

**PUBLIC RECORD**



**Australian Government**  
**Anti-Dumping Commission**

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**CUSTOMS ACT 1901 - PART XVB**

**STATEMENT OF ESSENTIAL FACTS  
NO. 290 and 298**

**ANTI-CIRCUMVENTION INQUIRY**

**ZINC COATED (GALVANISED) STEEL EXPORTED FROM THE  
REPUBLIC OF KOREA, TAIWAN AND THE PEOPLE'S  
REPUBLIC OF CHINA**

**5 November 2015**

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### ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
ADN	Anti-Dumping Notice
Angang HK	Angang Group Hong Kong Co., Ltd
ANSTEEL	Angang Steel Co., Ltd
AsiaZone	Asiazone Co Ltd
Bao Australia	Bao Australia Pty Ltd
Baoshan Steel	Baoshan Iron & Steel Co.
BlueScope	BlueScope Steel Limited
BOS	basic oxygen steelmaking
Case 290	Inquiry 290
Case 298	Inquiry 298
China	People's Republic of China
circumvention goods	Slightly modified goods subject of the anti-circumvention inquiry
CITIC	CITIC Australia Commodity Trading Pty Ltd
CON 290	Consideration Report 290
CON 298	Consideration Report 298
DIBP	Department of Immigration and Border Protection
Dongbu	Dongbu Steel Co., Ltd
Dongkuk	Dongkuk Steel Mill Co. Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
galvanised steel	Zinc coated (galvanised) steel
ICD	Interim countervailing duty
IDD	Interim dumping duty
Investigation 190A	Investigation into dumping of zinc coated (galvanised) steel from China, Korea and Taiwan
Investigation 193A	Investigation into countervailing of zinc coated (galvanised) steel from China
Investigation 249	Investigation into dumping of zinc coated (galvanised) steel from India and Vietnam
HRC	Hot Rolled Coil
Korea	Republic of Korea
original notices	Subsection 269TG(2) and TJ(2) notices following Investigation 190A and 193A
POSCO Australia	POSCO Australia Pty Ltd
Precision Components	Precision Components Australia Pty Ltd
SEF	Statement of Essential Facts
TCO	Tariff concession order

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the Act	Customs Act 1901
the Commissioner	Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the original application
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Regulations	<i>Customs (International Obligations) Regulation 2015</i>
the Tariff Act	<i>Customs Tariff Act 1995</i>
Union Steel	Union Steel Co., Ltd
Wright Steel	Wright Steel Sales Pty Ltd
Yieh Phui	Yieh Phui Enterprise Co., Ltd

## 1. SUMMARY AND RECOMMENDATIONS

### 1.1. Introduction

This Statement of Essential Facts (SEF) relates to the Commissioner of the Anti-Dumping Commission's (the Commissioner's) anti-circumvention inquiries into whether a circumvention activity has occurred in relation to notices published under subsections 269TG(2) and 269TJ(2) of the *Customs Act 1901* (the Act)<sup>1</sup> in relation to zinc coated (galvanised) steel (galvanised steel) exported to Australia from the Republic of Korea (Korea), Taiwan and the People's Republic of China (China).

The anti-circumvention inquiries follow two separate applications by BlueScope Steel Limited (BlueScope) that allege circumvention activities have occurred under section 48 of the *Customs (International Obligations) Regulation 2015* (the Regulations), through the slight modification of galvanised steel exported to Australia.

This SEF sets out the facts on which the Commissioner proposes to base his recommendations to the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary),<sup>2</sup> subject to any submissions received in response to this SEF.

### 1.2. Proposed recommendation

The Anti-Dumping Commission (the Commission) has found that a circumvention activity, in the form of slight modification of goods exported to Australia, has occurred in respect of galvanised steel subject to the original subsection 269TG(2) and 269TJ(2) notices.

Specifically, the Commission has found that a circumvention activity has occurred in relation to goods exported from Taiwan and China by certain exporters, but not in relation to goods exported from Korea.

Based on these findings, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend to the Parliamentary Secretary that she alter the original notices applicable to galvanised steel exported from Korea, Taiwan and China.

The Commissioner proposes to recommend the original notices be altered to change the description of the goods covered by those notices to include alloyed galvanised steel exported from China or Taiwan by specific exporters. In relation to some exporters, the specific alloying element of boron would be included in the notice, while in the case of others this change would include all types of alloyed galvanised steel.

### 1.3. Authority to make a decision

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<sup>1</sup> A reference to a part, division, Section or Subsection in this report is a reference to a provision of the Act, unless otherwise specified.

<sup>2</sup> The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker for this inquiry.

Division 5A of Part XVB sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting anti-circumvention inquiries in relation to goods covered by an application for the purpose of making a report to the Parliamentary Secretary.

#### **1.4. Application**

On 1 April 2015, BlueScope, the sole Australian producer of galvanised steel, lodged an application under subsection 269ZDBC(1) requesting an anti-circumvention inquiry in relation to galvanised steel exported from Korea and Taiwan.

On 7 May 2015, BlueScope lodged an application under subsection 269ZDBC(1) for an anti-circumvention inquiry in relation to galvanised steel exported from China.

The Commissioner was satisfied that each application was made in the prescribed manner and contained the information required in an application for an anti-circumvention inquiry.<sup>3</sup>

#### **1.5. Initiation**

After examining each application, the Commissioner was satisfied that there appeared to be reasonable grounds for asserting a circumvention activity in relation to the original notices had occurred.<sup>4</sup>

The Commissioner decided not to reject the applications, and notice of the initiation of:

- an anti-circumvention inquiry into galvanised steel exported from Korea and Taiwan was published on 5 May 2015; and
- an anti-circumvention inquiry into galvanised steel exported from China was published on 1 June 2015.

The anti-circumvention inquiry into galvanised steel exported from Korea and Taiwan is numbered case 290 (Inquiry 290).

The anti-circumvention inquiry into galvanised steel exported from China is numbered case 298 (Inquiry 298).

#### **1.6. Statement of essential facts**

The Commissioner must, within 110 days after the initiation of an anti-circumvention inquiry, or such longer period as the Parliamentary Secretary allows,<sup>5</sup> place on the Public Record a statement of the facts on which the Commissioner proposes to base his

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<sup>3</sup> Section 269ZDBD

<sup>4</sup> Subsection 269ZDBE(2)

<sup>5</sup> Subsection 269ZDBF(1)

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recommendation in relation to the original notice (following an anti-circumvention inquiry).<sup>6</sup>

In formulating this SEF, the Commissioner must have regard to the application, any submissions concerning publication of the notice that are received by the Commission within 40 days after the date of initiation of the inquiry, and any other matters considered relevant.<sup>7</sup>

On 19 August 2015, the Parliamentary Secretary granted:

- a 78 day extension to the date by which the SEF must be placed on the Public Record in relation to the anti-circumvention inquiry into galvanised steel exported from Korea and Taiwan; and
- a 47 day extension to the date by which the SEF must be placed on the Public Record relation to the anti-circumvention inquiry into galvanised steel exported from China.

Following these extensions, the publication of the SEFs in relation to each inquiry must be placed on the Public Record 5 November 2015.

Considering there are significant similarities and overlap between Inquiry 290 and Inquiry 298, and that both have the same SEF due date, the Commissioner considers it appropriate to issue a combined SEF for both inquiries (this SEF).

### 1.7. Findings and conclusions

The Commission has made the following findings and conclusions based on available information at this stage of the inquiry.

#### 1.7.1. Circumvention activities (Chapter 5 of this report)

A circumvention activity, in the form of the slight modification of goods exported to Australia<sup>8</sup> has occurred in relation to exports by the following entities from the following countries:

Supplier	Exporter	Country of export	Original notice that has been circumvented
Asiazone Co Ltd (Asiazone)	Yieh Phui Enterprise Co., Ltd (Yieh Phui)	Taiwan	Subsection 269TG(2)

<sup>6</sup> Section 269ZDBF

<sup>7</sup> Subsection 269ZDBF(2)

<sup>8</sup> Subsection 48(2) of the Regulations.

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Angang Group Hong Kong Co., Ltd (Angang HK)	Angang Steel Co., Ltd (ANSTEEL)	China	Subsection 269TG(2)
Company A	Unknown	China	Subsections 269 TG(2) and 269TJ(2)

**Table 1 – Summary of exporters determined to have exported circumvention goods**

Notes:

- 1) *Although ANSTEEL has been found to have exported slightly modified goods, the original section 269TJ(2) countervailing duty notice does not apply to exports of galvanised steel by ANSTEEL as that company is exempted from interim countervailing duties. Consequently, ANSTEEL has only been found to have circumvented the original section 269TG(2) dumping duty notice.*
- 2) *The Commissioner is in the process of considering the confidentiality issues surrounding the naming of Company A and hence the identity of this company has not been released in this SEF.*

*The Commission may release the identity of this company at a later date once further consideration is given to these confidentiality issues.*

In the case of Yieh Phui and ANSTEEL this slight modification involved the export of galvanised steel containing a level of the alloying element boron in a concentration of 0.0008% or more.

In the case of Company A this slight modification involved the export of galvanised steel containing an unknown alloy at or above the levels required to classify the exported goods as ‘alloyed steel’ under Schedule 3 to the *Customs Tariff Act 1995* (the Tariff Act) (see Paragraph 2.4.3 for further discussion of this classification).

### **1.7.2. Proposed changes to the original notices (Chapter 6 of this report)**

Following the finding that a circumvention activity has occurred in relation to the original notices, the Commissioner is satisfied that, because of this activity, the original notices should be altered.<sup>9</sup>

The Commission proposes to recommend that the original notices relating to galvanised steel be altered to amend the description of the goods subject to the notice to be as follows.

#### **Section 269TG(2) notice:**

The goods description in the original dumping duty notice is recommended to be amended to the following:

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<sup>9</sup> Paragraph 269ZDBG(1)(d)

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- *flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc;*

*and*

- ***flat rolled products of alloy steel containing boron of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc: exported from:***

- *China by Angang Steel Co., Ltd; or*
- *Taiwan by Yieh Phui Enterprise Co., Ltd;*

*and*

- ***flat rolled products of alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc exported from China and supplied by China by Company A.***

The text in **bold** above indicates changes to the first sentence of the original notice.

### **Section 269TJ(2) notice**

The goods description in the original countervailing duty notice is recommended to be amended to the following:

- *flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc; and*
- ***flat rolled products of alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc exported from China and supplied by Company A.***

The text in **bold** above indicates changes to the first sentence of the original notice.

*Note: as the original countervailing duty notice does not apply to exports of galvanised steel by ANSTEEL (exempted from interim countervailing duties), changes to the original countervailing duty notice should not include an extension of the notice to include ANSTEEL in the manner detailed above for the original dumping duty notice.*

## 2. BACKGROUND

### 2.1. The original investigations and notices

#### Dumping Duty Notice

On 3 August 2012, BlueScope lodged applications requesting that the then Minister publish a dumping duty notice in respect of:

- galvanised steel exported to Australia from China, Korea and Taiwan; and
- aluminium zinc coated steel exported to Australia from China, Korea and Taiwan.

On 5 September 2012, following consideration of the applications, the then Chief Executive Officer of the Australian Customs and Border Protection Service (Customs and Border Protection) decided not to reject the applications and initiated separate investigations into each product under case numbers 190a (galvanised steel) and 190b (aluminium zinc coated steel).

On 6 February 2013, following the making of a preliminary affirmative determination (PAD), securities were taken on galvanised steel exported from China, Korea and Taiwan that was entered for home consumption on or after that date.

On 5 August 2013, following consideration of *Anti-Dumping Commission Report No. 190*, the then Attorney-General published a dumping duty notices under subsections 269TG(1) and 269TG(2) imposing anti-dumping measures in the form of interim dumping duty (IDD) on galvanised steel exported to Australia from China, Korea and Taiwan.

The dumping duty notices cover all exporters of galvanised steel from China, Korea and Taiwan except for:

- Union Steel Co., Ltd (Union Steel) from Korea;
- Sheng Yu Co., Ltd from Taiwan; and
- Ta Fong Steel Co., Ltd from Taiwan.

For the purposes of these inquiries, the subsection 269TG(2) notice is the original dumping duty notice (the prospectively operating notice), as set out by subsection 269ZDBB(1).

#### Countervailing duty Notice

On 3 August 2012, BlueScope lodged applications requesting that the then Minister publish a countervailing duty notice in respect of galvanised steel and aluminium zinc coated steel exported to Australia from China.

On 26 November 2012, following consideration of the applications, the then CEO of Customs and Border Protection decided not to reject the applications and initiated

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separate investigations into each product under case numbers 193a (galvanised steel) and 193b (aluminium zinc coated steel).

On 15 May 2013, preliminary anti-dumping measures, in the form of countervailing duty securities, were imposed on galvanised steel exported from China, Korea and Taiwan that was entered for home consumption on or after that date.

On 5 August 2013, following consideration of *Anti-Dumping Commission Report No. 193*, the then Attorney-General published countervailing duty notices under subsection 269TJ(1) and TJ(2) imposing anti-dumping measures in the form of interim countervailing duty (ICD) on galvanised steel exported to Australia from China.

The countervailing duty notices cover all exporters of galvanised steel from China except for:

- ANSTEEL; and
- ANSC TKS Galvanising Co., Ltd.

For the purposes of these inquiries, the subsection 269TJ(2) notice is the original countervailing duty notice (the prospectively operating notice), as set out by subsection 269ZDBB(1).

### 2.2. Summary of dates – Investigation 190a and 193a

The table below summarises key dates of the original investigations into galvanised steel for ease of reference. Patterns of trade discussions make reference to these dates throughout this report in examining whether a circumvention activity has occurred.

Activity	Investigation 190a (dumping)	Investigation 193a (countervailing)
Initiated	5 September 2012	26 November 2012
Securities collected from	6 February 2013	15 May 2013
Publication of original notice (interim duties collected from)	5 August 2013	5 August 2013

Table 2 – Summary of key dates – original investigations

### 2.3. Goods subject to the original notices

#### 2.3.1. Goods description

The goods subject to the original notices are:

*flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc*

The goods are generically called **galvanised steel**.

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A full description of the goods is available in Australian Customs Dumping Notice (ACDN) No. 2012/40 (relating to the initiation) and ACDN No. 2012/62 (relating to the clarification of the goods). These ACDNs are available on the Commission's website at <http://www.adcommission.gov.au/notices/Pages/Past%20Years/2012.aspx>.

### 2.3.2. Exempted goods

Painted galvanised steel, pre-painted galvanised steel, electro-galvanised plate steel and corrugated galvanised steel are specifically excluded from the original notices.

Additionally, the relevant Minister has granted exemptions from the anti-dumping measures imposed by the original notices under subsections 8(7)(b) and 10(8)(aa) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) in relation to goods subject to the following 15 tariff concession orders (TCOs):

TCO Number	Date of effect of exemption
TC 0939596	
TC 1242989	
TC 1248929	
TC 1248930	
TC 1317796	6 February 2013
TC 1349350	
TC 1349351	
TC 1349352	
TC 1349354	
TC 1309160	13 June 2013
TC 1316841	
TC 1316842	4 September 2013
TC 1318527	21 October 2013
TC 1328432	18 December 2013
TC 1342242	20 March 2014

Table 3 – TCOs that exemptions relate to

These TCOs contain details as to the specific physical characteristics of the exported goods subject to those orders, including physical dimensions, alloy levels, applicability with specific standards, yield and tensile strength, and whether the product is ‘galvannealed’.<sup>10</sup>

These TCOs generally relate to very specific and specialised galvanised steel.

### 2.3.3. Tariff classifications

Galvanised steel the subject of the original notice is classified to the following tariff subheadings of Schedule 3 to the Tariff Act.

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<sup>10</sup> The combined process of galvanizing and annealing to produce specialized sheets of steel.

- 7210.49.00 (statistical codes 55, 56, 57 and 58) - applicable to flat rolled zinc coated non-alloy steel of a width of 600mm or more; and
- 7212.30.00 (statistical code 61) - applicable to flat rolled zinc coated non-alloy Steel of a width of less than 600mm

## **2.4. Application for anti-circumvention inquiries**

### **2.4.1. Inquiry 290**

On 1 April 2015, BlueScope lodged an application under subsection 269ZDBC(1) for an anti-circumvention inquiry in relation to galvanised steel exported from Korea and Taiwan.

In its application, BlueScope alleged that the applicable anti-dumping measures in respect of galvanised steel from Korea and Taiwan were being circumvented by importers and exporters of the goods through the slight modification of those goods. Specifically, BlueScope alleged that galvanised steel that would otherwise be subject to the anti-dumping measures was being slightly modified through the addition of alloys to those goods, which allows for those goods to no longer be considered galvanised steel of **iron or non-alloy** steel, but rather of alloyed steel (and classified to a different tariff subheading – see Paragraph 2.6.1 below).

In its application, BlueScope highlighted that it considers galvanised steel including the alloying element of boron has been imported and declared as alloyed galvanised steel, thereby evading the anti-dumping measures. BlueScope identified that other alloys (such as chromium) may also have been used in such a modification.

### **2.4.2. Inquiry 298**

On 7 May 2015, BlueScope lodged an application under subsection 269ZDBC(1) for an anti-circumvention inquiry in relation to galvanised steel exported from China.

As with the application lodged in relation to Korea and Taiwan, BlueScope alleged the circumvention of anti-dumping measures through the slight modification (addition of alloys) of galvanised steel exported from China.

As with Korea and Taiwan, this application focussed on the addition of boron but indicated other alloys may have been used to slightly modify exported goods.

## **2.5. Consideration of the applications**

Following review of these applications, the Commissioner was satisfied that both applications complied with subsection 269ZDBE(2) as they:

- complied with section 269ZDBD; and
- established that there appeared to be reasonable grounds for asserting that circumvention activities in relation to the original notice had occurred.

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In relation to the application concerning exports from Korea and Taiwan, the Commissioner decided not to reject the application and initiated an anti-circumvention inquiry on 5 May 2015 (Inquiry 290). The Commission's assessment of that application is set out in CON 290.

Public notification of initiation of Inquiry 290 was made in *The Australian* newspaper on 5 May 2015. Anti-Dumping Notice (ADN) 2015/69 provides further details of the inquiry.

In relation to the application concerning exports from China, the Commissioner decided not to reject the application and initiated an anti-circumvention inquiry on 1 June 2015 (Inquiry 298). The Commission's assessment of the application is set out in CON 298.

Public notification of initiation of Inquiry 298 was made in *The Australian* newspaper on 1 June 2015. ADN 2015/69 provides further details of the inquiry.

These ADNs are available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The inquiry periods were established as:

- Korea and Taiwan (Inquiry 290) - 1 July 2011 – 31 March 2015; and
- China (Inquiry 298) - 1 July 2011 - 31 May 2015.

### **2.6. The goods subject to the inquiries (the circumvention goods)**

The goods subject to the anti-circumvention inquiries (the circumvention goods), for the purposes of subsection 48(2)(a) of the Regulations, are described as:

*Flat rolled iron or steel products (**whether or not containing alloys**) of a width less than 600mm and, equal to or greater than 600mm, plated or coated with zinc.*

For the purposes of this report, the circumvention goods are referred to as '**alloyed galvanised steel**' or as '**the circumvention goods**' unless defined otherwise.

#### **2.6.1. Tariff classifications of the circumvention goods**

Alloyed galvanised steel is classified to tariff subheadings:

- 7225.92.00 (statistical code 38); and
- 7226.99.00 (statistical code 71)

of Schedule 3 to the Tariff Act.

#### **2.6.2. Identifying and classifying the circumvention goods**

Note 1(f) to Chapter 72 (iron and steel) of Schedule 3 of the Tariff Act provides that, in order for a product to be considered of 'other alloy steel' (required to be classified to the above codes relating to alloyed galvanised steel), the below must be satisfied:

*Steels not complying with the definition of stainless steel and containing by weight one or more of the following elements in the proportion shown:*

- *0.3% or more of aluminium*
- *0.0008% or more of boron*
- *0.3% or more of chromium*
- *0.3% or more of cobalt*
- *0.4% or more of copper*
- *0.4% or more of lead*
- *1.65% or more of manganese*
- *0.08% or more of molybdenum*
- *0.3% or more of nickel*
- *0.06% or more of niobium*
- *0.6% or more of silicon*
- *0.05% or more of titanium*
- *0.3% or more of tungsten (wolfram)*
- *0.1% or more of vanadium*
- *0.05% or more of zirconium*
- *0.1% or more of other elements (except sulphur, phosphorus, carbon and nitrogen), taken separately.*

Galvanised steel that does not meet these requirements should be classified to 7210.49.00 (statistical codes 55, 56, 57 and 58) and 7212.30.00 (statistical code 61) and is considered to be non-alloy galvanised steel.

## **2.7. Responding to this SEF**

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Parliamentary Secretary in relation to these inquiries.

This SEF represents an important stage in the inquiries. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. However, it is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making his final report to the Parliamentary Secretary. The report will recommend whether or not the original notices should be altered because a circumvention activity has occurred, and the alterations to be made to those notices (if any).

Responses to this SEF should be received by the Commissioner no later than **25 November 2015**.

The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.

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The Commissioner must report to the Parliamentary Secretary by 20 December 2015.

Submissions should preferably be emailed to [operations2@adcommission.gov.au](mailto:operations2@adcommission.gov.au).

Alternatively, they may be sent to fax number +613 8539 2499, or posted to:

The Director  
Operations 2 – Anti-Dumping Commission  
Department of Industry, Innovation and Science  
Lvl 35, 55 Collins St  
Melbourne VIC 3000  
GPO Box 1632 Melbourne VIC 3001

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available on the Commission's web site at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of importer and exporter questionnaire responses and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2440 to make an appointment), or online at [www.adcommission.gov.au](http://www.adcommission.gov.au)

Documents on the Public Record should be read in conjunction with this SEF.

### **3. INQUIRY PROCESS**

The Commission has conducted reasonable inquiries with interested parties following the initiation of Inquiry 290 and 298. The inquiry process is outlined below.

#### **3.1. Post-initiation meeting with BlueScope**

Following initiation, the Commission met with BlueScope on 27 May 2015 to gain a better understanding of:

- the process involved in the slight modification of galvanised steel to circumvent anti-dumping measures;
- alloys that may be used for this slight modification; and
- the commercial activities that may surround the circumvention.

The non-confidential record of the meeting can be found on the Public Record.

#### **3.2. Identifying possible circumvention**

During its consideration of the applications, the Commission accessed import data information (based on import declarations made by importers or their agents) held by the Department of Immigration and Border Protection (DIBP) in its imports database.

This data covered the tariff classifications for both the goods and the circumvention goods over the length of the inquiry periods.

This data forms **Confidential Attachment 1** to this report.

This data was analysed in detail and was used to identify all possible importers and exporters of goods that could have been involved in a circumvention activity during the applicable inquiry periods. This involved:

- identifying possible ‘switches’ of trade from the tariff classification applicable to non-alloyed galvanised steel to alloyed galvanised steel;
- identifying potential ‘start up’ circumventors (where there was no history of trade in non-alloyed galvanised steel but trade in alloyed galvanised steel commenced following imposition of the anti-dumping measures); and
- identifying patterns of trade in alloyed goods occurring historically prior to the imposition of anti-dumping measures and continuing after the imposition of these measures at similar rates).

In addition, the Commission examined BlueScope’s application to identify exporters that were named in the application as potentially being involved in circumvention activities and determined whether they should be contacted based on all other available information.

### **3.3. Importer and exporter questionnaires**

Once possible circumvention was identified, the Commission disseminated importer and exporter questionnaires to all parties potentially involved in the circumvention activity of the slight modification of goods.

Importer questionnaires were sent to seven entities declared in the DIBP data as the importer of potential circumvention goods. Responses to the importer questionnaire were received from five importers.

Exporter questionnaires were sent to seven possible suppliers of circumvention goods.

The below table identifies these suppliers and whether they responded to the exporter questionnaire and provides some details about each response.

<b>Supplier</b>	<b>Country of supply</b>	<b>Exporter Questionnaire response provided?</b>	<b>Details</b>
Union Steel	Korea	Yes	Dongkuk Steel Mill Co. Ltd responded as that company merged with Union Steel Korea on 1 January 2015
POSCO Australia Pty Ltd (POSCO Australia)	Korea	No	POSCO Australia corresponded to the Commission to declare that it had not exported the circumvention goods
Asiazone	Taiwan	Yes	Asiazone provided a combined response with its related company, Yieh Phui
Kenna International Corporation	Taiwan and Korea	No	Corresponded with the Commission advising they were not the exporter of the goods
Angang	China	No	No response or correspondence provided
Bao Australia Pty Ltd	China	No	No response or correspondence provided
Company A	China	No	No response or correspondence provided

**Table 4 – entities that exporter questionnaires were sent to for completion**

In addition, the Commission received a voluntary response to the exporter questionnaire from Dongbu Steel Co., Ltd (Dongbu) which declared that company had not exported the circumvention goods to Australia during the inquiry period.

Non-confidential versions of responses to the importer and exporter questionnaire, as well as general correspondence declaring that the goods have not been exported or imported are available on the Public Record.

### **3.4. General submissions**

In the public notices advising of the initiation of the anti-circumvention inquiries, the Commission invited general submissions to be lodged in response to the application.

The following general submissions were received:

<b>Submitted by</b>	<b>Date</b>
Sheng Yu Steel Co., Ltd	4/6/15
Wright Steel Sales Pty Ltd (Wright Steel)	7/8/15
POSCO Australia	4/8/15
BlueScope	11/9/15
Wright Steel and CITIC Australia Commodity Trading Pty Ltd (CITIC)	11/9/15
Yieh Phui	30/10/15

**Table 5 – Summary of general submissions**

Non-confidential versions of these submissions are on the Commission's Public record.

*Note: the submission from Yieh Phui received on 30 October 2015 has not been considered as part of this SEF as to do so would, in the Commissioner's opinion, prevent the timely placement of the SEF on the public record pursuant to subsection 269ZDBF(3). This submission will be considered in the final report to the Parliamentary Secretary.*

### **3.5. Meetings with interested parties**

At the request of the parties, the Commission conducted additional meetings with:

- Wright Steel and CITIC;
- POSCO Australia; and
- BlueScope.

Non-confidential records of the meetings with BlueScope and Wright Steel/CITIC are available on the Commission's Public Record in accordance with subsection 269ZJ(4).

POSCO Australia did not provide its clearance for the record of meeting with that company to be placed on the Public Record, and therefore the Commissioner has disregarded the matters discussed during that meeting for the purposes of this inquiry.

## 4. KEY LEGISLATIVE PROVISIONS

The below provisions prescribe what a circumvention activity of the slight modification of goods exported to Australia entails.

### 4.1. Circumvention activity – slight modification of goods

Subsection 48(2) of the Regulations provides that a circumvention activity occurs where there is a slight modification of goods exported to Australia. This circumvention activity occurs if all of the following apply:

- a) the circumvention goods are exported to Australia from a foreign country in respect of which the dumping and/or countervailing duty notice applies;
- b) before that export, the circumvention goods are slightly modified;
- c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
- d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice;
- e) Section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

### 4.2. When is a good slightly modified?

Subsection 48(3) of the Regulations sets out how the Commissioner should determine whether a circumvention good is slightly modified, including a non-exhaustive list of factors that may be examined to determine slight modification.

The Subsection states:

*For the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention good and the good the subject of the notice, having regard to any factor that the Commissioner considers relevant, including any of the following factors:*

- a) *each good's general physical characteristics;*
- b) *each good's end use;*
- c) *the interchangeability of each good;*
- d) *differences in the processes used to produce each good;*
- e) *differences in the cost to produce each good;*
- f) *the cost of modification;*

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- g) customer preferences and expectations relating to each good;*
- h) the way in which each good is marketed;*
- i) channels of trade and distribution for each good;*
- j) patterns of trade for each good;*
- k) changes in the pricing of each good;*
- l) changes in the export volumes for each good;*
- m) tariff classifications and statistical codes for each good.*

## 5. SUBMISSIONS OBJECTING TO THE APPLICATION

Following initiation of the inquiry, the Commission received submissions from Wright Steel and CITIC as to the validity of the application generally. The issues raised are discussed below.

### 5.1. Inconsistent applications, the impact of Investigation 249's findings, and claims that dumping must be proven

#### 5.1.1. Matters raised in submissions

In its submission dated 7 August 2015, Wright Steel highlighted that BlueScope, in its application for the publication of a dumping duty notice relating to alloyed and non-alloyed galvanised steel exported from India and Vietnam (Investigation 249), stated:

*(e)xports from Taiwan have continued, albeit at levels that are understood to be non-dumped*

Wright Steel submitted that it believes that this is an admission by BlueScope that exports from Taiwan are un-dumped.

Wright Steel goes on to say that, having admitted Taiwanese galvanised steel has not been dumped:

*it is simply improper to justify treating what BSL<sup>11</sup> now admits are non-dumped exports as somehow being intended to avoid an anti-dumping duty.*

Wright Steel submits that this statement, coupled with BlueScope's allegations in the applications for the anti-circumvention inquiries, shows inconsistency across BlueScope's applications and claims in relation to goods exported from Taiwan, by first stating that galvanised steel from Taiwan have been supplied at un-dumped prices, and then requesting that alloyed galvanised steel from Taiwan be brought under the scope of the original dumping duty notice.

In further support of claims that Taiwanese galvanised steel has not been supplied at dumped levels, Wright Steel highlights that the Commission's investigation into the alleged dumping of alloyed and non-alloyed steel from Vietnam and India (Investigation 249) resulted in the termination of that investigation due to the Commission not finding above-negligible levels of dumping from those countries, and consequently:

*It would be wholly unrealistic to accept the current market figures in that conclusion and then allow a circumvention case to render all alloy goods from other countries subject to unrealistic historical dumping factors not applicable in the current market.*

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<sup>11</sup> BlueScope

Wright Steel states that during Investigation 249, variable factors and exchange rate would have been assessed for a recent period of investigation, which would have made it obvious that these are vastly different to those applicable to the original notices subject to the anti-circumvention inquiries. Wright Steel considers that, in this context, bringing alloyed galvanised steel under the existing notices with the previously-established variable factors, would be ‘unfairly discriminatory’.

Coupled with Wright Steel’s submissions that evidence indicates that galvanised steel from Taiwan is undamped, Wright Steel submits that as per Article 11.1 and 11.2 of the *Anti-Dumping Agreement* (the ADA), the anti-dumping measures should remain in force where it is necessary to counteract dumping which is causing injury and these dumping measures should be reviewed where warranted, on the initiative of the Commission, or provided that a relevant period of time has passed, by a request from an interested party.

Wright Steel submits that, although the ADA does not include anti-circumvention provisions and there is no consensus as to whether such provisions are permitted (in domestic regimes), however if they were permitted, they would need to be consistent with the ADA.

It is considered that in making these points, Wright Steel intends to submit that, in light of BlueScope’s statement that Taiwanese galvanised steel has been supplied at un-dumped prices, the Commission should consider the removal of anti-dumping measures against those goods, and further not consider the extension of those measures to alloyed galvanised steel.

Noting the above, Wright Steel goes on to submit that, even if the Commission were to entertain the notion of extending the notice to alloyed galvanised steel in light of the statement by BlueScope and findings of Investigation 249, before alloyed galvanised steel can be brought under anti-dumping measures (noting the company considers that this cannot not be done at all), it is a requirement to specifically establish that those goods have been dumped, and that the Commission has at no time made a finding of dumping in relation to these goods.

To support this contention, Wright Steel submits:

*[The] ADA makes clear that before anti-dumping measures can be imposed, an investigation must consider whether goods are being exported to Australia at dumped prices and if so, whether this caused the material injury to like goods.*

The Company goes on to state:

*Art 5.2 states that “(a)n application under paragraph 1 shall include evidence of (a) dumping, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and (c) a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph.” ADA Art 5.8 states that “(a)n 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 dumping or of injury to justify proceeding with the case".*

### **5.1.2. Commission's assessment**

In relation to Wright Steel's claims that BlueScope has lodged inconsistent applications with the Commission based on statements made in relation to the application for Investigation 249, the Commission considers that the statement by BlueScope in its application for Investigation 249 that:

*(e)xports from Taiwan have continued, albeit at levels that are understood to be non-dumped*

is not fulsome evidence that the anti-dumping measures are no longer necessary or that alloyed steel exported from Taiwan has not been involved in a circumvention activity.

Firstly, the Commission notes that this statement in BlueScope's application for Investigation 249 appears to relate to non-alloy galvanised steel from Taiwan, and not the circumvention goods (alloyed galvanised steel) which is the subject of this inquiry.

The Commission notes that, while BlueScope may indeed consider that non-alloyed galvanised steel was exported from Taiwan to Australia at the time of that application at prices that were not dumped, the Commission cannot be satisfied that non-alloyed galvanised steel exported from Taiwan is no longer dumped without conducting a review of the variable factors applicable to those exporters.

The Commission considers there is insufficient evidence that one or more of the variable factors relevant to non-alloyed galvanised steel exported from Taiwan may have changed for it to seek (under subsection 269ZA(3)) a Parliamentary Secretary-initiated review of these measures at this stage. Although interested parties (including CITIC as an affected party) should note that they are able to apply for such a review if they consider it can be demonstrated that one or more of the relevant variable factors may have changed in accordance with section 269ZA.

Further, the Commission does not consider that the outcome of Investigation 249's findings in relation to Vietnam and India provide an indication as to whether galvanised steel (either alloyed or non-alloyed) exported from Taiwan has been dumped. The assessment of the variable factors of export price and normal value in that investigation were specific to those countries and not to Taiwan.

As detailed above, if affected parties consider that a review of the anti-dumping measures applicable to galvanised steel is warranted as the variable factors relevant to those measures have changed, they may apply for a review of those measures.

In relation to Wright Steel's submissions that in order for circumvention goods to be brought under the original notice they must have been shown to be dumping, the Commission considers that Wright Steel's interpretation of the ADA is misrepresentative of the requirements of the ADA. Articles 5.2 and 5.8 relate specifically to an application under Article 5.1 for an investigation to determine the 'existence, degree and effect of any dumping'. Consequently, these provisions relate to an application for the publication of a

dumping duty notice (i.e. an original investigation) and not to an application for an anti-circumvention inquiry (which no provisions in the ADA specifically address).

The Commission does not consider that there is any requirement, either under the ADA, the Act or the Regulations that, during an anti-circumvention inquiry, the variable factors and/or dumping must be examined or established. While it may be possible to include an assessment of the current level of variable factors in the context of an anti-circumvention inquiry, which would determine the current level of dumping and subsidisation, this is not required by the provisions and in the case of this inquiry, it was determined this assessment would not be undertaken.

In any case, the test to determine whether a circumvention activity has occurred does not require consideration as to whether the circumvention goods have not been dumped, or have caused material injury to the Australian industry.

During Investigation 190a, it was established that non-alloyed galvanised steel exported from Korea, China and Taiwan was dumped and that this dumping had caused material injury to the Australian industry. The purpose of this anti-circumvention inquiry is to establish whether a circumvention activity under section 48 of the Regulations has occurred in relation to the original dumping duty notice imposed after Investigation 190a. That is, the inquiry will determine whether goods have been exported to Australia that would have otherwise been subject to the original notice (found to have been dumped) had they not been slightly modified.

## **5.2. The ‘uncertain ambit of the application renders it invalid’**

### **5.2.1. Matters raised in submissions**

Wright Steel’s 7 August 2015 submission declares that:

*the application is inadequate as to all targeted countries as there is no clear and workable indication of the goods to be covered. BSL [BlueScope] should not be entitled to make an open-ended application in relation to goods that cannot be identified from the face of the application.*

Wright Steel asserts that ADA Article 5.2(ii), which requires a full description of allegedly dumped goods, has not been adhered to as BlueScope’s application:

*does not provide any clear parameters as to which alloy goods are covered or not.*

Wright Steel’s 7 August 2015 submission asserts that the application is very broad and does not provide clear parameters as to which alloy goods are covered, nor was any ‘cut-off point’ for addition of alloys provided, including boron.

In its 11 September 2015 submission, Wright Steel (in conjunction with CITIC who co-submitted) clarifies:

*[BlueScope] has not articulated which position it is asserting, renders the application fatally flawed, as any application of such a nature, with such drastic consequences for*

*the viability of the businesses of other interested parties, should say what it wants. ADC should not have to guess and should not be effectively asked to make strategic choices on BLS' [BlueScope's] behalf*

Wright Steel's submission of 11 September 2015 goes on to submit that, even if a cut-off level were nominated, it would be inappropriate to identify a cut-off level as that would encourage exporters to increase levels of alloys to circumvent the notice and therefore this would be problematic.

Further, Wright Steel's 11 September 2015 submission states that interested parties have the right to know the addition of which alloys are included in the application so that they can trade in those not included with impunity.

The 11 September 2015 submission goes on to highlight the difficulties Wright Steel considers result from BlueScope not identifying a 'cut-off point' for the Commission's investigation and the Parliamentary Secretary's final decision.

### **5.2.2. Commission's assessment**

The Commissioner considers that the ambit or scope of BlueScope's application is sufficiently certain, and provides interested parties with a clear indication of the nature of the circumvention activities and goods that BlueScope intended to apply for an inquiry into.

The Commissioner's view is that BlueScope's application alleges that a slight modification of exported goods has occurred through the addition of boron at or above a specified level, and that there is the potential for other alloys to be used in this manner. The application also requests that, should the original notices be altered, the definition of the goods subject to the notice be expanded to include:

*flat rolled iron or steel products (whether or not containing alloys) of a width less than 600mm and, equal to or greater than 600mm, plated or coated with zinc.*

Therefore, it is the Commissioner's view that BlueScope's application intended to cover all types of alloyed galvanised steel that meet the definition of an alloyed galvanised steel to provide for their classification under 7225.92.00 (statistical code 38) and 7226.99.00 (statistical code 71) of the Tariff Act, and there is no ambiguity on this matter.

The Commission notes this request is reasonable considering the information available to BlueScope, including the nature of import data available which does not specify which alloy is included in imported alloyed galvanised steel.

Additionally, BlueScope's applications for anti-circumvention inquiries were considered by the Commissioner. In each case, the applications were found to have satisfied the requirements of section 269ZDBE.

Specifically, the Commissioner was satisfied BlueScope's applications, in accordance with subsection 269ZDBE(2):

- the requirements of subsection 269ZDBD were satisfied; and

- the applications established there appears to be reasonable grounds for asserting that one or more circumvention activities have taken place.

It is therefore considered that the Commissioner has fully assessed the applications and was satisfied that sufficient evidence was provided to meet the requirements.

The anti-circumvention inquiries were subsequently initiated (see Paragraph 1.5).

The reasons for initiation are discussed in CON290 and CON298, which can be found on the Public Record.

Further, there is no requirement in the Act or regulations that an application for an anti-circumvention inquiry must include a full description of allegedly dumped goods, as has been asserted by Wright Steel.

Additionally, there is no requirement for an applicant for an anti-circumvention inquiry to specify a ‘cut-off point’ for the extent of the alleged modification of those goods (noting that the modification must be established as being slight).

In any case, the Commission notes that, as a result of the inquiry, the Commission’s recommendations regarding alterations that should be made to the original notice have been limited to boron-added galvanised steel. However, should alloyed galvanised steel including different alloying elements be exported in the future that meets the requirements of subsection 48(2) of the Regulations, a separate application for an anti-circumvention inquiry could be made, and the original notices may be extended to include those alloying elements.

These findings address the issues and concerns raised in Wright Steel’s submissions in relation to the breadth of examination of all alloys as well as end use concerns, noting that the assessment of whether an activity has occurred examines whether the end use of the circumvention goods is the same as before the modification.

The Commission understands the impact this application may have, however, only goods that have been slightly modified and have the same end use before and after the slight modification can be captured. Hence, the Commissioner is satisfied that the ambit of the inquiry is clear and certain.

The Commission notes Wright Steel’s submission that the scope of the goods subject to the anti-circumvention inquiry should be narrowed to allow parties to trade in non-subject goods with impunity. The Commission highlights that trade in any alloyed galvanised steel that is of a slightly modified good for the purposes of subsection 48(2) of the Regulations is a circumvention activity (noting the requirements of Paragraphs (a) to (e) of those provisions – see Chapter 4).

### **5.3. The application does not address each of the designated factors**

#### **5.3.1. Matters raised in submissions**

Wright Steel's 7 August 2015 submission submits the BlueScope application has a 'lack of evidence as to functionality' and focuses on import volumes and cost to produce. The Commission understands is intended to submit that the application does not properly address the functionality of boron-added galvanised steel.

The submission goes on to state:

*the regulations identify 13 non-exhaustive factors that must be considered. It would be improper to continue to conduct an investigation not grounded in sufficient attention by the applicant. It would be improper to continue to conduct an investigation not grounded in sufficient attention by the applicant to each factor, once it is evident that the applicant could easily have done more in that regard.*

### **5.3.2. Commission's assessment**

It is considered that the 'factors' referred to by Wright Steel in this context relate to the factors prescribed by subsection 48(3) of the Regulations, which provides:

*For the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention good and the good the subject of the notice, having regard to any factor that the Commissioner considers relevant, including any of the following factors...*

This subsection goes on to list 13 factors that the Commissioner may have regard to in determining whether a circumvention good is slightly modified, that is, whether the requirements of subsection 48(2)(b) have been satisfied.

The Commission notes that this is a non-exhaustive list of factors and that the Commissioner may consider any of those factors. The Commissioner is not required to consider all of those factors or to limit his consideration to only those factors.. The Commission therefore considers that an application can be valid even though it does not address all of the subsection 48(3) factors.

Further, it is not considered that, even during an inquiry, that all of these factors must be specifically considered by the Commissioner in making a determination as to whether circumvention goods have been slightly modified. This provision requires that the Commissioner must compare the goods subject to the original notices and the circumvention goods to establish whether they have been slightly modified, which may involve examining any, all or none of the listed factors.

In any case, the Commission notes that BlueScope's application does specifically address each of these factors, commencing at Page 11. It is therefore unclear why Wright Steel considers the application 'inadequate' for not addressing all of the subsection 48(2) factors.

## **5.4. Confidentiality issues**

### **5.4.1. Matters raised in submission**

Wright Steel's 7 August 2015 submission states:

*A number of ADA provisions point to problems if this inadequate application is allowed to justify the continuation of the investigation. ADA Art 6.2 provides that “(t)hroughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests.” ADA Art 6.5.1 provides that “(t)he authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof.”*

*These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. A respondent to an application of this nature should be able to see BLS’s assertions as to each of the 13 factors. This is not the case with this application.*

This statement follows Wright Steel's discussion of the application's examination of 'factors'.

#### **5.4.2. Commission's assessment**

In relation to Wright Steel's submission regarding confidentiality issues in the application, it is unclear to the Commission as to what confidential information in the application Wright Steel is asserting has been redacted by BlueScope but has not been replaced by a sufficiently detailed non-confidential summary thereof.

If this relates to BlueScope's discussion of the 13 factors under subsection 48(3) of the Regulations, it is observed that the BlueScope application, available on the Commission's electronic public record, does not redact any information relating to those factors.

In general, the Commission considers that a sufficiently detailed non-confidential version of the application was provided by BlueScope and this has been placed on the Public Record since the date of initiation of the inquiries.

## 6. HAS A CIRCUMVENTION ACTIVITY OCCURRED?

This chapter examines whether a circumvention activity has occurred in relation to the original notices. It examines the activities of each supplier of the goods that have been identified as potentially being involved in a circumvention activity, as discussed above at Paragraph 3.2.

### 6.1. Taiwanese suppliers

#### 6.1.1. Yieh Phui

##### Background

As outlined in Paragraph 3.3, Yieh Phui provided a response to the exporter questionnaire. This was a combined response for Yieh Phui and its related Hong Kong based trading company, Asiazone.

CITIC was identified by the Commission as a possible importer of the circumvention goods from Asiazone and was requested to complete an importer questionnaire. CITIC completed this questionnaire and identified Asiazone as its supplier of alloyed galvanised steel.

CITIC and Wright Steel provided submissions to the inquiry in relation to goods supplied by Asiazone. As detailed in the importer visit report for CITIC during the original investigation (Investigation 190a - available on that investigation's Public Record):

*CITIC Australia advised...it [has] engaged in [an]... arrangement with Wright Steel Sales Pty Ltd (Wright Steel) in relation to the import and sale of steel products.*

##### Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the Regulations)?

As outlined at Paragraph 3.2, the Commission has accessed DIBP import data for all importations during the inquiry period of goods classified to tariff 7225.92.00 (statistical code 38) and 7226.99.00 (statistical code 71), which relate to alloyed galvanised steel. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Asiazone to Australia during the inquiry period were entered under these tariff classifications, declared as having originated in Taiwan.

The import data accessed by the Commission shows that the supply of alloyed galvanised steel by Asiazone to Australia commenced in the last quarter of the 2013 calendar year. This was confirmed by the company in its response to the exporter questionnaire.

In the combined response to the exporter questionnaire, Asiazone and Yieh Phui confirmed that the companies have been involved in the manufacture and export of

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alloyed galvanised steel to Australia during the inquiry period. Specifically, Asiazone and Yieh Phui's response outlined the following:

- Yieh Phui manufactures alloyed galvanised steel in Taiwan;
- Yieh Phui sells these goods to Australia through Asiazone;
- Yieh Phui is aware of the final customer and destination of the goods when making this sale, and plays a role in negotiating the terms of the sale; and
- Yieh Phui directly ships the goods from Taiwan to the Australian customer.

In addition, Yieh Phui provided a detailed listing of its sales to Australia (via Asiazone) during the inquiry period. This listed sales of both non-alloy and alloyed (boron-added) galvanised steel. This forms **Confidential Attachment 2**.

Yieh Phui submitted in its questionnaire response that all alloyed galvanised steel exported to Australia during the inquiry period was boron-added steel and not an alloy of a different alloying element.

As outlined above, CITIC has identified that it purchases the alloyed galvanised steel directly from Asiazone.

In light of the above, the Commission is satisfied that circumvention goods are exported to Australia from Taiwan.

*Who is the exporter?*

In light of the above information from Yieh Phui and Asiazone's combined exporter response, the Commission considers Yieh Phui to be the exporter of alloyed galvanised steel supplied to Australia by Asiazone during the inquiry period. This is consistent with the findings of Investigation 190a in relation to Yieh Phui.

### **Before that exportation, were the circumvention goods slightly modified (Subsection 48(2)(b) of the Regulations)?**

Under subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of subsection 48(3) under the following categories:

- patterns of trade<sup>12</sup> and export volumes.<sup>13</sup>
- physical differences;<sup>14</sup>

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<sup>12</sup> Subsection 48(3)(j) of the Regulations

<sup>13</sup> Subsection 48(3)(l) of the Regulations

- manufacturing cost<sup>15</sup> and selling price;<sup>16</sup>
- marketing<sup>17</sup> and trade channels/distribution;<sup>18</sup> and
- interchangeability,<sup>19</sup> end use<sup>20</sup> and customer preferences and expectations.<sup>21</sup>

This specifically addresses twelve of the thirteen subsection 48(3) factors.

In relation to the final factor, tariff classification, as outlined in Chapter 2, alloyed and non-alloyed galvanised steel fall under different tariff classifications in Schedule 3 of the Tariff Act.

Discussion of each category is below.

### Patterns of trade and export volumes

As detailed above, Yieh Phui declared that it commenced exporting alloyed galvanised steel to Australia in the last quarter of calendar year 2013, after the publication of the original notice. This is confirmed by the Australian sales listing submitted by the company (**Confidential Attachment 2**) in its exporter questionnaire response and the import data obtained from DIBP (**Confidential Attachment 1**).

The Commission observes that this data shows that there was a corresponding decline in Yieh Phui's exports of non-alloy galvanised steel at levels similar to the increase in volumes of the alloyed goods from the final quarter of calendar year 2013. This data also shows that the total volume of galvanised steel (alloyed and non-alloyed combined) exported to Australia remained stable from financial year 2013 (before the export of alloyed galvanised steel) through to financial year 2015.<sup>22</sup>

In its response to the exporter questionnaire, Yieh Phui submitted that it had made sales of alloyed galvanised steel during the inquiry period to third countries. The company provided a detailed sales listing of all sales of alloyed galvanised steel to third countries during the inquiry period.

The Commission does not have access to Yieh Phui's total third company sales data throughout the inquiry period. However, it has compared the volume of alloyed goods sold to third countries during the investigation period for Investigation 190a (1 July 2011 – 30 June 2012) and notes that these exports represent a negligible volume of total exports of galvanised steel to third countries by Yieh Phui.

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<sup>14</sup> Including physical characteristics (Subsection 48(3)(a)) and production process changes (Subsection 48(3)(d)) of the Regulations

<sup>15</sup> Subsection 48(3)(e) and (f) of the Regulations

<sup>16</sup> Subsection 48(3)(k) of the Regulations

<sup>17</sup> Subsection 48(3)(h) of the Regulations

<sup>18</sup> Subsection 48(3)(i) of the Regulations

<sup>19</sup> Subsection 48(3)(c) of the Regulations

<sup>20</sup> Subsection 48(3)(b) of the Regulations

<sup>21</sup> Subsection 48(3)(g) of the Regulations

<sup>22</sup> The inquiry period only covers Q1 – Q3 of financial year 2015. The data provided by Yieh Phui has been pro-rated for the purposes of this analysis).

The Commission notes that this third country sales data does not include country of destination, and hence the Commission is unable to undertake analysis of the export destinations.

Yieh Phui's questionnaire response declared that the company sold 'a small amount' of alloyed galvanised steel on the domestic market during the inquiry period, and provided a domestic sales listing of these sales for the inquiry period.

As with third country sales, the Commission calculated the volume of domestic sales of alloyed galvanised steel as a percentage of all domestic sales of galvanised steel during the investigation period of Investigation 190a and found this volume to be negligible.

The Commission has compared the alleged circumvention goods to the goods subject to the original notice and found patterns of trade that suggest alloyed galvanised steel and non-alloyed galvanised steel are likely to be substantially interchangeable, have the same end use and each fulfil similar customer preferences and expectations.

### **Physical differences**

BlueScope's applications and submissions to the investigation on the physical differences between alloyed and non-alloyed galvanised steel have focussed on the addition of boron to galvanised steel at a level at or above 0.0008% concentration, but have also referred to the possibility of the addition of other alloys (such as chromium).

BlueScope's application submitted that the physical characteristics of non-alloyed and alloyed galvanised steel will not differ, with the main difference is that alloyed galvanised steel will contain alloying elements not present in significant quantities in non-alloyed goods.

BlueScope has submitted that alloyed galvanised steel with small amounts of boron would appear and behave in the same manner as non-alloyed galvanised steel, noting that it would be impossible for the end user to know whether such a small amount of boron has been added to the steel without testing it or observing the mill certificate. BlueScope has explained that the visual and physical characteristics of steel would not differ from such a small addition of boron or other elements.<sup>23</sup>

However, BlueScope has submitted that if a large quantity of boron were added to the galvanised steel, it could have a softening effect in specific types of low-carbon steel grades and welding issues could ensue.<sup>24</sup>

It is not clear to the Commission what this 'large quantity of boron' would be at or above. In its questionnaire response, Yieh Phui identified that it had exported alloyed (boron-added) galvanised steel during the inquiry period.

Yieh Phui's response discussed the boron content of its alloyed galvanised steel, submitting that it was significantly higher than the 0.0008% required to be considered an alloyed product under the relevant tariff classifications.

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<sup>23</sup> Refer to the BlueScope Record of Meeting – 27 May 2015 site visit.

<sup>24</sup> Refer to the BlueScope Record of Meeting – 27 May 2015 site visit.

As per the requirements of the questionnaire, Yieh Phui's Australian sales listing included line-by-line information as to the boron level in the galvanised steel sold to Australia during the inquiry period. In addition, Yieh Phui provided source documentation for eight selected sales in this listing, including a mill certificate for each. The Commission observed from these mill certificates that the boron level recorded in the Australian sales listing was accurate.

The Commission observes that this exports listing from Yieh Phui identifies that some exports were of boron-added galvanised steel only marginally above the 0.0008% concentration, while other exportations showed levels of boron of levels that were substantially higher, though at no time were these levels close to that seen for exports of alloyed galvanised from another supplier, which the Commission is satisfied was of specialised steel for automotive components (see Paragraph 6.3.1).

Yieh Phui's exporter questionnaire response did not address claims as to the physical differences between its alloyed and non-alloyed galvanised steel (though focus was placed on interchangeability and end use – see later discussion).

In terms of manufacturing processes, BlueScope's application explained that the production process to manufacture the circumvention goods (alloyed galvanised steel) and the goods the subject of the original notices (iron or non-alloyed galvanised steel) are essentially the same. This was reiterated by BlueScope when meeting with the Commission at its premises on 27 May 2015.

BlueScope's application submitted that the only difference in the process of manufacturing alloyed galvanised steel as opposed to iron or non-alloy galvanised steel is the inclusion of alloying elements in liquid steel (prior to casting, rolling and galvanising) above the concentrations detailed in the notes to Chapter 72 of Schedule 3 of the Tariff Act (see Paragraph 2.7.2).

During the 27 May 2015 meeting, BlueScope explained that, after the point of adding alloys to the liquid steel, no further changes would be made in the manufacturing process to manufacture alloyed galvanised steel as opposed to non-alloy galvanised steel, with the liquid steel being cast into slabs and rolled into hot rolled coil (HRC) prior to galvanisation.<sup>25</sup>

During the Commission's visit to the BlueScope plant, the Commission observed the process by which boron or other alloys would be added to steel in the manufacturing process by simply adding small amounts of boron to liquid steel following the production of that steel after the basic oxygen steelmaking (BOS) process.<sup>26</sup>

In its response to the exporter questionnaire, Yieh Phui described its manufacturing process of alloyed galvanised steel and non-alloyed galvanised steel, which involves purchasing already-manufactured HRC and galvanising this (i.e. not a fully integrated steel making process).

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<sup>25</sup> See the 27 May 2015 BlueScope meeting note for file for further details.

<sup>26</sup> Refer to the BlueScope Record of Meeting – 27 May 2015 site visit.

In this response, Yieh Phui advised that its manufacturing process for alloyed galvanised steel and non-alloyed galvanised steel ‘is generally the same’, noting that both alloyed and non-alloyed galvanised steel were manufactured to either the Australian Standard or Japanese Industrial Standards.

The company explained that the main difference in the manufacturing process of alloyed galvanised steel compared to non-alloyed galvanised steel is that the company purchases alloyed HRC to feed into its manufacturing process (instead of non-alloyed HRC).

In addition to the difference of adding alloyed HRC as opposed to non-alloyed, Yieh Phui submitted that there are some other differences in manufacturing conditions between alloyed galvanised steel and non-alloy galvanised steel manufactured, specifically:

- alloyed HRC has a thinner scale on the surface than non-alloy hot-rolled steel, which generally makes it easier for Yieh Phui at the pickling process to remove this scale;
- alloyed HRC is easier to be trimmed, which means there are fewer defects (such as edges cracks and burrs) found on alloyed hot-rolled steel after the trimming process; and
- alloyed HRC is easier to be cold-rolled in order to reduce the steel thickness as the alloyed HRC has a lower level of steel strength than that of non-alloyed HRC (meaning less rolling force and electricity is needed to cold roll the HRC).

The Commission has compared the alleged circumvention goods exported by Yieh Phui to the goods subject to the original notice and considers that the physical characteristics of both goods are similar, with the main difference being the presence of the alloy boron at levels at or above 0.0008% (but not at levels seen in specialised automotive steel).

Further, the Commission is satisfied that the manufacturing process of the goods subject to the original notices and the circumvention goods are similar, with the difference in the case of goods exported by Yieh Phui being the purchase of alloyed HRC instead of non-alloyed HRC and all other processes being substantially similar, though some additional benefits to trimming, rolling and scale removal may exist.

### **Manufacturing cost and selling price**

BlueScope’s application included a cost calculation for the manufacturer steel in a fully-integrated steel manufacturing process<sup>27</sup> to add boron to liquid steel to meet the 0.0008% chemical composition requirement, estimating the cost of this modification to be \$0.45/metric tonne of steel. BlueScope has submitted that there would be no further changes in the cost to make alloyed steel by an integrated manufacturer of alloyed galvanised steel than this alloy input cost.<sup>28</sup>

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<sup>27</sup> Where the steel is made from iron ore and other raw materials

<sup>28</sup> Refer to the BlueScope Record of Meeting – 27 May 2015 site visit.

Yieh Phui's response to the exporter questionnaire advised that its supplier charged an additional cost for the supply of alloyed HRC compared to non-alloyed HRC, providing their supplier's pricing extras sheet to demonstrate this. The Commission confirms that this price extras sheet indicates specific price extras per tonne of boron-added galvanised steel, the quantum of which is dependent on the type of galvanised steel itself (i.e. specification).

The Commission has accessed verified data for Yieh Phui's cost of HRC purchases submitted to the original investigation (Investigation 190a) into galvanised steel and observes that this pricing extra would represent a very small percentage of the purchase price of alloyed HRC, and of the total cost to make alloyed galvanised HRC.

The exporter questionnaire requested that Yieh Phui provide data that would determine the total difference in cost to make and sell alloyed HRC compared to non-alloyed HRC. Due to limitations of the company's accounting record, this has not been able to be provided.<sup>29</sup>

Yieh Phui's response to the exporter questionnaire submitted:

- its sales process remained the same for both non-alloyed and alloy galvanised steel; and
- during the inquiry period, the company had a policy of charging a set amount per metric tonne extra to its customers for the purchase of alloyed galvanised steel as opposed to non-alloyed galvanised steel.

As mentioned above, Yieh Phui provided a listing of all sales of alloyed galvanised steel and non-alloyed galvanised steel to Australia during the inquiry period (**Confidential Attachment 2**), which included selling price information. The Commission's analysis shows that the premium declared to be charged by Yieh Phui for alloyed galvanised steel represents a very small percentage of the total selling price.

The Commission has compared the alleged circumvention goods to the goods subject to the original notice and have found that the addition of boron to galvanised steel to make alloyed galvanised steel has a small to negligible impact on Yieh Phui's cost to produce those goods when compared to the goods subject to the original notice, resulting from the purchase of the more expensive alloyed HRC from Yieh Phui's suppliers.

### **Marketing and trade channels/distribution**

In its application, BlueScope stated that the channels of marketing, trade and distribution for the circumvention goods and the goods the subject of the original notice are the same, and there are no differences in the prices offered to the Australian market between the alloyed and non-alloyed products.

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<sup>29</sup> See the company's response to the exporter questionnaire for further details.

These contentions were again made by BlueScope during the Commission's visit with the company at its manufacturing premises.<sup>30</sup>

In its response to the importer questionnaire, CITIC confirmed that its order and purchase process from Asiazone does not differ for non-alloyed and alloy galvanised steel, except for the fact that CITIC is required to specify whether they would like to order non-alloyed or alloyed steel when placing their order.

Yieh Phui, in their exporter questionnaire submitted that the company did not market alloyed galvanised steel differently to non-alloyed galvanised steel, though it did inform its Australian customer of the benefit of adding boron to galvanised steel.

The Commission has compared the alleged circumvention goods to the goods subject to the original notice and have found there is little difference between the ordering and sales transaction of Yieh Phui's alloyed galvanised steel compared to its non-alloyed galvanised steel. The Commission has found there is no difference in the trade channels and distribution methods between alloyed and non-alloyed galvanised steel and both products are marketed in the same way.

### **Interchangeability, end use, customer preference and expectations**

BlueScope's application submitted that the circumvention goods and the goods the subject of the notice have the same end-use applications, submitting that there are no "new" end-use applications for galvanised steel that have emerged post the imposition of anti-dumping measures in August 2013.

In its exporter questionnaire response, Yieh Phui indicated that the main purpose of switching from non-alloyed galvanised steel to boron added galvanised steel is to 'minimise the strain ageing effect' of the galvanised steel.

Specifically, Yieh Phui's questionnaire response submitted that its supply of alloyed galvanised steel to Australia arose in 2013 after requests from its customer for a solution to minimise the 'strain ageing effect' on the steel.

Yieh Phui submits that:

*strain ageing is a phenomenon known as the later reappearance of strength of steel at a higher level over a certain period of time after the production of steel is completed. The reappearance of a higher level of strength results in a loss of some ductility and formability of steel. Therefore, the finished goods which have been stored in the warehouse by the downstream customer for a longer time period is usually harder to be processed.*

Yieh Phui explained that it offers boron-added galvanised steel to address this issue, as its past experience has demonstrated that a certain amount of boron minimises the strain ageing effect of steel. In addition, Yieh Phui submitted that it has experienced that the addition of boron to galvanised steel 'enhances the formability' of the steel.

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<sup>30</sup> See the 27 May 2015 BlueScope meeting note for file for further details.

The company submitted that the inclusion of boron in its galvanised steel therefore makes the exported products suitable for Australian downstream customers that keep the steel in inventory for longer periods of time and have 'greater demand on the formability of steel'.

Yieh Phui submitted that, in order for the strain aging effect to be minimised, the boron percentage in the steel must be higher than the 0.0008% required to be considered alloyed steel, making reference to the company's submission that the boron level in its exports of galvanised steel are above this percentage.

In terms of end use of the galvanised steel, Yieh Phui's questionnaire response stated:

*The majority of both the non-alloy galvanized steel and alloyed galvanized steel that Yieh Phui exported to Australia during the inquiry period was used by the downstream processors in Australia to make purlin for building constructions. There is no difference in purposes or end uses between the non-alloy galvanized steel and alloyed galvanized steel that Yieh Phui exported to Australia during the inquiry period.*

In addition, Yieh Phui submitted that both the alloyed galvanised steel and non-alloyed galvanised steel it exported to Australia can be used interchangeably.

To conclude, Yieh Phui's exporter questionnaire submitted that:

*...it is Yieh Phui's position that the boron-added galvanized steel it shipped to Australia is not a product with a slight modification of boron-free galvanized steel exported to Australia. Instead, the boron-added galvanized steel Yieh Phui shipped to Australia and other countries is a product different from the boron-free galvanized steel that the customer usually has to specifically order for it.*

CITIC's response to the importer questionnaire confirmed Yieh Phui's submission that the main driver behind switching from non-alloyed galvanised steel exports to boron added alloyed galvanised steel is the beneficial impact boron has on the galvanised steel. In terms of use, CITIC advised that in some cases, the goods can be used interchangeably, but in many cases the alloyed galvanised steel is beneficial.

CITIC's importer questionnaire response submitted 'we sell to various parts of the market', indicating that the end use of the imported goods is more than for purlin as explained in Yieh Phui's questionnaire response.

In general submissions to the inquiry, CITIC and Wright Steel further addressed the benefits of adding boron to galvanised steel, raising the following issues:

- BlueScope have provided no evidence as to why the addition of boron is not beneficial to galvanised steel; and
- studies exist to show the beneficial impact of boron on steel, including during the 'continuous annealing process'.

Following publication of Yieh Phui's exporter questionnaire on the Public Record, BlueScope lodged a submission<sup>31</sup> refuting Yieh Phui's claims that the alloyed galvanised steel exported by Yieh Phui was a different product to non-alloy galvanised steel.

BlueScope submitted:

- Yieh Phui's claims that a new market requirement for the minimising of strain aging in galvanised steel occurred at the same time as the anti-dumping measures being imposed are disingenuous;
- BlueScope does not add boron to its galvanised steel and has and continues to supply around two-thirds of the Australian market volume for galvanised steel;
- BlueScope supplies non-alloyed galvanised steel to the same customers and end-users as Yieh Phui,
- there have been no changes in customers buying galvanised steel, no changes to downstream processing and no change in the ultimate end uses of galvanised steel;
- BlueScope has not seen a market request to supply galvanised steel that is free from or has minimised strain aging effect;
- Yieh Phui's claim of adding boron to minimise strain aging appearance of galvanised steel is technically correct, but is incomplete as:
  - the levels of boron in Yieh Phui's alloy galvanised steel are metallurgically insufficient to achieve the intent of controlling stretcher strain; and
  - nitrogen and carbon cause stretcher strain and while boron may impact the effect of nitrogen, it does not control carbon;
- strain ageing or 'stretcher strain' is essentially a visual blemish and there is no technical or aesthetic requirement or market-driven requirement for any of the commercial quality forming grades or structural grades of galvanised steel to be free from or have reduced stretcher strain;
- non-strain ageing or minimal strain-ageing steel is only required in the Australian market and globally for low strength formable galvanised steel grades, which require a special steel type known as 'Interstitial free' steel that eliminates both carbon and nitrogen; and
- there are some grades of galvanised steel where boron is beneficially used, but these are special grades for specific applications which are mostly automotive and are in relatively low volumes.

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<sup>31</sup> Dated 11 September 2015

The Commission has compared the alleged circumvention goods to the goods subject to the original notice and found alloyed galvanised steel and non-alloyed galvanised steel are likely to be substantially interchangeable, have the same end use and each fulfil similar customer preferences and expectations.

### **Summary of findings and conclusion**

The Commission considers that the balance of evidence supports a finding that alloyed galvanised steel exported by Yieh Phui during the inquiry period has been slightly modified through a minor change to the manufacturing process.

This modification occurred through the purchase and use of alloyed HRC instead of non-alloyed HRC prior to production of the circumvention goods in Taiwan, and hence occurred before the exportation of those goods.

The Commission considers that the available evidence demonstrates that when comparing the alleged circumvention goods with the goods the subject of the notice the following observations have been made:

#### *Patterns of trade and export volume:*

The pattern of trade for goods exported to Australia, whereby all exports were previously supplied by non-alloyed galvanised steel prior to a switch to alloyed galvanised steel, indicates that the alloyed galvanised steel is being supplied through the same trade channels and used in the same end uses as the non-alloyed galvanised steel exported prior to this shift.

#### *Physical differences:*

- the main physical characteristics are essentially the same, the only physical difference being the addition of boron in concentrations higher than 0.0008%; and
- the adding of boron to galvanised steel to make alloyed galvanised steel requires minor adjustments to Yieh Phui's manufacturing process and has little to no impact on the physical characteristics of the steel.

#### *Manufacturing cost and selling price:*

- the addition of boron to galvanised steel to make alloyed galvanised steel has a small to negligible impact on Yieh Phui's cost to produce those goods, resulting from the purchase of the more expensive alloyed HRC from Yieh Phui's suppliers; and
- Yieh Phui charges a small to negligible extra premium on the selling price of alloyed galvanised steel compared to non-alloyed galvanised steel.

#### *Marketing and trade channels/distribution:*

- there is little difference between the ordering and sales transaction of Yieh Phui's alloyed galvanised steel compared to its non-alloyed galvanised steel; and

- there is no difference between the trade channels and distribution of alloyed and non-alloyed galvanised steel and both products are marketed in the same way.

*Interchangeability, end use and customer preferences and expectations:*

- the end use of non-alloyed and alloyed galvanised steel exported by Yieh Phui in the inquiry period is the same;
- while most parties agree that both alloyed galvanised steel and non-alloyed galvanised steel exported by Yieh Phui are interchangeable, CITIC claims that there will be cases where alloyed galvanised steel is beneficial in comparison to non-alloyed galvanised steel, suggesting there is not complete interchangeability between products;
- the Commission considers that alloyed galvanised steel and non-alloyed galvanised steel are likely to be substantially interchangeable, even in cases where the steel has been stored for a long time; and
- customers have requested goods which minimise the strain ageing effect due to longer shelf life resulting in the non-alloy galvanised steel being more difficult to process.

However, there are conflicting views as to whether:

- the addition of boron in the levels seen in the alloyed galvanised steel exported by Yieh Phui is beneficial in minimising the strain ageing effect of the steel; and
- the strain ageing effect of galvanised steel is in fact a market issue that requires addressing.

The Commission considers that it is not in a position to comment whether:

- there is a market need to minimise the strain aging effect of steel; or
- the addition of boron at levels seen in Yieh Phui's exported goods minimises that effect.

However, the Commission considers that while there may be some benefit to the addition of boron to minimise the strain ageing effect of steel that has been stored for long periods allowing for easier use, no evidence has been provided that demonstrates that non-alloyed galvanised steel cannot be used in these circumstances, though it may not be as easy to process.

In regards to the issue of processing steel that has been stored for long periods, it is observed that this problem is unlikely to have only emerged in the final quarter of calendar year 2013 when Yieh Phui began exporting alloyed galvanised steel.

Additionally, the Commission considers BlueScope and importers of non-alloyed galvanised steel are likely to be supplying end users who store the galvanised steel for

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similar periods of time to the end users of steel exported by Yieh Phui, and this issue is unlikely to be limited to customers of Yieh Phui's steel, noting that:

- the Commission has found during Investigation 190a into galvanised steel, and during the recent investigation into galvanised steel from Vietnam and India (Investigation 249) that the key market segments for galvanised steel are the building and construction industry segment (largest consumer by volume) and the smaller manufacturing industry segment;
- CITIC has advised that they supply to 'various parts of the market', indicating it sells to these market segments; and

the Commission's has found in Investigation 190a and Investigation 249 that BlueScope supplies non-alloyed galvanised steel to both of the key market segments.

### **Is the use or purpose of the circumvention goods the same before and after the slight modification (Subsection 48(2)(c) of the Regulations)?**

For a detailed discussion of use or purposes of non-alloy and alloyed galvanised steel exported by Yieh Phui to Australia, refer to the discussion of subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

### **Had the circumvention goods not been slightly modified, would they have been subject to the original notice (Subsection 48(2)(d) of the Regulations)?**

As detailed at Paragraph 2.3.1, the goods subject to the original dumping duty notice are:

*"flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc."*

Painted galvanised steel, pre-painted galvanised steel, electro-galvanised plate steel and corrugated galvanised steel are specifically excluded from the original dumping duty notice. Additionally, the relevant Minister has granted exemptions from the anti-dumping measures imposed by the original dumping duty notice to goods subject to 15 tariff concession orders.

As detailed above, the Commission has found that a slight modification has been made to the circumvention goods exported by Yieh Phui through the use of alloyed (boron-added) HRC in its manufacturing process of galvanised steel (as opposed to using unalloyed HRC). The use of boron-added HRC results in the production of alloyed galvanised steel.

The Commission is satisfied that, had Yieh Phui not used alloyed HRC in its manufacturing process and continued to use non-alloyed HRC, the galvanised steel produced by the company would be correctly classified as non-alloyed galvanised steel.

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Excluding cases where goods produced by Yieh Phui met the requirements of the abovementioned TCOs, or where production was of painted galvanised steel, pre-painted galvanised steel, electro-galvanised plate steel or corrugated galvanised steel, the Commission is satisfied that the galvanised steel produced by Yieh Phui would have been subject to the original dumping duty notice.

The Commission notes that:

- the TCOs that have been the subject of the granting of exemptions from anti-dumping measures relate to very specific galvanised steel that is often used in automotive applications;
- examination of the importation databased (**Confidential Attachment 1**) indicates that exports of both alloyed and non-alloyed galvanised steel have not accessed tariff concessions under the TCOs applicable to galvanised steel; and
- previous data gathered by the Commission in Investigation 190a does not identify that Yieh Phui has historically produced or exported painted galvanised steel, pre-painted galvanised steel, electro-galvanised plate steel or corrugated galvanised steel.

The Commission considers that it does not have definitive evidence to establish whether all of Yieh Phui's exports of alloyed galvanised steel during the inquiry period fit into any of the excluded categories of steel or the exempted TCOs. However, the Commission considers it is likely that the vast majority, if not all, of this alloyed galvanised steel did not qualify for such an exemption, and hence would have been subject to the original dumping duty notice had they not been slightly modified.

### Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods (Subsection 48(2)(e) of the Regulations)?

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsections 269TG(2) or 269TJ(2) of the Act.

In this case, the Commission notes that a countervailing duty notice is not applicable to galvanised steel exported from Taiwan. Consequently, section 10 of the Dumping Duty Act is not applicable.

As discussed above, dumping duties (imposed by the original dumping duty notice) apply to:

*"flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc."*

The slight modification of the goods that has been performed by Yieh Phui results in the circumvention goods exported by Yieh Phui being considered 'alloyed galvanised steel' for the purposes of classification under subheadings 7225.92.00 (statistical code 38) and 7226.99.00 (statistical code 71) of the Tariff Act.

This modification means that the exported goods are no longer 'of iron or non-alloy steel' and hence not subject to the description of the goods covered by the dumping duty notice.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence section 8 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia.

### **Conclusion**

The Commission finds that, in relation to alloyed galvanised steel exported to Australia by Yieh Phui, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

#### **6.1.2. Kenna International Corporation (Kenna International)**

As outlined in Paragraph 3.3 of this report, Kenna International was contacted by the Commission to complete an exporter questionnaire after being identified as a potential supplier of alloyed galvanised steel exported from Taiwan and Korea. The company was also identified as a potential importer of alloyed galvanised steel and hence was sent an importer questionnaire for completion as well.

Following receipt of these questionnaires, Kenna International contacted the Commission and advised that it was an importer of alloyed galvanised steel but not an exporter of those goods, but it may appear as a 'supplier' in the DIBP database on occasions where it has imported goods on behalf of an Australian customer.

From this information and further confidential information obtained by the inquiries, the Commission is satisfied that Kenna International was not an exporter of galvanised steel exported from Taiwan and Korea during the inquiry period. However, Kenna International was an importer of alloyed galvanised steel during the inquiry period.

The Commission is satisfied that the confidential information provided establishes that the alloyed galvanised steel imported by Kenna International from Taiwan and Korea during the inquiry period is not subject to the original dumping duty notice due to applicable exemptions to that notice and hence a circumvention activity has not occurred.

Refer to **Confidential Attachment 3** for further discussion of the confidential information relied upon.

### **6.2. Chinese suppliers**

#### **6.2.1. Angang HK**

##### **Background**

As outlined in Paragraph 3.3 of this report, Angang HK was contacted by the Commission to complete an exporter questionnaire. The company did not provide a response to the exporter questionnaire, or provide any correspondence or declaration that they had not been involved in a circumvention activity. In the absence of relevant information from the

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supplier, the Commission has relied on all available information to make determinations in relation to goods supplied by Angang HK during the inquiry periods, including:

- import data gathered from DIBP;
- information on file gathered from and verified with Angang HK and its affiliates during Investigation 190a and 193a; and
- confidential information considered reliable for the purposes of drawing conclusions in relation to goods supplied by Angang HK to Australia (discussed in **Confidential Attachment 4**).

### Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the Regulations)?

As outlined at Paragraph 3.2, the Commission has accessed import data for all importations during the inquiry period of goods classified to tariff 7225.92.00 (statistical code 38) and 7226.99.00 (statistical code 71), which relate to alloyed galvanised steel. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Angang HK to Australia during the investigation period were declared under this tariff classification (that is, alloyed galvanised steel), and declared as having originated in China.

Additionally, confidential information received from another interested party supports the accuracy of the above data and establishes that this alloyed galvanised steel includes boron of a concentration greater than 0.0008% (see **Confidential Attachment 4**).

In light of the above, the Commission is satisfied circumvention goods are exported to Australia from China.

### *Who is the exporter?*

During the original investigations (Investigations 190a and 193a), the Commission received response to the exporter questionnaires from ANSTEEL and affiliates (one in relation to Investigation 190a and another in relation to Investigation 193a).

In this exporter questionnaire response, the companies identified that, during the periods of Investigations 190a and 193a:

- ANSTEEL was an exporting producer of galvanised steel merchandise to Australia;
- Angang Group International Trade Corporation (Angang International), is an affiliated company to ANSTEEL, acting as an agent in the sale of galvanised steel to foreign markets including Australia;
- Angang International sells to Australia via Angang HK, which issues commercial invoices to the Australian customers; and

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- Angang HK is affiliated with ANSTEEL and Angang International.

During Investigations 190a and 193a, the Commission undertook a verification visit to ANSTEEL to verify information provided in the company's exporter questionnaire responses. The relevant verification visit report on Investigation 190a's Public Record.

Following this verification visit, the Commission was satisfied that, for the purposes of Investigations 190a and 193a:

- ANSTEEL, Angang HK and Angang International should be treated as one entity for the determination of export price; and
- ANSTEEL was the exporter of galvanised steel supplied via Angang HK and Angang International during the investigation period.

Noting:

- the affiliation between Angang HK and ANSTEEL;
- the nature of each business (ANSTEEL has manufacturing facilities in China while Angang HK is a Hong Kong based trading company); and
- the historical findings of Investigations 190a and 193a

The Commission considers that ANSTEEL was likely the exporter of alloyed galvanised steel supplied by Angang HK to Australia during the inquiry period.

### **Before that exportation, were the circumvention goods slightly modified (Subsection 48(2)(b) of the Regulations)?**

Under subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of subsection 48(3) under the following categories:

- patterns of trade<sup>32</sup> and export volumes;<sup>33</sup>
- physical differences;<sup>34</sup>
- manufacturing cost<sup>35</sup> and selling price;<sup>36</sup>

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<sup>32</sup> Subsection 48(3)(j) of the Regulations

<sup>33</sup> Subsection 48(3)(l) of the Regulations

<sup>34</sup> Including physical characteristics (Subsection 48(3)(a)) and production process changes (Subsection 48(3)(d)) of the Regulations

<sup>35</sup> Subsection 48(3)(e) and (f) of the Regulations

<sup>36</sup> Subsection 48(3)(k) of the Regulations

- marketing<sup>37</sup> and trade channels/distribution;<sup>38</sup> and
- interchangeability,<sup>39</sup> end use<sup>40</sup> and customer preferences and expectations.<sup>41</sup>

This specifically addresses twelve of the thirteen subsection 48(3) factors.

In relation to the final factor, tariff classification, as outlined in Chapter 2, alloyed and non-alloyed galvanised steel fall under different tariff classifications in Schedule 3 of the Tariff Act.

Discussion of each category is below.

### **Patterns of trade and export volumes**

Import data obtained from DIBP (**Confidential Attachment 1**) indicates that ANSTEEL exported:

- non-alloyed galvanised steel up to the second quarter of calendar year 2013 before ceasing exports of those goods; and
- alloyed galvanised steel from the first quarter of calendar year 2015.

The import data indicates that:

- ANSTEEL exported alloyed galvanised steel to one importer in the inquiry period;
- ANSTEEL made exportations of non-alloyed galvanised steel to that importer prior to ceasing exports of non-alloyed galvanised steel in 2013; and
- the volume of exports to that importer prior to ceasing exportation of non-alloyed galvanised steel in 2013 were similar to the volume of exports of alloyed galvanised steel to that importer commencing in 2015.

Confidential information gathered by the Commission confirms these patterns of exports from ANSTEEL. See **Confidential Attachment 4**.

The Commission has compared the alleged circumvention goods to the goods subject to the original notice and found patterns of trade that suggest alloyed galvanised steel and non-alloyed galvanised steel are likely to be substantially interchangeable, have the same end use and each fulfil similar customer preferences and expectations.

### **Physical Differences**

As discussed above in Paragraph 6.1.1, BlueScope has outlined the process of the slight modification of galvanised steel for an integrated manufacturer of those goods.

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<sup>37</sup> Subsection 48(3)(h) of the Regulations

<sup>38</sup> Subsection 48(3)(i) of the Regulations

<sup>39</sup> Subsection 48(3)(c) of the Regulations

<sup>40</sup> Subsection 48(3)(b) of the Regulations

<sup>41</sup> Subsection 48(3)(g) of the Regulations

During the Investigations 190a and 193a verification visit to ANSTEEL, the Commission confirmed that ANSTEEL was a fully integrated manufacturer of galvanised steel during that case's investigation period.

Noting that ANSTEEL has not cooperated with the exporter questionnaire response, the Commission considers that all available information indicates that:

- ANSTEEL is a fully integrated manufacturer of alloyed galvanised steel; and
- ANSTEEL's manufacturing process for alloyed galvanised steel would likely require the alterations to the non-alloyed galvanised steel manufacturing process described by BlueScope (that is, by adding alloying elements to liquid steel after the BOS process).

The Commission's understanding of ANSTEEL's manufacturing process for galvanised steel from Investigations 190a and 193a<sup>42</sup> is that ANSTEEL's galvanising process is substantially similar to the galvanising process undertaken by Yieh Phui (noting the Commission understands that this process is similar globally for all galvanised steel manufacturers). Consequently, the Commission considers that the physical characteristics of non-alloyed and alloyed galvanised steel will not differ, with the main difference being that alloyed galvanised steel will contain boron.

The Commission has compared the alleged circumvention goods to the good subject to the original notice and considers that the physical characteristics of the goods<sup>43</sup> have been slightly modified by the addition of boron.

### **Manufacturing costs and selling price**

The Commission considers that the cost of the modification to ANSTEEL's manufacturing process for liquid steel is likely to be similar to the cost submitted by BlueScope for this modification (approximately AU\$0.45 per tonne of steel).

As discussed above in Paragraph 6.1.1, Yieh Phui has submitted that, when that company galvanises alloyed HRC into alloyed galvanised steel, there are some cost advantages over galvanising non-alloyed HRC.

The Commission's understanding of ANSTEEL's manufacturing process for galvanised steel from Investigations 190a and 193a<sup>44</sup> is that ANSTEEL's galvanising process is substantially similar to the galvanising process undertaken by Yieh Phui (noting the Commission understands that this process is similar globally for all galvanised steel manufacturers). Consequently, the Commission considers that the cost advantages explained by Yieh Phui may also apply to ANSTEEL's manufacture of alloyed galvanised steel.

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<sup>42</sup> See ANSTEEL's exporter verification report for Investigations 190a and 193b

<sup>43</sup> Section 48(3)(a) of the Regulations

<sup>44</sup> See ANSTEEL's exporter verification report for Investigations 190a and 193b

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However, it is considered that the overall cost to make difference between alloyed and non-alloyed galvanised steel produced by ANSTEEL is likely to be negligible as a percentage of total cost to make those goods.

In relation to the alloyed galvanised steel exported by ANSTEEL, limited information exists as to the differences in selling price to non-alloyed galvanised steel from:

- ANSTEEL to its Australian importer; or
- the importer to the Australian market.

The Commission has compared the available information regarding the alleged circumvention goods to the goods subject to the original notice and has found that the addition of boron to galvanised steel to make alloyed galvanised steel would be likely to have a small to negligible impact on ANSTEEL's cost to produce those goods when compared to the goods subject to the original notice.

### **Marketing and trade channels/distribution**

As discussed at Paragraph 6.1.1, BlueScope has submitted that the channels of marketing, trade and distribution for the circumvention goods and the goods the subject of the original notice are the same, and there is no difference in the prices offered to the Australian market between the alloyed and non-alloyed products. BlueScope has also submitted that non-alloyed and alloyed galvanised steel are marketed in the same way.

Other available confidential information confirms that the sales process of ANSTEEL's alloyed galvanised steel and non-alloyed galvanised steel is the same or similar. Confidential Information obtained by the Commission implies that end users of alloyed galvanised steel do not specifically request that the products sold to them contain alloy, which supports the Commission's finding that the channels of marketing and trade are the same. Refer to **Confidential Attachment 4** for further discussion.

The Commission has compared the information available regarding the alleged circumvention goods to the goods subject to the original notice and have found there is no difference between the ordering and sales transaction of alloyed galvanised steel compared to its non-alloyed galvanised steel. The Commission has found there is no difference in the trade channels and distribution methods between alloyed and non-alloyed galvanised steel and both products are marketed in the same way.

### **Interchangeability, end use and customer preference and expectations**

As discussed at Paragraph 6.1.1, BlueScope submitted that the circumvention goods and the goods the subject of the notice have the same end-use applications.

With regards to the alloyed galvanised steel exported by ANSTEEL to Australia, limited information is available as to the specific end use of those goods.

As discussed in Paragraph 6.1.1, Yieh Phui and CITIC have submitted that the addition of boron minimises the 'strain ageing effect' of steel, which is beneficial to Australian customers. However, the end use of non-alloyed galvanised steel and alloyed galvanised

steel supplied by those companies into the Australian market is the same and the goods may be used interchangeably.

In relation to the end use of ANSTEEL's alloyed galvanised steel, in the absence of evidence as to the actual end use of those goods, the Commission considers that the pattern of trade where:

- exports of non-alloyed goods ceased in 2013 after Investigations 190a and 193a had been initiated and preliminary affirmative determinations made; then
- exports of alloyed goods commenced in 2015 in similar volumes to an importer who previously purchased non-alloyed goods

This forms persuasive evidence to suggest that the end use of the alloyed galvanised steel exported by ANSTEEL to Australia is the same as that of non-alloyed galvanised steel exported by ANSTEEL.

The Commission has compared the alleged circumvention goods to the goods subject to the original notice and found alloyed galvanised steel and non-alloyed galvanised steel are likely to be substantially interchangeable, have the same end use and each fulfil similar customer preferences and expectations.

### **Summary of findings and conclusion**

The Commission considers that the balance of evidence supports a finding that alloyed galvanised steel exported by ANSTEEL during the inquiry period has been slightly modified through a minor change to the manufacturing process.

#### *Patterns of trade and export volumes:*

- ANSTEEL exported non-alloyed galvanised steel up to the second quarter of the 2013 calendar year; and
- ANSTEEL exported alloyed galvanised steel commencing from the first quarter of the 2015 calendar year.

#### *Physical differences:*

- the main physical characteristics are essentially the same, the only physical difference being the addition of boron in concentrations higher than 0.0008%;
- the adding of boron to galvanised steel to make alloyed galvanised steel requires minor adjustments to ANSTEEL's manufacturing process.

#### *Manufacturing cost and selling price:*

- the addition of boron to galvanised steel to make alloyed galvanised steel has a small to negligible impact on ANSTEEL's cost to produce those goods; and

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- available evidence indicates that the cost difference between products is likely to be small to negligible.

*Marketing and trade channels/distribution:*

- there is little difference between the ordering and sales transaction of ANSTEEL's alloyed galvanised steel compared to its non-alloyed galvanised steel.

*Interchangeability, end use and customer preferences and expectations:*

- the goods can be used interchangeably;
- the end use of non-alloyed and alloyed galvanised exported by ANSTEEL in the inquiry period is the same; and
- there is no difference in customer preferences and expectations.

### **Is the use or purpose of the circumvention goods the same before and after the slight modification (Subsection 48(2)(c) of the Regulations?)**

For a detailed discussion of use or purposes of non-alloy and alloyed galvanised steel exported by ANSTEEL to Australia, refer to the discussion of subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

### **Had the circumvention goods not been slightly modified, would they have been subject to the original notice (Subsection 48(2)(d) of the Regulations)?**

As detailed at Paragraph 2.4.1, the goods subject to the original dumping duty notice are:

*"flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc."*

Painted galvanised steel, pre-painted galvanised steel, electro-galvanised plate steel and corrugated galvanised steel are specifically excluded from the original dumping duty notice. Additionally, the relevant Minister has granted exemptions from the anti-dumping measures imposed by the original dumping duty notice to goods subject to 15 tariff concession orders.

As detailed above, the Commission has found that a slight modification has been made to the circumvention goods exported by ANSTEEL through the addition of boron to its liquid steel before casting, rolling and galvanising.

The Commission is satisfied that, had ANSTEEL not included these alloys in its manufacturing process and continued to use non-alloyed liquid steel to cast, roll and galvanise, the galvanised steel produced by the company would be correctly classified as non-alloyed galvanised steel.

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Excluding cases where goods produced by ANSTEEL met the requirements of the abovementioned TCOs, or where production was of painted galvanised steel, pre-painted galvanised steel, electro-galvanised plate steel or corrugated galvanised steel, the Commission is satisfied that the galvanised steel produced by ANSTEEL would have been subject to the original dumping duty notice. It is noted that exports by ANSTEEL are not subject to the original countervailing duty notice.

As noted at Paragraph 6.1.1, the Commission notes that the TCOs that have been the subject of the granting of exemptions from anti-dumping measures relate to very specific galvanised steel that is often used in automotive applications.

The Commission does not have definitive evidence to establish whether any or all of ANSTEEL exports of alloyed galvanised steel during the inquiry period fit into any of the excluded categories of steel or the exempted TCOs. However, the Commission considers it is likely that much of this alloyed galvanised steel did not qualify for such an exemption, and hence would have been subject to the original dumping duty notice had they not been slightly modified.

### **Do section 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods (Subsection 48(2)(e) of the Regulations)?**

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsections 269TG(2) or 269TJ(2).

In this case, the Commission notes that a countervailing duty notice is not applicable to galvanised steel exported by ANSTEEL from China. Consequently, section 10 of the Dumping Duty Act is not applicable.

As discussed above, dumping duties (imposed by the original dumping duty notice) apply to:

*“flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc.”*

The slight modification of the goods that has been performed by ANSTEEL results in the circumvention goods exported by ANSTEEL being considered ‘alloyed galvanised steel’ for the purposes of classification under subheadings 7225.92.00 (statistical code 38) and 7226.99.00 (statistical code 71) of the Tariff Act.

This modification means that the circumvention goods are no longer ‘of iron or non-alloy steel’ and hence not subject to the description of the goods covered by the dumping duty notice.

The Commission is satisfied that the alleged circumvention goods are not subject to the dumping duty notice and hence section 8 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia.

### **Conclusion**

The Commission finds that, in relation to alloyed galvanised steel exported to Australia by ANSTEEL, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

### **6.2.2. Company A**

#### **Background**

As outlined in Paragraph 3.3 of this report, Company A was contacted by the Commission to complete an exporter questionnaire. The company did not provide a response to the exporter questionnaire, or provide any correspondence or declaration that they had not been involved in a circumvention activity.

No information was provided by any other interested party in relation to the goods supplied by Company A.

In the absence of a response from Company A directly, the Commission has relied on all available information in considering the galvanised steel supplied to Australia by Company A during the inquiry period..

The Commission's primary source of reliable information relating to galvanised steel goods supplied by Company A is data contained in the DIBP import records.

#### **Have the circumvention goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the Regulations)?**

As discussed above and outlined at Paragraph 3.2, the Commission has accessed import data from DIBP for all importations during the inquiry period of goods classified to tariff classification 7225.92.00 (statistical code 38) and 7226.99.00 (statistical code 71), which relate to alloyed galvanised steel. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Company A to Australia during the inquiry period were declared under this tariff classification (that is, alloyed galvanised steel), and declared as having originated in China. This galvanised steel was described by the importer as 'alloy galv steel in coil' in its customs declaration.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from China.

#### ***Who is the exporter?***

An internet search for Company A indicates that the company may be a trading company of steel and steel products, which is also indicated by the company's name. It is therefore unlikely that this company is the manufacturer of the supplied alloyed galvanised steel and hence may not be the exporter of those goods in line with the Commission's established policy detailed in the *Dumping and Subsidy Manual*.

Having undertaken reasonable inquiries into historical responses to the Commission in relation to past investigations, the Commission confirms that, in addition to not providing

information relevant to the inquiries (as mentioned at the Background to Paragraph 6.2.2 above), Company A has not previously provided information to the Commission (i.e. in the original investigations, or to any other historical investigation undertaken by the Commission) with respect to galvanised steel.

Consequently, the Commission has been unable to ascertain the identity and name of the exporter of the galvanised steel goods supplied by Company A to Australian importers.

**Before that exportation, were the circumvention goods slightly modified (Subsection 48(2)(b) of the Regulations)?**

Under subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of subsection 48(3) under the following categories:

- patterns of trade<sup>45</sup> and export volumes.<sup>46</sup>
- physical differences;<sup>47</sup>
- manufacturing cost<sup>48</sup> and selling price;<sup>49</sup>
- marketing<sup>50</sup> and trade channels/distribution;<sup>51</sup> and
- interchangeability,<sup>52</sup> end use<sup>53</sup> and customer preferences and expectations.<sup>54</sup>

This specifically addresses twelve of the thirteen subsection 48(3) factors.

In relation to the final factor, tariff classification, as outlined in Chapter 2, alloyed and non-alloyed galvanised steel fall under different tariff classifications in Schedule 3 of the Tariff Act.

Discussion of each category is below.

**Patterns of trade and export volumes**

Information contained in DIBP's import records shows that Company A:

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<sup>45</sup> Subsection 48(3)(j) of the Regulations

<sup>46</sup> Subsection 48(3)(l) of the Regulations

<sup>47</sup> Including physical characteristics (Subsection 48(3)(a)) and production process changes (Subsection 48(3)(d)) of the Regulations

<sup>48</sup> Subsection 48(3)(e) and (f) of the Regulations

<sup>49</sup> Subsection 48(3)(k) of the Regulations

<sup>50</sup> Subsection 48(3)(h) of the Regulations

<sup>51</sup> Subsection 48(3)(i) of the Regulations

<sup>52</sup> Subsection 48(3)(c) of the Regulations

<sup>53</sup> Subsection 48(3)(b) of the Regulations

<sup>54</sup> Subsection 48(3)(g) of the Regulations

- supplied non-alloyed galvanised steel to Australia in small quantities during the second and third quarters of calendar year 2013 and did not supply non-alloyed galvanised steel to Australia for the rest of the inquiry period;
- Investigation 190a was initiated in September 2012, at approximately the time that Company A ceased supplying non-alloyed galvanised steel to Australia; and
- importers of alloyed and non-alloyed galvanised steel from Company A are different (i.e. the importer of alloyed steel from Company A did not purchase non-alloyed steel from that company during the inquiry period).

The Commission notes:

- Investigation 190a was initiated in September 2012, at approximately the time that Company A ceased supplying non-alloyed galvanised steel to Australia; and
- the company commenced supplying alloyed galvanised steel to Australia after the publication of the original notices on 5 August 2013.

The Commission has compared the alleged circumvention goods to the goods subject to the original notice and found patterns of trade that suggest alloyed galvanised steel and non-alloyed galvanised steel are likely to be substantially interchangeable, have the same end use and each fulfil similar customer preferences and expectations.

### **Physical differences**

The exact chemical composition of the alloyed galvanised steel exported by Company A is not known. As noted above, the importer of the alloyed galvanised steel supplied by Company A has identified the products as ‘alloy galv steel in coil’, and hence the imports may be of alloyed galvanised steel that contains one or several alloys of varying levels required to satisfy the requirements of tariff classification 7225.92.00 (statistical code 38) and 7226.99.00 (statistical code 71).

The Commission has compared the alleged circumvention goods to the good subject to the original notice and considers that the physical characteristics of the goods<sup>55</sup> have been slightly modified by the addition of an unknown alloy.

### **Manufacturing cost and selling price**

Available information (particularly that supplied by BlueScope and Yieh Phui discussed at Paragraph 6.1.1) suggests that the alloyed galvanised steel supplied by Company A’s manufacturing process is likely to only differ from the manufacturing process of non-alloyed galvanised steel through the addition of small amounts of alloys to liquid steel (for an integrated manufacturer) or the purchase of pre-made alloyed steel feed products for a steel processor (not fully integrated).

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<sup>55</sup> Section 48(3)(a) of the Regulations

Further, available evidence establishes that it is unlikely that the modifications made to the manufacturing process of Company A's alloy galvanised steel resulted in a significant cost difference to non-alloyed galvanised steel.<sup>56</sup>

The Commission has compared the available information regarding the alleged circumvention goods to the goods subject to the original notice and have found that the addition of an unknown alloy to galvanised steel to make alloyed galvanised steel would be likely to have a small to negligible impact on Company A's cost to produce those goods when compared to the goods subject to the original notice.

### **Marketing and trade channels/distribution**

BlueScope's application stated that the channels of marketing, trade and distribution for the circumvention goods and the goods the subject of the original notice are the same, and there does not exist a price difference in the prices offered to the Australian market between the alloyed and non-alloyed products.

No information is available as to the exact sales process of Company A's alloyed and non-alloyed galvanised steel, though other interested parties that have cooperated with the inquiries<sup>57</sup> have submitted there is little difference between the sales process, purchase price or Australian selling price of the products.

The Commission has compared the information available regarding the alleged circumvention goods by other exporters to the goods subject to the original notice and have found there is no difference between the ordering and sales transaction of alloyed galvanised steel compared to its non-alloyed galvanised steel. The Commission has found no evidence to suggest that this would be different for Company A and thus has found there is no difference between the ordering and sales transaction of alloyed galvanised steel compared to its non-alloyed galvanised steel and no difference in the trade channels and distribution methods between alloyed and non-alloyed galvanised steel and both products are marketed in the same way.

### **Interchangeability, end use and customer preference and expectations**

BlueScope's application submitted that the circumvention goods and the goods the subject of the notice have the same end-use applications, submitting that there are no "new" end-use applications for galvanised steel that have emerged post the imposition of anti-dumping measures in August 2013.

The end use of Company A's alloyed galvanised steel is not clear. However the Commission compared the two importers who sourced alloyed and non-alloyed galvanised steel and noted that both importers have previously participated in other investigations conducted by the Commission. Both importers were general traders of a variety of steel products and the end users of these traders were previously found to be general fabricators or distribution channels. The Commission was satisfied that there was no evidence to suggest that either of these importers had supplied to the automotive

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<sup>56</sup> Refer to Section 6.1.1 for discussion of manufacturing cost differences.

<sup>57</sup> Including Yieh Phui and CITIC – see Section 6.1.1.

sector in the past. The Commission considers the balance of evidence available suggests that the change in trade pattern was made as a result of multiple trading companies in Australia stocking product supplied by Company A at different times rather than a customer specific requirement for a different end use.

The Commission is aware of certain specialised alloyed galvanised steels that do have a different end use to non-alloyed galvanised steel (such as specialised automotive galvanised steel – see BlueScope's 27 May 2015 record of meeting on the Public Record), however no information has been provided to establish this is the case in relation to alloyed galvanised steel supplied by Company A.

The patterns of trade for Company A do not form conclusive evidence of the end use of the goods being the same before and after modification, as the new importer may have commenced importation of specialised products where the end use differs before and after addition of alloys. However, no information has been provided to support this, and the commencing of this supply/import relationship could reasonably be an example of supply starting as slightly modified goods with no history of non-alloyed products.

The Commission has compared the information available regarding the alleged circumvention goods by other exporters to the goods subject to the original notice and found alloyed galvanised steel and non-alloyed galvanised steel are likely to be substantially interchangeable, have the same end use and each fulfil similar customer preferences and expectations. The Commission has found no evidence to suggest that this would be different for Company A and thus has found alloyed galvanised steel and non-alloyed galvanised steel are likely to be substantially interchangeable.

### **Summary of findings and conclusion and conclusion**

In the case of non-cooperation by the supplier of the circumvention goods, the Commission considers that the balance of evidence supports a finding that alloyed galvanised steel exported by Company A during the inquiry period has been slightly modified through a minor change to the manufacturing process.

The Commission considers that the available evidence demonstrates that when comparing the alleged circumvention goods with the goods the subject of the notice the following observations have been made:

#### *Patterns of trade and export volumes:*

The supply of non-alloyed product ceased after Investigation 190a was initiated and did not re-commence and alloyed galvanised steel supply started after the imposition of anti-dumping measures to a different importer.

#### *Physical differences:*

- the main physical characteristics are essentially the same, the only physical difference being the addition of an unknown alloy; and
- the adding of an unknown alloy to galvanised steel to make alloyed galvanised steel requires minor adjustments to the manufacturing process.

*Manufacturing cost and selling price:*

The addition of an unknown alloy to galvanised steel to make alloyed galvanised steel has a small to negligible impact on cost to produce those goods.

*Marketing and trade channels/distribution:*

There is little difference between the sales transaction of Company A's alloyed galvanised steel compared to its non-alloyed galvanised steel and both products are marketed in the same way.

*Interchangeability, end use and customer preferences and expectations:*

- it is likely that the goods can be used interchangeably;
- the end use of non-alloyed galvanised steel and alloyed galvanised steel supplied by Company A in the inquiry period is the same; and
- it is likely that the customer preferences and expectations for both goods are the same.

**Is the use or purpose of the circumvention goods the same before and after the slight modification (Subsection 48(2)(c) of the Regulations)?**

For a detailed discussion of use or purposes of non-alloyed and alloyed galvanised steel supplied by Company A to Australia, refer to the discussion of subsection 48(2)(b) of the Regulations above.

Following analysis of all available information, noting that there has been no cooperation by the supplier of the circumvention goods or their importer with the inquiry, the Commission is satisfied that the use or purpose of the circumvention goods are the same before and after the slight modification of those goods.

**Had the circumvention goods not been slightly modified, would they have been subject to the original notice (Subsection 48(2)(d) of the Regulations)?**

As detailed at Paragraph 2.4.1, the goods subject to the original dumping duty notice and countervailing duty notice are:

*"flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc."*

Painted galvanised steel, pre-painted galvanised steel, electro-galvanised plate steel and corrugated galvanised steel are specifically excluded from the original dumping duty notice. Additionally, the relevant Minister has granted exemptions from the anti-dumping measures imposed by the original notices to goods subject to 15 tariff concession orders.

As detailed above, the Commission has found that a slight modification has been made to the circumvention goods exported by Company A.

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The Commission is satisfied that, had the alloyed galvanised steel supplied by Company A not been modified to include alloys, the galvanised steel supplied by the company would be correctly classified as non-alloyed galvanised steel.

Excluding cases where goods supplied by Company A met the requirements of the abovementioned TCOs, or where the goods exported were painted galvanised steel, pre-painted galvanised steel, electro-galvanised plate steel or corrugated galvanised steel, the Commission is satisfied that the galvanised steel produced by Company A would have been subject to the original dumping duty notice.

The Commission notes that:

- the TCOs that have been the subject of the granting of exemptions from anti-dumping measures relate to very specific galvanised steel that is often used in automotive applications;
- examination of the importation database (**Confidential Attachment 1**) indicates that exports of both alloyed and non-alloyed galvanised steel have not accessed tariff concessions under the TCOs applicable to galvanised steel; and
- the description of the alloyed galvanised steel supplied by Company A does not identify it as any of the other excluded goods.

The Commission considers that it does not have definitive evidence to establish whether all of Company A's exports of alloyed galvanised steel during the inquiry period fit into any of the excluded categories of steel or the exempted TCOs. However, the Commission considers it is likely that the vast majority, if not all, of this alloyed galvanised steel did not qualify for such an exemption, and hence would have been subject to the original notices had they not been slightly modified.

### **Do sections 8 or 10 of the Dumping Duty Act apply to the export of the circumvention goods (Subsection 48(2)(e) of the Regulations)?**

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties respectively, by virtue of a notice under subsections 269TG(2) or 269TJ(2).

As discussed above, the dumping and countervailing duties imposed under sections 8 and 10 of the Dumping Duty Act apply to:

*"flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc."*

The slight modification of the goods that has been performed by Company A results in the circumvention goods exported by Company A being considered 'alloyed galvanised steel' for the purposes of classification under subheadings 7225.92.00 (statistical code 38) and 7226.99.00 (statistical code 71) of the Tariff Act.

This modification means that the exported goods are no longer 'of iron or non-alloy steel' and hence not subject to the description of the goods covered by the original notices.

The Commission is satisfied that the alleged circumvention goods are not subject to the original subsections 269TG(2) or 269TJ(2) notices and hence sections 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

### **Conclusion**

The Commission finds that, in relation to alloyed galvanised steel exported to Australia by Company A, a circumvention activity has occurred pursuant to subsection 48(2) of the Regulations, namely that there has been a slight modification of goods exported to Australia.

#### **6.2.3. Bao Australia**

##### **Background**

As outlined in Paragraph 3.3 of this report, Bao Australia was contacted by the Commission to complete an exporter questionnaire. The company did not provide a response to the exporter questionnaire, or provide any correspondence or declaration that they had not been involved in a circumvention activity.

Precision Components Australia Pty Ltd (Precision Components) was identified by the Commission as a possible importer of the circumvention goods from Bao Australia and requested to complete an importer questionnaire. Precision Components completed this questionnaire, a non-confidential version of which is on the Public Record.

##### **Have the goods been exported to Australia from a foreign country in respect of which the notice applies (Subsection 48(2)(a) of the Regulations)?**

As discussed above and outlined at Paragraph 3.2, the Commission has accessed import data from DIBP for all importations during the inquiry period of goods classified to tariff classification 7225.92.00 (statistical code 38) and 7226.99.00 (statistical code 71), which relate to alloyed galvanised steel. This data forms **Confidential Attachment 1**.

Examination of this data shows that goods supplied by Bao Australia to Australia during the inquiry period were declared under this tariff classification (that is, alloyed galvanised steel), and declared as having originated in China.

In its response to the importer questionnaire, Precision Components identified that it had purchased alloyed galvanised steel from China from 'Baoshan Iron & Steel Co.' (Baoshan Steel).

Commercial documents provided by Precision Components in its response to the importer questionnaire indicate that Bao Australia is the direct supplier of the alloyed galvanised steel, but they have been manufactured by Baoshan Steel.

In light of the above, the Commission is satisfied that the circumvention goods are exported to Australia from China.

*Who is the exporter?*

Noting the findings that a circumvention activity has not been found to have occurred in relation to this supplier (see below for details), this determination is not considered necessary in relation to this supplier.

**Before that exportation, were the circumvention goods slightly modified (Subsection 48(2)(b) of the Regulations)?**

Under subsection 48(3) of the Regulations, to determine whether the circumvention goods were slightly modified for the purposes of subsection 48(2)(b) of the Regulations, the Commissioner must compare the circumvention goods and the goods the subject of the original notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in that subsection.

In this section, the Commission has considered the factors of subsection 48(3) under the following categories:

- patterns of trade<sup>58</sup> and export volumes.<sup>59</sup>
- physical differences;<sup>60</sup>
- manufacturing cost<sup>61</sup> and selling price;<sup>62</sup>
- marketing<sup>63</sup> and trade channels/distribution;<sup>64</sup> and
- interchangeability,<sup>65</sup> end use<sup>66</sup> and customer preferences and expectations.<sup>67</sup>

This specifically addresses twelve of the thirteen subsection 48(3) factors.

In relation to the final factor, tariff classification, as outlined in Chapter 2, alloyed and non-alloyed galvanised steel fall under different tariff classifications in Schedule 3 of the Tariff Act.

Discussion of each category is below.

**Patterns of trade and export volumes**

Import data obtained from DIBP (**Confidential Attachment 1**) indicates that Bao Australia supplied:

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<sup>58</sup> Subsection 48(3)(j) of the Regulations

<sup>59</sup> Subsection 48(3)(l) of the Regulations

<sup>60</sup> Including physical characteristics (Subsection 48(3)(a)) and production process changes (Subsection 48(3)(d)) of the Regulations

<sup>61</sup> Subsection 48(3)(e) and (f) of the Regulations

<sup>62</sup> Subsection 48(3)(k) of the Regulations

<sup>63</sup> Subsection 48(3)(h) of the Regulations

<sup>64</sup> Subsection 48(3)(i) of the Regulations

<sup>65</sup> Subsection 48(3)(c) of the Regulations

<sup>66</sup> Subsection 48(3)(b) of the Regulations

<sup>67</sup> Subsection 48(3)(g) of the Regulations

- non-alloyed galvanised steel throughout the entire inquiry period to three importers, including Precision Components – including after the imposition of anti-dumping measures;
- alloyed galvanised steel from the middle of the 2014 calendar year only to Precision Components – commencing after the imposition of anti-dumping measures; and
- volumes of non-alloyed galvanised steel supplied by Bao Australia were steady throughout the inquiry period (no discernible ‘switch’ to alloyed galvanised steel).

Precision Components imported non-alloyed galvanised steel from numerous suppliers during the inquiry period, but only imported alloyed galvanised steel from Bao Australia during the inquiry period (commencing after the imposition of anti-dumping measures).

### **Physical differences**

Precision Component’s response to the Importer Questionnaire include a confidential detailed import listing of alloyed and non-alloyed galvanised steel imported from Bao Australia during the inquiry period. The accuracy of this listing was checked against commercial documentation provided by the company and determined to be accurate.

The imports listing identified the alloys and alloy levels of the imported goods. In some cases, this listing identified that multiple alloys were present in the imported goods, and in other cases only a single alloy was present. However, for all imports of alloyed galvanised steel from Bao Australia during the inquiry period, the level of alloys present were well above the alloy level required for the products to be classified as an ‘alloy steel’ as per the requirements of the notes to Chapter 72 of Schedule 3 of the Tariff Act (see Paragraph 2.6.1).

This import listing forms **Confidential Attachment 5**.

As Bao Australia has not responded to the exporter questionnaire, the Commission does not have access to information regarding the manufacturing process of alloyed and non-alloyed galvanised steel supplied by that company (and manufactured by its affiliate Baoshan Steel).

Available information (particularly that supplied by BlueScope and Yieh Phui discussed at Paragraph 6.1.1) suggests that the alloyed galvanised steel supplied by Bao Australia’s manufacturing process is likely to only differ from the manufacturing process of non-alloyed galvanised steel through the addition of small amounts of alloys to liquid steel (for an integrated manufacturer) or the purchase of pre-made alloyed steel feed products for a steel processor (not fully integrated). It is unclear whether Baoshan Steel is a fully integrated manufacturer or a steel processor; however information from the Shanghai

Baosteel Group Corporation website indicates that companies in that group are fully integrated steel manufacturers.<sup>68</sup>

The Commission has compared the alleged circumvention goods to the good subject to the original notice and considers that the physical characteristics of the goods<sup>69</sup> have been slightly modified by the addition of alloys.

### Manufacturing cost and selling price

The Commission has not been provided with evidence from the supplier of the cost of inclusion of the level of alloys in goods supplied by Bao Australia, noting that these alloys are at higher concentrations and include other alloys to the calculation provided by BlueScope in estimating the cost of adding 0.0008% boron to liquid steel (see Paragraph 6.1.1).

The Commission's own research of the cost of the declared alloying elements and calculations using BlueScope's provided formula and the verified cost to make and sell of galvanised steel incurred by BlueScope during financial year 2014 (provided to Investigation 190a and 193a) indicates that the impact of the total cost to make and sell for an integrated manufacturer of galvanised steel of adding alloys at the maximum levels reported by Precision Components would account for a negligible percentage of that total cost to make and sell (see **Confidential Attachment 6** for calculations).

However, the Commission does not have an understanding of whether other modifications to the manufacturing process of alloyed steel containing the alloying elements at concentrations reported for the goods supplied by Bao Australia. It is considered possible that further changes to the manufacturing process may be required and extra cost incurred. However, as the supplier has not responded to the exporter questionnaire, this information has not been provided.

The Commission has compared the available information regarding the alleged circumvention goods to the goods subject to the original notice and have found that the addition of alloys to galvanised steel to make alloyed galvanised steel would be likely to have a small to negligible impact on Bao's cost to produce those goods when compared to the goods subject to the original notice.

### Marketing and trade channels/distribution

BlueScope's application stated that the channels of marketing, trade and distribution for the circumvention goods and the goods the subject of the original notice are the same, and there does not exist a price difference in the prices offered to the Australian market between the alloyed and non-alloyed products.

In their importer questionnaire response, Precision Components confirm that the order process of Bao Australia's alloyed galvanised steel and non-alloyed galvanised steel is the same or similar.

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<sup>68</sup> See [http://www.baosteel.com/group\\_en/](http://www.baosteel.com/group_en/)

<sup>69</sup> Section 48(3)(a) of the Regulations

## PUBLIC RECORD

Precision Component's response to the importer questionnaire identified that there are no differences in the ordering and purchase process between alloyed and non-alloyed galvanised steel supplied by Bao Steel.

Precision Components also identified that there was no purchase price difference between alloyed and non-alloyed galvanised steel purchased from Bao Australia (where all other elements of the purchase are equal). This is not consistent with the general trend shown in information gathered from interested parties.

Precision Components submitted that the imported galvanised steel is used by that company to make automotive components and therefore is not on-sold in its original state (hence pricing information from Precision Components to its customers is not relevant in determining price differences between alloyed and non-alloyed goods).

The Commission has compared the information available regarding the alleged circumvention goods to the goods subject to the original notice and have found there is no difference between the ordering and sales transactions of alloyed galvanised steel compared to non-alloyed galvanised steel.

### **Interchangeability, end use, customer preferences and expectations**

In its application and meeting with the Commission dated 27 May 2015, BlueScope submitted that certain specialised alloyed galvanised steel may be required for use in manufacturing automotive parts. BlueScope has indicated that non-alloyed galvanised steel is not suitable for this specific use.

BlueScope also indicated that this specialised automotive alloyed galvanised steel would include alloys other than boron and at levels higher than 0.0008% in the case of boron, or the other 'thresholds' required by the notes to Chapter 72 of Schedule 3 to the Tariff Act. BlueScope indicated that this steel may also be 'quenched and tempered'.

Precision Components have submitted that the end-use of their imports from Bao Australia is the manufacture of specific automotive parts, the material specifications of which are determined by Precision Component's customer (i.e. the customer demands components made from alloyed steel).

The Commission has compared the information available regarding the alleged circumvention goods to the goods subject to the original notice and have circumstances where there are differences between the end uses or interchangeability of alloyed galvanised steel compared to its non-alloyed galvanised steel.

### **Summary of findings and conclusion**

The Commission considers that the balance of evidence supports a finding that alloyed galvanised steel exported by Bao Australia during the inquiry period has been slightly modified.

The Commission considers that the available evidence demonstrates that when comparing the alleged circumvention goods with the goods the subject of the notice the following observations have been made:

*Patterns of trade and export volumes:*

- Bao Australia exported non-alloyed galvanised steel throughout the entire inquiry period to three importers;
- Alloyed galvanised steel exports commenced in the middle of the 2014 calendar year and this was only to Precision Components; and
- volumes of non-alloyed galvanised steel were not affected by the commencement of alloyed galvanised steel exports.

*Physical differences:*

- the main physical characteristics are essentially the same, the only physical difference being the addition of an unknown alloy; and
- the adding of various alloys to galvanised steel to make alloyed galvanised steel that is then supplied by Bao Australia requires modifications to the manufacturing process.

*Manufacturing cost and selling price:*

The cost impact of the manufacturing modifications is unclear though considered likely to be minimal.

*Marketing and trade channels/distribution:*

- there is little difference between the ordering and sales transaction of Bao Australia's alloyed galvanised steel compared to its non-alloyed galvanised steel; and
- there is no difference in the purchase price between alloyed galvanised steel and non-alloyed galvanised steel supplied by Bao Australia.

*Interchangeability, end use and customer preferences and expectations:*

- the end use of the non-alloy and alloyed galvanised steel supplied by Bao Australia is different as the alloyed galvanised steel is for use in making specific automotive parts that non-alloyed galvanised steel is not suitable for, due to the requirements of the importer's customers;
- the non-alloyed and alloyed galvanised steel cannot be used interchangeably; and
- the addition of alloys is driven by customer preferences and expectations, whereby alloyed goods are used in the production of automotive parts.

**Is the use or purpose of the circumvention goods the same before and after the slight modification (Subsection 48(2)(c) of the Regulations)?**

As discussed above, the Commission is satisfied that the end use of alloyed galvanised steel supplied by Bao Australia is not the same before its slight modification (adding of alloys).

Subsection 48(2)(c) of the Regulations is therefore not satisfied. Subsection 48(2) of the Regulations provides that all of the factors listed in that provision have to apply for the circumstance of slight modification of goods to be established. A failure to satisfy subsection 48(2)(c) of the Regulations means that circumstances cannot be established. Accordingly, there is no need to consider the remaining factors in subsection 48(2) of the Regulations.

### **Conclusion**

The Commission determines that, in relation to alloyed galvanised steel supplied to Australia by Bao Australia, a circumvention activity has not occurred pursuant to subsection 48(2) of the Regulations.

## **6.3. Korean suppliers**

### **6.3.1. POSCO Australia**

#### **Background**

As outlined in Paragraph 3.3 of this report, POSCO Australia was contacted by the Commission to complete an exporter questionnaire.

After receiving the exporter questionnaire, POSCO Australia contacted the Commission to declare that the company had not exported slightly modified goods.

Consequently, POSCO Australia declined to submit a response to the exporter questionnaire.

The Commission has been provided with confidential information from other interested parties to the inquiries in relation to goods supplied by POSCO Australia.

This information is confidential or would adversely affect business or commercial interests, if released. Nonetheless, this information has been taken into consideration in making determinations in relation to goods supplied by POSCO Australia for the purposes of this SEF. The confidential information is discussed further in **Confidential Attachment 7**.

#### **Conclusion**

The Commission determines that, in relation to alloyed galvanised steel supplied to Australia by POSCO Australia, a circumvention activity has not occurred pursuant to subsection 48(2) of the Regulations.

### **6.3.2. Kenna International**

As discussed at Paragraph 6.1.2, the Commission is satisfied that alloyed steel identified as being supplied by Kenna International in the DIBP import database incorrectly identifies that company as the supplier. The company has been advised that it may seek to remedy this error in its import declarations directly with DIBP, and the Commission has referred this matter to DIBP directly.

However, the company was an importer of alloyed galvanised steel during the inquiry period.

The Commission is satisfied that alloyed galvanised steel imported by Kenna International during the inquiry period from Taiwan and Korea has not been involved in a circumvention activity.

Confidential information provided by Kenna International was considered in making this determination, and is discussed at **Confidential Attachment 3**.

### 6.3.3. Union Steel

As outlined in Paragraph 3.3 of this report, Union Steel was contacted by the Commission to complete an exporter questionnaire, after identifying that Union Steel was a potential supplier of circumvention goods during the inquiry period.

After receiving this request, correspondence was received from Dongkuk Steel Mill Co., Ltd (Dongkuk), identifying that it had taken over Union Steel on 1 January 2015, and identifying that non-alloy galvanised steel exported to Australia by Dongkuk is exempted from IDD imposed by the original dumping duty notice (after merging with Union Steel that was exempted from that notice following a finding that goods from that exporter were not dumped during Investigation 190a). Dongkuk submitted that, consequently it was not possible for a circumvention activity to have taken place in relation to its exports or exports by Union Steel.

Further, Dongkuk provided a response to the exporter questionnaire that reiterated the above.

The Dumping Commodity register for non-alloy galvanised steel confirms that non-alloy galvanised steel exported by Dongkuk<sup>70</sup> after 1 January 2015 and from Union Steel prior to that date are exempted from anti-dumping measures applicable to galvanised steel.

The Commission notes that the DIBP import data indicates that Union Steel exported alloyed galvanised steel during the inquiry period prior to being taken over by Dongkuk. No exports of alloyed galvanised steel were made directly by Dongkuk following the change in ownership.

As the original dumping duty notice does not apply to these exporters, the Commission finds that, in relation to alloyed galvanised steel exported to Australia by Union Steel during the inquiry period, no circumvention activity has occurred pursuant to subsection 48(2) of the Regulations.

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<sup>70</sup> Produced at the Busan Nam-gu manufacturing plant (the only galvanised steel plant formerly operated by Union Steel, now owned by Dongkuk)

#### 6.3.4. Dongbu

As outlined in Paragraph 3.3 of this report, Dongbu submitted a response to the Exporter Questionnaire for the inquiries. This response declared that Dongbu had not been involved in the export of circumvention goods to Australia during the inquiry period.

The Commission notes that it did not identify Dongbu as a potential exporter of circumvention goods through its analysis of DIBP data, nor did it request the company complete and Exporter Questionnaire response.

The Commission is satisfied that, in relation to galvanised steel exported by Dongbu during the inquiry period, a circumvention activity has not occurred.

### 6.4. Summary of findings and conclusion

The Commission has found that circumvention activities, specifically the slight modification of goods exported to Australia, have occurred.

The following activities have been found to have occurred:

Supplier	Exporter	Country of export	Nature of circumvention activity	Notice that circumvention activity relates to
Asiazone	Yieh Phui	Taiwan	Slight modification of goods – addition of boron	Subsection 269TG(2)
Angang HK	ANSTEEL	China	Slight modification of goods – addition of boron	Subsection 269TG(2)
Company A	Unknown	China	Slight modification of goods – addition of unknown alloys	Subsections 269TG(2) and TJ(2) notices

Table 6 – Summary of circumvention activities found

## 7. PROPOSED ALTERATION TO THE NOTICES

### 7.1. Legislative provisions

Subsection 269ZDBG(1) provides that, after conducting an anti-circumvention inquiry in relation to the original notice, the Commissioner must give the Minister a report recommending either:

- the original notice(s) remain unaltered; or
- the following:
  - the original notice(s) be altered because the Commissioner is satisfied that one or more circumvention activities in relation to the original notice(s) have occurred; and
  - the alterations to be made to the notice(s).

### 7.2. BlueScope's proposed changes

BlueScope's applications for the anti-circumvention inquiries submit that the Parliamentary Secretary should alter the original notices to capture the alleged circumvention activities by expanding the description of the goods subject to the notice to the following:

*flat rolled iron or steel products (whether or not containing alloys) of a width less than 600mm and, equal to or greater than 600mm, plated or coated with zinc.*

This modification would have the impact of extending the original notices to all alloyed galvanised steel, regardless of country of export, exporter/supplier or alloy content.

### 7.3. Approach – limited modification

As outlined in Chapter 6, the Commission has found that the circumvention activities detailed in Table 6 have occurred.

BlueScope's proposed alterations to the notice discussed at Paragraph 7.2 extend the original notices in a manner that is broader than the circumvention activities that the Commission has found have occurred.

It is the Commission's position that, once satisfied that a circumvention activity has occurred, the Commissioner should take only the action required to remedy the activities that have been found. The Commissioner's recommendations to the Parliamentary Secretary should be designed to specifically address the circumvention activities, rather than extend the notice in a broader sense.

Consequently, it is proposed that a 'limited modification' to the original notices be made that directly addresses the circumvention activities, as outlined below.

## 7.4. Proposed alteration to the notices

In light of the findings outlined in Chapter 6 that circumvention activities have occurred in relation to galvanised steel exported from China and Taiwan, the Commissioner proposes to recommend that the original notices relating to galvanised steel be altered to amend the description of the goods subject to the notice, as follows:

### Section 269TG(2) notice:

The goods description in the original dumping duty notice is recommended to be amended to the following:

- *flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc; and*
- *flat rolled products of alloy steel containing boron of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc exported from:*
  - *China by Angang Steel Co., Ltd; or*
  - *Taiwan by Yieh Phui Enterprise Co., Ltd*
- *flat rolled products of alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc exported from China and supplied by Company A.*

The text in **bold** above indicates changes to the first sentence of the original notice.

### Section 269TJ(2) notice

The goods description in the original countervailing duty notice is recommended to be amended to the following:

- *flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc; and*
- *flat rolled products of alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc exported from China and supplied by Company A.*

The text in **bold** above indicates changes to the first sentence of the original notice.

*Note: as the original countervailing duty notice does not apply to exports of galvanised steel by ANSTEEL (exempted from interim countervailing duties), changes to the original countervailing duty notice should not include an extension of the notice to include ANSTEEL in the manner detailed above for the original dumping duty notice.*

## **8. DATE OF EFFECT**

### **8.1. Legislative provisions**

Subsection 269ZDBH(1)(b) requires that, when making a declaration that an original notice is to be altered, the Parliamentary Secretary's declaration must specify the date from which those changes take effect.

Subsection 269ZDBH(8) provides that, when specifying a date in a declaration under (1)(b), the Parliamentary Secretary is not able to specify a date earlier than the date of publication of the public notice of initiation of an anti-circumvention inquiry.

### **8.2. Proposed date of effect of alterations to the notices**

BlueScope's application requests that, when specifying a date from which changes to the notices would take effect following the anti-circumvention inquiries, this should be the date of the public notification of the initiation of the inquiries.

To ensure any alteration to the original notice provides an effective remedy to the injurious effects caused by circumvention behaviour, it is necessary to alter the original notices in such a way that the changes are applied both retrospectively and prospectively.

The Commission proposes to recommend that the original notices be altered so as to have effect from the date of initiation of these inquiries:

- 5 May 2015 for Inquiry 290 for galvanised steel exported from Korea and Taiwan; and
- 1 June 2015 for Inquiry 298 for galvanised steel exported from China.

## APPENDICES AND ATTACHMENTS

<b>Confidential Attachment 1</b>	DIBP import data listing
<b>Confidential Attachment 2</b>	Yieh Phui Australian sales listing
<b>Confidential Attachment 3</b>	Confidential information relating to goods supplied by Kenna International
<b>Confidential Attachment 4</b>	Confidential information relating to goods supplied by Angang HK
<b>Confidential Attachment 5</b>	Precision Components imports listing
<b>Confidential Attachment 6</b>	Precision Components alloys cost estimation
<b>Confidential Attachment 7</b>	Confidential information relating to goods supplied by POSCO Australia