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Director Operations 1  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

## Reviews of measures – Aluminium zinc coated steel

### Baoshan Iron and Steel Co Ltd / Shanghai Meishan Iron and Steel Co Ltd

Dear Director

This submission is made on behalf of Baoshan Iron & Steel Co., Ltd (Baoshan) and Shanghai Meishan Iron and Steel Co Ltd (Meishan) (referred to collectively as Baosteel in this submission), to the current reviews of measures (cases 409 and 410 respectively) into exports of aluminium zinc coated steel (GI).

#### 1. Retrospective application of new legislative amendments

Baosteel wishes to raise its strong objections regarding the Anti-Dumping Commission's ("the Commission") proposed retrospective application of *Customs Amendment (Anti-Dumping Measures) Bill 2017* ("the Bill"), to the current review of measures which were initiated and undertaken well before the Bill was introduced to Australia's parliament. Baosteel submits that reviews 409 and 410 cannot be considered to have been undertaken immediately before the commencement of the amendments. In these circumstances, review 409 and 410 do not comply with the requirements of item 4 of the Bill, and as such, the introduced amendments should not be applied in that review.

Item 4 of the Bill provides that the amendments will apply to:

- (a) a review under Division 5 of Part XVB of the Customs Act 1901 for which an application is lodged, or request is made, on or after the commencement of this Schedule;
- (b) such a review that was being undertaken immediately before the commencement of this Schedule but for which a declaration in accordance with subsection 269ZDB(1) of that Act had not been made at that time;
- (c) an application for such a review that was lodged, or a request for such a review that was made, before the commencement of this item but for which a notice of a review under subsection 269ZC(4), (5) or (6) of that Act had not been made at that commencement. [Emphasis added]

It is clear then that in the case of reviews 409 and 410, the introduced amendments outlined in the Bill should only be applied to those reviews that were ‘undertaken **immediately** before the commencement of this schedule’. The term ‘*immediately*’ should be interpreted as applying only to reviews initiated after the Australian Government had announced its intention to amend the Act, by introducing the bill to Parliament on 13 September 2017, and not to all reviews underway at the time of amendments commencing, as the Commission appears to be interpreting.

Had the Australian Government intended for the amendments to apply to all reviews underway at the commencement of the schedule, there would have been no need to include the word ‘immediately’ in defining the retrospective application of the amendments. In the case of reviews 409 and 410, the Commission appears to be reading item 4 of the Bill as applying to a ‘*review that was being undertaken before the commencement of this Schedule*’ by effectively removing the effect and relevance of the term ‘immediately’.

In Baosteel’s view, the Australian Government intended the amendments to be limited only to reviews initiated **immediately** prior to the commencement of the schedule, to mitigate any adverse impact arising from the retrospective application of the amendments. In so doing, it would allow for the legitimate and reasonable expectations of interested parties to be observed by ensuring that the retrospective amendments only applied to those reviews where the amendments were capable of being known and complied with.

Further support for the retrospective application of the new provisions to the date of the bill being introduced to Parliament on 13 September 2017 is evident in the practice of the Australian Tax Office which has relied on announcements and published draft legislation to observe the rule of law principal that the law should be capable of being known in order to comply<sup>1</sup>.

The *Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013*<sup>2</sup> also provides a recent example of legislation that highlights the preferred date for retrospective legislation to take effect. That bill was announced on 1 March 2012 and first read in parliament on 13 February 2013. However, the bill took effect on 16 November 2012 (the day on which draft legislation was released for public comment).

Therefore, Baosteel requests the Commission to reconsider its interpretation and retrospective application of the new export price provisions, and ascertain export price consistent with subsection 269TAB of the Act that was applicable at the time of Baosteel’s application for review.

## 2. Previous volumes of exports

In the issues paper, the Commission simply notes that both Baosteel exporting companies had previously exported like goods to Australia during the original investigation period (1 July 2011 – 30 June 2012), and had not exported like goods since December 2012. It contains no assessment or consideration of the relative volumes as expressed in the explanatory memorandum.

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<sup>1</sup> [http://law.ato.gov.au/atolaw/view.htm?docid=PSR/PS200711/NAT/ATO/00001](http://law.ato.gov.au/atolaw/view.htm?docid=PSR/PS200711/NAT/ATO/00001;);  
<http://law.ato.gov.au/atolaw/view.htm?docid=PSR/PS201127/NAT/ATO/00001>

<sup>2</sup> [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4965\\_ems\\_b7b5685c-d33d-4c8c-8d95-24a621d41342%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4965_ems_b7b5685c-d33d-4c8c-8d95-24a621d41342%22)

14. New paragraph 269TAB(2A)(b)(i) requires consideration of the previous volumes of exports (if any) of the goods that are the subject of the review to Australia by that Exporter. If the previous volumes of exports are ***much higher*** than the volume of exports during the period being examined by the review, this may indicate that the Exporter has adopted a strategy of low volume exports in an attempt to exploit the unintended consequence of the review of measures to obtain a more favourable rate of duty. This may be relevant in the Minister's determination that the information (if any) provided by the Exporter is insufficient or unreliable for the purpose of determining an appropriate export price and that the specific methods prescribed under new subsection 269TAB(2B) should be applied.

[emphasis added]

It is clear that the new legislation required of the Commission to consider whether the previous volumes of exports were '*much higher than the volumes of exports during the period being examined by the review*' in order to understand and determine whether the exporter had '*adopted a strategy of low volume exports in an attempt to exploit the unintended consequence of the review of measures to obtain a more favourable rate of duty*'. It is also clear that the Commission has not undertaken any such assessment or consideration, despite requesting and being provided with Baosteel's quarterly export volumes between April 2011 through to March 2016.

That data clearly shows the following:

- exports to Australia by Baoshan during the original investigation period totalled [REDACTED] metric tonnes, which approximately represented [REDACTED]% of the total Australian market and a similar percentage of Baoshan's total production capacity;
- exports to Australia by Meishan during the original investigation period totalled [REDACTED] metric tonnes, which approximately represented [REDACTED]% of the total Australian market, or [REDACTED]% of Meishan's total production capacity;

These negligible export volumes during the original investigation period cannot be considered to be 'much higher', and in no way are indicative of an intended strategy to exploit the dumping framework. Instead, the original negligible export volumes and the end of exports in 2012 reflects the company's decision to not supply and compete in export markets with [REDACTED], but instead focus on [REDACTED] that are not readily available or able to be manufactured locally and/or by other exporters.

The decision of Baosteel to apply for review of the measures at this time was prompted by [REDACTED] seeking supply of particular product specifications which it considers are not currently being manufactured in Australia, and in some cases are not able to be manufactured in Australia by the local producer. This includes aluminium zinc coated sheets [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The [REDACTED] seeking supply of [REDACTED]

██████████ aluminium zinc coated products has been advised by Bluescope that at this stage, it is unable to supply ██████████ material.

Baosteel has contacted Bluescope<sup>3</sup> and sought to confirm this directly with them and they have advised that:

- it has the capability to produce both ZINCALUME® steel products and zinc coated steel products ██████████  
██████████; and
- BlueScope can produce an equivalent ██████████  
██████████

It is Baosteel's desire to supply the small demand in Australia for ██████████ material which is the basis of its decision to seek a review of the measures at this time. It did not cease exporting in 2012 as part of a strategy to request a review five years later in the hope of obtaining a favourable rate of dumping duty. It has applied for review of the measures to obtain an anti-dumping measure which would ensure future exports of these ██████████ materials are not dumped whilst effectively preventing material injury.

Baosteel considers that a floor price measure would achieve this outcome and address any possible concerns of BlueScope. The explanatory memorandum envisages this possible outcome by noting:

*... the Bill makes allowance for the fact that some Exporters may have exported low volumes or made no exportations, but applying subsections 269TAB(1) or (3) will not lead to a less effective rate of duty.*

Therefore, Baosteel requests the Commission to reconsider its previous negligible export volumes and the number of years that have passed since it ceased exporting to Australia, to confirm that it has not applied for a review with an intended strategy to achieve a more favourable dumping duty rate.

### 3. Pattern of trade for like goods

Baosteel contends that the Commission's assessment and consideration of the patterns of trade for like goods to be flawed and missing objective examination of the evidence. Whilst merely noting the considerable decrease in export volumes of like goods from China, and that no exports existed in many quarters since the imposition of measures, the Commission's assessment focuses on and gives weight to the export volumes of like goods from other exporting countries.

This is in direct contrast to the example and guidance contained in the explanatory memorandum to the Customs Amendment (Anti-Dumping Measures) Bill 2017.

*15. New paragraph 269TAB(2A)(b)(ii) requires consideration of the patterns of trade for those goods. For example, some goods are specialty or custom products that are consistently exported in low volumes. Considering patterns of trade may involve an examination of the previous patterns of trade for the Exporter in question, or the pattern of trade generally among Exporters of goods from the country of export. The Minister may also consider the pattern of trade in other ways. For*

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<sup>3</sup> Baosteel does not dispute BlueScope's statement of its actual and capable production of like goods to the ██████████ compliant material.

*example, if a decline in the pattern of trade from the Exporter reflects a similar decline in the pattern of trade from the country of export generally, during the period being examined by the review, this may demonstrate that low volumes are indicative of broader market trends, rather than a strategy of low volume exports in an attempt to exploit the unintended consequence of the review of measures to obtain a more favourable rate of duty. This may weigh in favour of the Minister determining that the information (if any) provided by the Exporter is sufficient and/or reliable for the purpose of determining an appropriate export price and that the specific methods prescribed under new subsection 269TAB(2B) should not be applied.*

It is clear from the explanatory memorandum that the assessment of patterns of trade is to be undertaken in the context of the 'exporter in question' or 'the pattern of trade generally among Exporters of goods from the country of export'. As highlighted by example, a similar pattern of decline or trend between that of the exporter's volumes and from the country of export more broadly, suggests a broader market trend rather than an attempt by the export to reduce its export volumes to obtain a more favourable measure.

As is evident from the graph at Figure 1 of the Commission's issues paper, exports from China have been negligible, but for most of the period did not exist at all. This pattern of trade to Australia by Baosteel and Chinese exporters more broadly reflects a contrast in market dynamics between the Australian and Chinese domestic markets. This also demonstrates and supports a conclusion that the patterns of trade to Australia are similar between Baosteel's exports and exports more broadly from China, and as such, the Commission ought to give weight to these facts and determine that Baosteel is not a low volume exporter as defined, and recommend that the new subsection 269TAB(2B) of the Act should not be applied.

#### **4. Factors affecting patterns of trade for like goods that are not within the control of the exporter.**

Firstly, Baosteel does not consider that its circumstances accord with the intent of the new export price provisions, which is aimed at limiting an exporters ability to receive a less effective anti-dumping duty by not exporting, or exporting small volumes at a higher price, for a period of time, before applying for the duty to be reviewed. Baosteel's exports have never been of a significant volume.

As noted earlier in this submission, Baosteel's purpose for requesting a review of the measures at this time is due to interest from [REDACTED] material. The supply of this non-standard product accords with Baosteel's general company policy of focusing on the supply of non-standard products into export markets.

Given that demand in the Australian market is predominantly for standard commercial grades of aluminium zinc coated products, there is limited demand and opportunity for Baosteel to supply non-standard materials to Australia. This limited demand is beyond the control of Baosteel and it has been the primary factor which has led to the reduction in Baosteel's export volumes since 2012.

#### **5. Export price based on third country exports**

Baosteel disagrees with the Commission's proposed method for determining export prices on the basis of export sales to third countries such as Belgium. The nature of trade between exports to

Belgium and the intended future exports to Australia do not reflect similar levels of trade. That is, the Commission's proposed export price is based on sales to a related trading intermediary that does not take stock of the goods, but simply buys and sells to the final end-user customer. By contrast, Baosteel's intended future exports to Australia are expected to be made directly to the final end-user customer in Australia.

Should the Commission continue to rely on third country exports, Baosteel submits that the Commission should at the very least follow its normal practice of establishing an export price that reflects the first arms-length transaction outside of the group, less necessary deductions to arrive at a free-on-board export price. This approach is outlined in the Commission's Dumping & Subsidy Manual and provides for the treatment of the producer and related intermediary as a single exporter.

This has been the common and regular practice of the Commission in determining export prices where such sales exist and should be adopted for the purposes of ascertaining the export price in this review. The export prices based on the first arms-length transactions by the Baosteel intermediary in Belgium would most comparable to the constructed normal values, as the included profit captures and reflects the overall profit achieved by Baosteel on its domestic sales to unrelated customers.

## **6. Identified errors in preliminary dumping margin calculations**

### **a) HRC to CRC yield ratio**

In calculating its constructed normal value, the Commission has applied a yield ratio for the conversion by Meishan of HRC to CRC. The calculated yield ratio by the Commission amounted to [REDACTED]%. This figure is incorrect as the Commission has used the [REDACTED].

The correct yield ratio was submitted to the Commission upon request which shows that the yield ratio for converting HRC to CRC represents [REDACTED]% after taking account of [REDACTED].

## **7. Effectiveness of dumping measures applying to Baosteel's future exports**

Baosteel reiterates its view that the Commission should not be applying the new export price provisions in this review, as the application and initiation were made based on the review provisions existing at that time. In any case, Baosteel contends that its circumstances do not meet the requirements for applying the new export provisions as the requirements for consideration of a 'low volume exporter' do not apply.

However, should the Commission continue to unfairly base Baosteel's export price on third country export sales, which are claimed to not properly compare with normal values or Baosteel's future exports, Baosteel requests the Commission to consider an alternative measure which would reasonably address concerns about the effectiveness of the dumping measures.

In Baosteel's view, and the view reflected in the explanatory memorandum, the purpose of the dumping measures is to adequately address the effects of dumping, whilst ensuring that the measure does not go further than is necessary to attain it. As Baosteel is only interested in undertaking future exports to Australia of [REDACTED] products, it requests the

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Commission to consider recommending the imposition of a floor price measure at the prevailing normal value for its highest grade and most premium model sold domestically during the review period. This would ensure that future exports to Australia of [REDACTED] products are subject to a premium floor price.

Based on the Commission's preliminary normal value calculations, the premium domestic models are:

- Baoshan Iron & Steel: model "[REDACTED]" based on [REDACTED] normal values; and
- Meishan Iron & Steel: model "[REDACTED]" based on [REDACTED] normal values

Baosteel requests the Commission to give careful consideration of the matters raised in this submission in recommending a reasonable dumping measure that both addresses the concerns of industry and legitimate future exports of like goods.

Yours sincerely

John Bracic