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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 449**

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

Dongbu disagrees with the proposed recommendation in Statement of Essential Facts No. 449 (“the SEF”) that the measures be continued against it.

We respectfully submit that the proposed recommendation is not based upon a proper consideration of the facts before the Commission, and that this becomes evident when the SEF’s reasoning is dissected.

The reasoning in the SEF is as follows:

*Dongbu’s FOB export price to Australia was, on a weighted average, higher than that of any other exporter subject to the anti-dumping measures during the inquiry period. Dongbu’s galvanised steel prices were also higher than the prices of goods exported to Australia by Dongkuk, which is exempt from the measures. In the absence of measures, the Commission’s view is that Dongbu would likely seek to compete with prices from Dongkuk and continue to export galvanised steel to Australia at dumped prices.*

*Dongbu accounted for approximately 33 per cent of galvanised steel exports from Korea to Australia, of goods subject to measures, during the inquiry period. Dongbu’s importers in Australia are similar to importers of galvanised steel from China and Taiwan. Given the lower pricing of goods exported from China and Taiwan, the Commission is of the view that should the measures be allowed to expire, Dongbu will compete directly with the lower prices from China and Taiwan, and would likely export galvanised steel to Australia at dumped prices.*

*Accordingly, the Commission considers that it is likely that future exports of galvanised steel from Dongbu would be dumped on the Australian market in the absence of the current measures. Further, the Commission considers it likely that the dumping of galvanised steel exported from Korea by Dongbu would place downwards pressure on prices in the Australian market, and that BlueScope would respond by reducing its own prices in order to maintain its market share. Noting the economic condition of the Australian industry and its present vulnerability, the Commission considers it likely that material injury would be*

*experienced by BlueScope as a result of the continuation and recurrence of dumping of galvanised steel exported from Korea by Dongbu.<sup>1</sup>*

Firstly, the finding that Dongbu's export volume represented 33% of *subject exports* from Korea seems to be irrelevant, or at the very least confusing to the consideration in the SEF. In isolation, as it is presented, 33% seems like a large number, however when understood in its proper context it is not. In particular, we note that the majority of the goods exported from Korea were made by Dongkuk,<sup>2</sup> and were therefore not subject to the measures. Understood in this light, what is being said is that Dongbu's exports were only one-third of the minority (i.e. non-Dongkuk) exports to Australia from Korea during the period of review.

We are confident in asserting that Dongbu's export volume would be less than 3% of the volume of all imports of the goods during the period of review. In the parlance of an investigation, this would be a *negligible volume*. In the hypothetical scenario, that an application for dumping measures was brought against Dongbu solely, that application would need to be terminated in accordance with Section 269TDA(3) of the Act. The policy here would appear to be that a small volume of imports should not be considered to be materially injurious to the Australian industry, in the context of competition from a very high volume of exports from other exporters.

Section 269TDA(3) is equally applicable to investigations based upon allegations that dumping has caused material injury or that dumping threatens material injury, the latter of which requires a similar forward-looking exercise as that which is being undertaken in this inquiry. The implication of this is that the volume of Dongbu's exports is not sufficient enough a volume to justify the imminence and foreseeability of a finding of a threat of material injury.

The simple fact that the volume of goods from Korea upon which the Commission intends to continue measures (i.e. just Dongbu's) would not allow for the imposition of measures in the first place is highly relevant to the current exercise. Under such circumstances we do not believe there is a rational basis to continue the measures against Dongbu.

In addition to this, we would also note that Dongbu's exports were less than [CONFIDENTIAL INFORMATION DELETED - number] of the entire Australian market for the goods, and just over [CONFIDENTIAL INFORMATION DELETED - number] of the Australian industry's contribution to that market. Again, these facts are more relevant to the Minister's consideration, as they relate directly to the impact, which is clearly negligible, of these exports on the Australian market.

Secondly, Dongbu's prices have been found to be higher than those of any exporter subject to the measures as well as being higher than those of Dongkuk, which is not subject to the measures. The conclusion that we believe should be drawn on the basis of these findings of fact is that Dongbu's exports, whether dumped or not, have not been injurious to BlueScope Steel Limited ("BSL") and are unlikely to be injurious to BSL should the measures be discontinued. To the contrary, the SEF concludes that, were the measures to be removed, Dongbu would "seek to compete" with China, Taiwan and Dongkuk (and, presumably, all other sources of the goods that are not subject to the measures). The assumption adopted by the SEF appears to be that Dongbu would chase the price down from other sources of the goods unless there is a floor price restraining them. In this regard we note:

- there is not an iota of evidence that supports this assumption; and
- the proposed AEP is [CONFIDENTIAL INFORMATION DELETED - percentage] higher than the floor price that applied when the exports were made.

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<sup>1</sup> Statement of Essential Facts 449 and 450, page 45.

<sup>2</sup> *Ibid*, page 44.

If Dongbu's intent was to compete with China, Taiwan or Dongkuk, it would have done so during the period of review and lowered its prices. The evidence shows that it did not and so, we submit, the conclusion in the SEF is unsupported.

We also reiterate the points made in Dongbu's submission of 17 April 2018, that Dongbu:

- exports to [CONFIDENTIAL INFORMATION DELETED - number] countries beside Australia;
- has increased its domestic sales of the goods by over [CONFIDENTIAL INFORMATION DELETED – percentage] since the original investigation; and
- had over [CONFIDENTIAL INFORMATION DELETED – percentage] capacity utilisation in the period of review.

There is simply no incentive for Dongbu to sell to Australia at ever lower prices.

These facts and findings tell us that the proposition that injury to BSL would recur is improbable rather than probable. Two market players, BSL and Dongkuk, have been competing head-to-head for the past four years, at much lower prices than Dongbu's and apparently without demurrer from BSL. Dongbu is not some kind of trade "predator", desirous of buying the Australian market with a sudden flood of dumped imports. It does not have the inclination or the production capacity or the financial war chest to do so. There is no evidence to that contrary.

We respectfully submit, therefore, that Dongbu would likely try to meld into the established Australian market, at the prices set within that market by the established players, where it saw an opportunity for profit, and that the Commission should arrive at that same conclusion. This does not signal the probability that Dongbu would "dump" and cause material injury to BSL thereby, should the measures be discontinued.

Finally, the SEF cites BlueScope's "present vulnerability" as a basis for the continuation of the measures. The exact nature of this vulnerability is not spelled out in the SEF. However, the SEF finds that BSL's sales volume had a "steady" increase between 2014 and 2017, as did its market share. So, via a process of elimination, the purported "vulnerability" must be BSL's chosen pricing methodology, its difficulty in competing against un-dumped goods at lower prices than Dongbu's, and the impact that has had on its levels of profit.<sup>3</sup>

In that case, we reiterate the previous finding that BSL's benchmark price is "closely" correlated to the lowest price available in the Australian market.<sup>4</sup> This vulnerability, such as it is, is one that exists so long as there are lower priced goods in the Australian market. Dongbu's prices are higher even than sources of zinc coated galvanised steel that are not subject to the measures. The presence of Dongbu's goods in the Australian market had no impact on BSL's price; the absence of Dongbu's exports from the Australian market would have no effect on BSL's prices.

To continue the measures against Dongbu in these circumstances is unwarranted.

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As discussed in Dongbu's submission of 17 April 2018, the Commission may only recommend the continuation of the measures to the Assistant Minister if it reaches the conclusion that it is *likely* that the expiration of those measures would result in a continuation or recurrence of injurious dumping. As

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<sup>3</sup> *Ibid*, pages 29 and 30.

<sup>4</sup> *Report 190 Galvanised steel and Aluminium zinc coated steel – China, Korea and Taiwan April 2013, at page 113*

Dongbu pointed out in that submission, and as is reflected in the SEF, those conclusions and recommendations must be based on fact.<sup>5</sup>

The proposed recommendation that the measures be continued against Dongbu is not based upon fact. Indeed, when the facts are fully considered, they establish that there is no proper basis to recommend that these measures be continued against Dongbu.

Yours sincerely



Alistair Bridges  
Senior Associate

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<sup>5</sup> Statement of Essential Facts 449 and 450, page 44.