significantly*" in the case of China and "*decreased sharply*" in the case of Korea and that their market shares "*declined significantly*".² As to the second basis, it is also clear from SEF 450 that the market share of all exports declined significantly between the period of investigation for the initial investigation, and the current period of investigation, as shown below:

¹ Page 39.

² Page 41.



So, the Commission's analysis would appear to be faulty, based on the basis of the information included in SEF 450.

As to whether demand persisted generally, it did. As a basic economic principle, if there is no demand, there is no market. The question of why supply from various areas (i.e., those subject to measures) decreased, is a different and more relevant question. This is answered quite simply. Any dumping measure that includes a floor price, such as those applicable to Dongbu, acts as a barrier to entry when the market price falls below that floor price. This has nothing to do with the seller. It is merely a function of the fact that there are other sources of the product that are not similarly restrained in terms of their price setting. If there was a decrease in the market price then, clearly, the prices of the restrained seller will be far less appealing to any potential customer.

Failure to consider the market price in Australia is a failure to consider the patterns of trade appropriately. This is particularly the case where there were significant decreases in the price of aluminium zinc coated steel in the Australian market. This is overwhelmingly evident from the information available to the Commission. In particular, we note the following graph from BlueScope. BSL's own price is a proxy for price movements in the Australian market generally, because:

- BSL is the largest supplier in the Australian market, and therefore has a significant degree of price power; and
- BSL has no interest in achieving higher prices in the Australian market, but instead chooses to slavishly match import prices (previous investigations have found that there is a correlation between the lowest import offer and BSL's benchmark price).

Figure 1 – BlueScope's average aluminium zinc coated steel selling prices – July 13 to Sep 2017



Up until 20 July 2017, Dongbu could not sell to Australia at a price that was less than the ascertained export price ascertained on the basis of information during the first review period (“AEP”).³ The prices in the Australian market did not return to the levels they had been in the period of review (“POR”) of the first review until around June 2017. Until that point, Dongbu’s products were less attractive to potential customers than the product that was available in the Australian market from BSL and from other sources of aluminium zinc coated steel.

The key driver of this decrease in prices was the decrease in hot rolled coil prices since the first POR. As per Dongbu’s application for its second review, the price of HRC had fallen by [CONFIDENTIAL INFORMATION DELETED - number] between the time the measures were set and the time of the application for the second review. This price fall had the impact of decreasing the price of the goods under consideration by [CONFIDENTIAL INFORMATION DELETED - number].⁴ Given the measures were set during this time, Dongbu was not afforded the same flexibility that other suppliers of the goods were, and so its sales volume diminished.

It is important to differentiate this from “dumping”. Dongbu has been found to have been one of the higher priced suppliers in the Australian market for both aluminium zinc coated steel and zinc coated galvanised steel. This would not change absent the measures. Dongbu will not enter into a transaction that is not ultimately beneficial to it. All sources of aluminium zinc coated steel had lower input costs, but only those not subject to the measures were afforded the benefit of those lower input costs when negotiating a price. As a result, Dongbu was not price competitive when compared to these other sources. As the Commission has found, aluminium zinc coated steel is a commodity product, so these strictures adversely impacted Dongbu’s sales volume to Australia.

Neither this decrease in the market price for aluminium zinc coated steel, nor the causative decrease in the price of HRC, were within Dongbu’s control. It was these things that impacted Dongbu’s trade patterns to Australia. On this basis, we do not think it can be found that there is insufficient or unreliable information to determine Dongbu’s export price to Australia. Dongbu’s export price was a sufficient and reliable indicator of its export price behaviour. At no time could it be accused of “gaming” the system. Indeed, its investment in two review procedures indicates its sincerity in anti-

³ Indeed, if Dongbu was to offer a price below this, the importer would incur duties that would make the price into Australia the same as the AEP.

⁴ See EPR 386 Doc 001 – *Application for review of anti-dumping measures by Dongbu Steel Co Ltd*, at page 7.

dumping compliance. Its sales were not related party sales. Its inability to make more sales was based on a floor price which exceeded that which was applicable to other exporters.

We strongly submit that its export price should be based upon the price of its own exports to Australia during the period of review, consistent with the globally recognised methodology for determining export prices. On this basis, Dongbu is not dumping. We ask that the ascertainment of Dongbu's export price by the Commission be reconsidered, and that the recommendations to the Minister restore Dongbu's own export price as the point of comparison for the margin calculation.

B The choice of proxy export price is arbitrary

As we have submitted above, we disagree that there is an appropriate basis to apply the "proxy export price" methodology in the circumstances of this review. That said, as a matter of logic, Dongbu also has significant concerns about the reasoning behind the selection of prices to Belgium as a proxy for Dongbu's sales to Australia. This choice appears to have been guided by three considerations, being the volume of trade between Dongbu and Belgium; the comparative nature of the trade in goods exported from Korea to Australia and from Korea to Belgium; and the *"comparable product specifications and characteristics"* of aluminium zinc coated products sold in the Australian market by exporters generally.⁵

In these respects we note the following:

- *"volume of trade"* - Dongbu also sold similar quantities [CONFIDENTIAL INFORMATION DELETED – countries]. The Commission collected information regarding [CONFIDENTIAL INFORMATION DELETED – country] sales during the verification. If the Commission was to use [CONFIDENTIAL INFORMATION DELETED – country] as the proxy export price, Dongbu calculates that the resultant margin would be reduced to [CONFIDENTIAL INFORMATION DELETED - margin]. No reason is given as to why Belgium is considered preferable to any of these other countries.
- *"nature of the trade in goods"* – in this regard, SEF 456 refers to the reasoning in *Anti-Dumping Commission Report Nos 409 and 410* ("REP 409/410"). This is somewhat confusing, as this report relates specifically to Chinese exporters, not Korean exporters generally, nor to Dongbu specifically. The consideration in these reports seems to relate to the commercial trade terms of the transactions of the goods there under consideration, including delivery and credit terms, and the level of trade comparison of the Chinese exporters' exports to Australia and those to Belgium. It is not apparent that such an analysis is readily transferable to Dongbu's situation. Indeed, if this analysis was undertaken, it has never been explained or disclosed to Dongbu. Dongbu still does not understand the SEF's conclusion that *"the nature of trade between Korea and Belgium is similar to the nature of trade between Korea and Australia"*.

Dongbu considers that the Australian market is substantially different to the Belgium market. There are two producers of aluminium zinc coated steel in Belgium, and numerous producers throughout the EU who have every ability to freely compete within the Belgium market.⁶ The market is one that is characterised by clear, dynamic competition from both internal sources and external sources. This is to be compared and contrasted with the Australian market, wherein the sole producer is in a strong position and its only source of competition is imports. The nature of the markets, and therefore the prices in the markets, and therefore trade to the markets, is entirely different.

- *"comparable product specifications and characteristics"* - the substance of this analysis is missing from the SEF, and so we find ourselves limited in what can be said in that regard.

⁵ Page 41.

⁶ Page 4, Appendix A, REP 409/410.

However we need to emphasise, and feel that it is extremely significant to mention, that identical goods to those that were actually exported to Australia during the period of review were not exported to Belgium. This is to be contrasted with Dongbu's trade with other countries, such as [CONFIDENTIAL INFORMATION DELETED – country], to which the same goods as those exported to Australia were sold. Given this fact, the relevance of the chosen proxy export price to Dongbu's sales to Australia on the basis of "*comparable product specifications and characteristics*" is not apparent to us. It does not appear to be correct appreciation of the factual situation.

Ultimately, we believe that the decision to adopt Dongbu's Belgian prices as a proxy export price has not been carefully-enough considered. It certainly has not been explained in any kind of detail. Properly considered, the factors referred to in the SEF either do not differentiate Belgium to any number of countries to which Dongbu exported, including [CONFIDENTIAL INFORMATION DELETED – country], or point away from the use of Belgian prices as a proxy. The decision to use Belgium appears to be an arbitrary one. If the Commission does not use Dongbu's own export prices to Australia, as requested in A above, then at the very least Dongbu sincerely requests that the selection of Belgium be reconsidered, and dispensed with.

Dongbu supports the Commission's recommendation that the measures be discontinued against its exports. Given this ultimate recommendation, it may seem unnecessary for Dongbu to address the merits of the export price that has been determined in the SEF.

However, a finding of "dumping" has associated implications beyond the application of measures. For example, it may be cited opportunistically by BSL or by another domestic industry to seek dumping measures against Dongbu, without reference to the eccentric manner in which it was determined. Dongbu respectfully but strongly rejects the finding that it "dumped" goods, the manner in which that finding was made, and the way in which it was arrived at and communicated to Dongbu.

We submit there is no basis under Section 269TAB(2A)(b) of the Act to determine that Dongbu's actual exports to Australia cannot be used to determine an export price. On the basis of its own prices Dongbu did not dump during the period of review.

Yours sincerely



Alistair Bridges
Senior Associate