

6 November 2014



## Essar Steel India Ltd.

# Investigation concerning galvanised steel from India and Vietnam

## Alleged material injury to the Australian galvanised steel industry, and its causation

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### **A Introduction**

On 11 July 2014, the Anti-Dumping Commission (“the ADC”) published Anti-Dumping Notice No 2014/55 (“ADN 2014/55”), which officially initiated a dumping investigation into flat rolled iron or steel products (whether or not containing alloys) that are plated or coated with zinc of any width exported to Australia from India and Vietnam. These products are generically called “*galvanised steel*”.

ADN 2014/55 explained that the Australian industry, BlueScope Steel Limited (“the Applicant”), had alleged in its application (“the Application”) that galvanised steel from India and Vietnam had been

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imported at dumped prices and that this had caused the Australian industry material injury through:

- price suppression
- reduced profit and profitability;
- reduced return on investment.
- reduced ability to raise capital for re-investment; and
- reduced employment numbers.

Our client, Essar Steel India Ltd. (“Essar”), has provided a comprehensive response to the Exporter Questionnaire (“EQ response”) as issued by the ADC. Essar now provides this submission in rebuttal of the Applicant’s outlandish claims that the exportation of galvanised steel from India and Vietnam has caused material injury to the Australian industry.

We note that since the lodgement of Essar’s EQ response, a number of submissions from interested parties have been placed on the ADC’s public record of this investigation, including submissions of the Applicant and of the Australian Steel Association (“the ASA”). The ADC also published its verification report in relation to the Applicant (“the verification report”).

Essar supports the submissions made by the ASA, which we think very clearly and cogently demonstrate that the injury claims made by the Applicant cannot be supported. Essar also notes that ADC’s *prima facie* level finding that there is no evidence to support the Applicant’s claims that it suffered injury in the forms of reduced ability to raise capital for re-investment and reduced employment numbers.

In this submission, Essar does not intend to repeat the submissions already made by the ASA. Rather, Essar would like to highlight some of the key issues that require the ADC’s further and careful consideration.

The Application and the surrounding facts and circumstances do not demonstrate that alleged dumping of galvanised steel from India and Vietnam has caused material injury to the Applicant. For that reason, Essar requests termination of the investigation.

## B Material injury is not demonstrated

An anti-dumping investigation concerning galvanised steel from China, Taiwan and Korea was initiated on the application of BlueScope and concluded in August 2013. The Applicant's primary claim in the current investigation is that the previously established injury caused by dumping has been "displaced" and "continued" by the importation of galvanised steel from India and Vietnam:

*It is BlueScope's position that material injury from dumped exports from India and Vietnam has displaced the injurious exports from P R China, Korea and Taiwan, resulting in a continuation of material injury to the Australian industry in 2013/14.<sup>1</sup>*

However, as pointed out by the ASA,<sup>2</sup> there is a clear discrepancy between the injury claims made by the Applicant in the previous investigation and those being made in the current investigation:

Injury claims in INV190	Injury claims in the current investigation
Loss of sales volume	Not claimed
Reduced market share	Not claimed
Reduced revenues	Not claimed
Price undercutting	Not claimed
Price depression	Not claimed
Price suppression	Price suppression
Reduced profits	Reduced profit
Reduced profitability	Reduced profitability
Reduced return on investment	Reduced return on investment
Reduced ability to raise capital for re-investment	Reduced ability to raise capital for re-investment*

<sup>1</sup> Application, pages 29 and 30.

<sup>2</sup> ASA submission dated 5 September 2014.

Reduced employment numbers	Reduced employment numbers*
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\* The ADC has subsequently found no evidence of these forms of injury.

This comparison contradicts the Applicant's argument that the previously claimed injury has been simply "displaced" and "continued" by the allegedly dumped imports from India and Vietnam. Thus, the injury claimed in INV190 is obviously not being continued by Indian and Vietnamese imports.

Moreover, after the ADC's verification visit in the current investigation, the list of possible injury factors was further shortened:

*Based on an analysis of the information contained in the application and obtained and verified during the verification visit, the Commission considers that the Australian industry has experienced injury in the form of:*

- *price suppression;*
- *reduced profit and profitability; and*
- *reduced return on investment.*

*At this time, the Commission is unable to find any evidence to suggest that the Australian industry has experienced injury in the form of reduced employment numbers and reduced ability to raise capital for re-investment.*

The significantly shortened list of injury claims should itself indicate some level of discontinuation of injury.

Section 269TAE(3) provides that the economic factors to be considered in assessing a material injury claim in an anti-dumping context include:

- (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and*
- (b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and*
- (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:*
  - (i) for which there are sales or forward orders; or*
  - (ii) which are held as stocks; and*
- (d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and*

*(e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and*

*(f) the level of return on investment in the industry; and*

*(g) cash flow in the industry; and*

*(h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and*

*(ha) the terms and conditions of employment (including the number of hours worked) of persons employed in the industry in relation to the production or manufacture of goods of that kind, or like goods; and*

*(j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and*

*(k) the ability of persons engaged in the industry, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and*

*(m) investment in the industry.*

These economic indicators have been prescribed so as to require the Commissioner to consider the fullest range of factors relating to the performance of an Australian industry in assessing its material injury claim, to form a holistic view about the economic conditions of the Australian industry subject to the assessment. In that way a more accurate assessment as to whether material injury has been caused to the Australian industry can be made, taking into account the wide variety of indicators involved.

As the ASA submission pointed out, during the investigation period the Australian industry, being the Applicant itself, has indeed enjoyed improvement and recovery in its economic conditions during the period of investigation and across all major economic performance indicators.

We note the following economic changes to the Australian industry during the POI as demonstrated in the ADC's verification report and the Application:

- a 25% surge in sales volumes since FY2012/13;
- a 26% improvement in revenue since FY2012/13;
- a 24% increase in market share since FY2012/13;
- an 18% increase in capacity utilisation since FY2012/13;
- a 10% increase in employment number since FY2012/13;

- a 50% improvement in profitability since FY2012/13;
- a 4% increase in unit price since FY2012/13;
- capital investment increased; and
- increased wages paid to employees.

Even if the factors of profit and profitability are not at some idealised level, the ADC must also consider the other economic factors and the significant growth and expansion that the Australian industry has achieved in order to form a view about the overall economic condition of the Australian industry and properly determine whether the industry as a whole, in the circumstance of the POI, can be said to have suffered “injury” that was “material”.

We submit that the evidence available to the ADC clearly shows that the Australian industry could not be said to have suffered material injury. The concept that material injury was caused by allegedly dumped imports from India and Vietnam is far-fetched.

## **C The three injury factors identified in the verification report**

Given that the verification report has already examined the Applicant’s claim and determined that only three out of the five injurious economic factors as claimed by the Applicant can be supported by the available evidence, we will focus only on those three factors.

### **1 Price suppression**

In relation to price suppression, the verification report states:

*Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.*

...

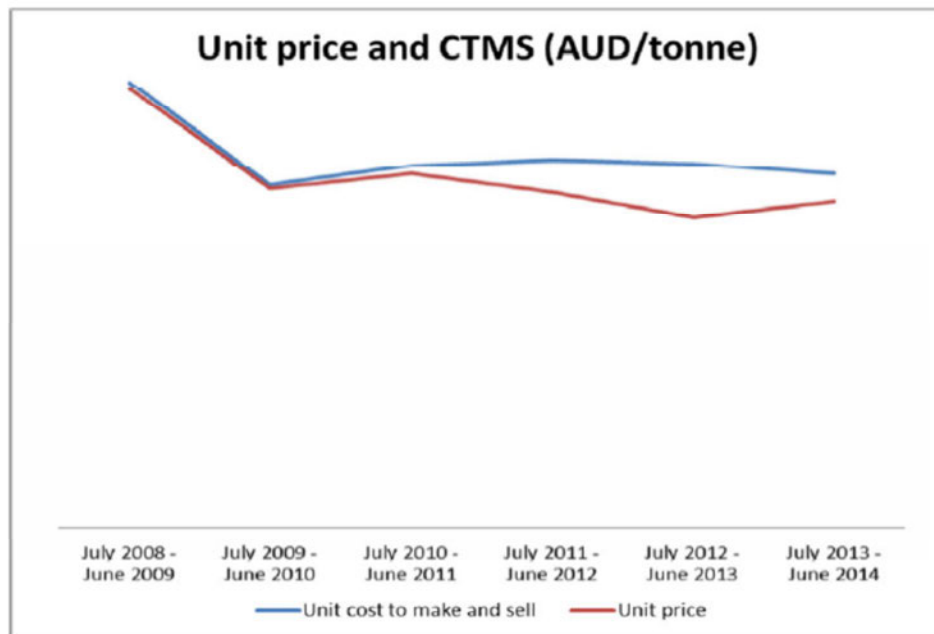


Figure 9 – BlueScope’s galvanised steel unit price and cost

*The graph above shows that since FY2011, BlueScope’s unit price has significantly decreased relative to unit cost and there is a notable margin between the two. Although the unit CTMS has decreased slightly in FY2014, while the unit price has increased, unit price still remains below unit cost, indicating price suppression.*

Given that the graph shows a decrease in costs and an increase in price during the POI, the data does not support the price suppression conclusion as preliminarily reached in the verification report. With respect, we do not agree with the finding that “[a]lthough the unit CTMS has decreased slightly in FY2014, while the unit price has increased, unit price still remains below unit cost, indicating price suppression”. This is especially the case when the data shows that the Applicant has always been unprofitable in recent history, regardless of the alleged dumping from India and Vietnam via imports that only emerged at more-than negligible volumes during the POI. The Applicant was able to increase its price for the first time in the last three years, whilst its cost to make and sell trended downwards. Therefore there is no evidence of price suppression at all, much less the kind of price suppression that could be causally linked to alleged dumping from India and Vietnam.

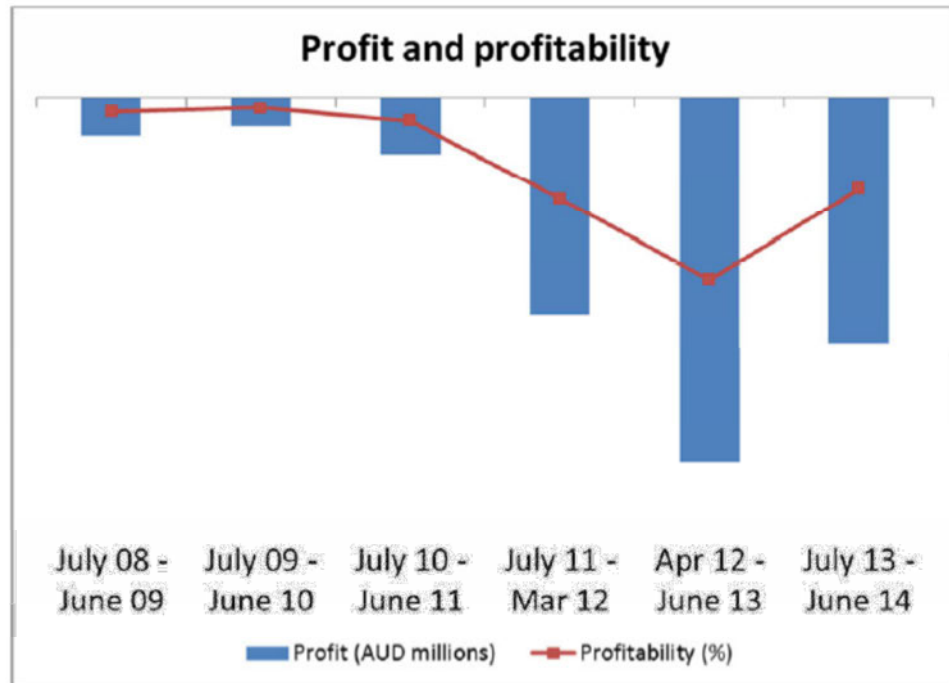
Because of those trends, price suppression in the POI is not demonstrated. The Australian industry’s prices are increasing and its costs are decreasing. The facts speak for themselves.

## 2 Reduced profit and profitability

As discussed above, the information verified by the ADC, showing a decrease in unit cost, an increase

in price, an increase in sales volumes and an increase in sales revenue, indicates *increased* profit and profitability. This is further confirmed in the verification report:

*The following graph shows trends in BlueScope's profit and profitability from FY2009 to FY2014.*



**Figure 10 – BlueScope's total profit and profitability for galvanised steel**

*The graph above shows a continuing (and considerable) decrease in BlueScope's profit and profitability since FY2010, particularly in FY2013. Although profit and profitability noticeably improved in FY2014 (relative to FY2013), BlueScope has still made a considerable loss in that year. [footnote omitted]*

Accordingly, during the investigation period, the evidence does not support the claims that profit had been "*reduced*" and that profitability had "*deteriorated*".

The fact that the Applicant "*still made a considerable loss*" in the POI is not a relevant consideration when considering whether allegedly dumped imports from India and Vietnam caused injury. The Applicant is more profitable than before. The fact that it is still not profitable in an absolute sense does not detract from that proposition. It enjoyed significant improvements in its financial position in the POI year, compared with its worse position in the year prior to that, and in the two years prior to that, and in the three years prior to that. The fact is that the Applicant has not been able to make a profit in any recent years, dating back to FY2008/09.



The evidence provided by the Applicant proves that during the POI the Applicant enjoyed the most significant increase in profitability in its recent history.

### 3 Reduced return on investment

In this regard, we note that the Applicant only provided evidence said to be supportive of its claimed reduced return on investment *after* the initiation of the investigation.<sup>3</sup> Even then the information does not support the claim:

*return on investment – return on investment in relation to galvanised steel decreased between FY2010 and FY2013. Although there has been an improvement in return on investment in FY2014, it remains a negative return;*<sup>4</sup> [underlining in original]

As mentioned above, the verification report suggests that the Applicant also failed to back up its claimed “reduced ability to raise capital for re-investment”. The ADC states in its verification report that:

*At this time, the Commission is unable to find any evidence to suggest that the Australian industry has experienced injury in the form of reduced employment numbers and reduced ability to raise capital for re-investment.*

The combination of an increase in investment during the POI and an improvement in return on investment is a clear indication that the claim of a reduced return on investment is unsubstantiated and must not be supported by the ADC.

In summary, there does not appear to be any evidence supporting the claimed injury – whether material or not, and regardless of its connection to the alleged dumping.<sup>5</sup>

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<sup>3</sup> Application, page 32; verification report, page 48.

<sup>4</sup> Verification report, page 48.

<sup>5</sup> It should be noted that in the previous investigation concerning galvanized steel from China, Taiwan and Korea, the final report states:

*Return on investment (ROI) in relation to galvanised steel decreased exponentially from 2008-09 to 2011-12. The downward trend shown for ROI was the most prevalent other injury factor in Confidential Appendix A7. The most significant decrease in ROI occurred in 2011-12, which would have been impacted on BlueScope’s restructure and closure of production facilities (at Western Port), including metal coating lines. BlueScope also notes that the ROI results in 2008-09 are impacted by significant capital expenditure in relation to its Port Kembla steel works.*

The report found that there was not enough evidence to suggest that the claimed injury in the form of reduced return on investment were caused by dumping. See Report 190, page 122.

## D Non-attribution principle must be properly implemented

As mentioned above in B and C, we submit that the Australian industry could not be said to have suffered material injury in any form.

In any case, to ultimately impose dumping measures the claimed injury must have been material, and it must have been caused by the alleged dumping, and injury caused by factors unrelated to the alleged dumping must not be attributed to the alleged dumping.

Therefore, even if on a general economic analysis level the Australian industry can be said to be “suffering” or “injured” in the sense that it is not performing at a profitable level, this is not the kind of determination the Commissioner is required to make. The question is whether material injury has been caused by the alleged dumped imports during the investigation period. Whilst the analysis is often a two-stepped exercise, first to examine “material injury”, then the “causation”, it should be remembered that the inquiry is ultimately a single, integrated one.

The Applicant has been running a business at unprofitable levels for the past six years. The data relating to periods prior to the alleged dumping is relevant in so far as it provides a comparative context in assessing whether material injury can be said to have occurred *during* the investigation period. An analysis of the Australian industry's performance in the years prior to the POI can guide the investigating authority to understand whether the claimed injury was caused by the alleged dumping *during* the investigation period. This requires a comparative analysis, separating the POI and the periods not in the POI, and separating injuries that can be linked to the alleged dumping and injuries that cannot be so related to the alleged dumping in *this* investigation.<sup>6</sup>

During the POI the Applicant has enjoyed hugely improved performance. Not only is there a lack of evidence of any material injury during the POI, but the alleged period of dumping corresponded with a period of extraordinarily good performance by the Applicant in comparison to previous years.

The Applicant has claimed that dumping started to occur only during the POI.<sup>7</sup> The Applicant does not

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<sup>6</sup> Noting that the imports from other countries, whether or not being dumped, and whether or not *found* to have been dumped in the previous investigation, are only relevant in so far as they are factors not related to the alleged dumping in *this* investigation, see Section 269TAE(2C).

<sup>7</sup> See the Application:

claim to have been affected by any dumping from any sources is 2012/13,<sup>8</sup> (and was certainly not affected by imports from India and Vietnam at that time). Therefore, the Applicant's performance in 2012/13 and in the POI of 2013/14 provides excellent points of comparison for the ADC's assessment.

As already discussed above, there is simply no evidence to suggest that the Applicant suffered any material injury in 2013/14 as compared to the 2012/13 period, let alone any injury caused by dumping. What the evidence does bear out is that a monopoly domestic producer has vigorously expanded its sales at higher prices than it previously enjoyed. As the ASA submission observes,<sup>9</sup> this is not indicative of material injury caused by dumping. Instead, it is a clear case of a supplier employing its significant market power, its freight advantage, and its timely delivery advantage to increase sales and to increase prices once it had succeeded in substantially lessening the competition against it. It did this with the assistance of earlier dumping measures.

We repeat again - during the POI, the Applicant has achieved:

- a 25% surge in sales volumes;
- a 26% improvement in revenue;
- a 4% increase in prices;
- a 24% increase in market share to over 71%;
- an 18% increase in capacity utilisation; and
- a 50% improvement in profitability.

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*Following the imposition of measures, exports of galvanised steel from India and Vietnam emerged. In 2011/12 exports from both countries were negligible. In 2012/13 and 2013/14 exports of galvanised steel (in aggregate) from India and Vietnam to Australia comprised 1.4 per cent and 24 per cent of total imports, respectively.*

*Material injury to the Australian industry from dumped exports from P R China, Korea and Taiwan commenced in 2010/11 and continued in 2011/12 as verified in the earlier anti-dumping investigation (Reports No. 190 and 193). It is BlueScope's position that material injury from dumped exports from India and Vietnam has displaced the injurious exports from P R China, Korea and Taiwan, resulting in a continuation of material injury to the Australian industry in 2013/14.*

<sup>8</sup> *Ibid*

<sup>9</sup> ADC record of meeting with ASA, at page 2.

Is this really a picture of “injury” attributable to alleged dumping?

Essar submits that there is no material injury to the Applicant/Australian industry, and that no material injury could be said to have been caused by the imports from India and Vietnam. Nonetheless, we will further address the “causation” claims as follows.

According to the Application and the verification report, the Applicant rests its causation claim on two bases:

- that India and Vietnam prices were considered in its IPP benchmark, according to which the Applicant sets its own selling price; and
- that importation of the goods from India and Vietnam “displaced” some of the imports previously from China.

In this regard, we make the following observations:

- 1 The Applicant achieved a 24% increase in market share – indicating that its sales performance was unaffected by the highs and lows of its IPP benchmark.
- 2 The Applicant depicts itself as a “price-taker” – however we remind the ADC that the Applicant enjoyed 71% of the market share on top of a 24% improvement. The economic results we have referred to in this submission are those of a price-setter rather than a price-taker.
- 3 The imported goods from India and Vietnam occupy a minimal market share – the Applicant cannot seriously be claiming that it has been materially hurt by the pricing of imports that account for about 7% of the total market share, whilst it boosted sales volumes in the face of competition from other imports accounting for 22% of the market.
- 4 If the so called IPP benchmark pricing arrangement could be said to provide any causal link between the alleged dumping and the alleged material injury at all – a proposition with which we disagree - the link that would be required to be made to attribute injury to the imports from India and Vietnam is removed by a number of factors.
- 5 The limited information made available suggests that the import prices from India and Vietnam which allegedly formed part of the Applicant’s pricing considerations were somewhat on-par with its IPP benchmark - sometimes below, sometimes above and sometimes “consistent” with the benchmark – and not always lower than the benchmark.

- 6 The vast majority of imports during the POI were not from India and Vietnam, and were three times the volume of the imports from India and Vietnam, and must also be part of the Applicant's IPP benchmark.
- 7 In the POI the Applicant was required to compete with:
  - (a) imports from Taiwan, which remains the largest source of importation, noting that amongst the four cooperative Taiwanese exporters in the previous investigation, two are not subject to the dumping notice, and one is subject to a 2.6% duty rate; and
  - (b) imports from three Korean exporters, one of whom achieved no-dumping status in the previous investigation and another which is subject to a relatively small 3.6% dumping duty.
- 8 The effect of these imports from countries not under investigation, whether or not at dumped price, must be properly taken into account, and not attributed to the imports from India and Vietnam.
- 9 To put it another way, if allegedly dumped imports are to be cumulated into a group for the purposes of analysis, then imports not subject to investigation must be cumulated into another group, and where this second group also dictates the IPP policy of the Applicant then price injury cannot be attributed to the allegedly dumped imports.
- 10 The Applicant adopted an aggressive price strategy in order to capture the market left by the exporters subject to dumping duties:

*During verification, BlueScope confirmed that it includes a premium on its sales to the Australian market. Whilst BlueScope advised that it currently targets premiums of % to % for base grade galvanised steel across a large proportion of its volumes, in some cases it is setting premiums well below this range, particularly for customers (such as) that traditionally source galvanised steel from offshore mills.*
- 11 In the context of the Applicant's increasing sales volumes, that aggressive strategy is an admission that the Applicant suppressed its increased prices of its own volition to a degree which was sufficient to nonetheless buy market share in an amount which far exceeded the import volumes from India and Vietnam.
- 12 The market share previously held by other importers has been displaced by the Applicant itself, and not by the imports from India and Vietnam.

- 13 Importers, not the Australian industry and Indian exporters, compete for the business of those Australian downstream end-users seeking alternative supply and who just cannot take the commercial risk of entering into onerous supply agreements with the Applicant.

In summary, we submit that, quite apart from the apparent inadequacy of evidence in support of any material injury claim, no such material injury could be said to have been *caused* by the importation of the goods from India and Vietnam.

Further, any “injury” caused by the factors unrelated to the alleged dumping in the current investigation must be properly considered and not attributed to the alleged dumping in the current investigation.

## **E The Applicant cannot expect to exist without competition**

Our analysis of the information available on the public record and observation of the preliminary findings in the verification report reinforce the view that the Applicant’s material injury claims cannot be supported. We have also pointed out the lack of support for the Applicant’s attempt to attribute the so called “injury” to the imports from India and Vietnam, an obvious deficiency of which is the fact that the vast majority of imports were not from India and Vietnam, and were no doubt sold by exporters involved in the previous investigation at prices that continued to be competitive with those of the Australian industry. Those other imports continue to be a far larger source of importation of the goods into Australia than those from India and Vietnam.

A reasonable bystander might wonder then, if there is no injury, why did the Applicant make such claim, targeted at the minimal volumes of the imports from India and Vietnam? Indeed it is curious as to why the Applicant is making such a claim when it has:

- increased sales volumes by 25%;
- increased in revenue by 26%;
- expanded market share by 24% to over 71%;
- charged higher prices to its customers.

On one view, the Application might indicate that the Applicant has an expectation that it should be able

to take over all of the market from importers, on the back of multiple anti-dumping actions, and increase its prices as much as it expects that it needs to. On the evidence of the Application, this would mean an increase in unit price of at least 15%.<sup>10</sup> The Applicant states as follows:

*It was BlueScope's expectation that the imposition of measures on dumped and subsidized exports of galvanised zinc steel from P R China, and dumped exports from Korea and Taiwan, in July 2013 would enable the Australian industry to recover from the injury experienced (in 2011/12) and evidenced by the then Customs and Border Protection.*

*This expectation, however, was not delivered.*

...

*In the absence of the dumped exports from India and Vietnam during 2013/14 that have captured approximately 25 per cent of the total import volume into Australia (described as "minimal" by the ASA), it would be expected that the Australian industry's increased sales volumes (from depressed levels) would have contributed to improved levels of profit and profitability. This did not occur.<sup>11</sup> [emphasis added]*

Further:

*The Australian industry has secured an increase in market share in 2013/14 following the imposition of measures in February 2013, and it was expected that this increase in production and local sales would displace further volumes. The emergence of dumped galvanised steel exports from India and Vietnam has stalled this expectation.*

...

*The expectation of recovery was short-lived. Importers commenced the sourcing of galvanised steel from countries (and exporters) not the subject of measures. The major suppliers to the Australian market following the imposition of measures have been producers in India and Vietnam.*

...

*It would be expected, however, that the exports from Taiwan are at non-dumped levels (in the absence of information to the contrary).<sup>12</sup> [emphasis added]*

These quotes expose the fact that this is not a case about "material injury" caused by alleged "dumping"

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<sup>10</sup> The information on Figure 9 of the verification report suggests that to achieve a positive profitability the Applicant would need to at least increase its price by 15%.

<sup>11</sup> BlueScope submission dated 22 September, page 2.

<sup>12</sup> *Ibid.*

at all. The motivation is simply that things were not as good as “*expected*” and that the anti-dumping system has not “*delivered*” according to these expectations. If this is the case, then Essar maintains that these expectations ignore market principles and defy commercial reality.

For example, the expectation that “*the Australian industry’s increased sales volumes (from depressed levels) would have contributed to improved levels of profit and profitability*” finds no support in basic economic principle. Expanding sales volume does not guarantee increased profitability – it is often the opposite. Obviously the price that one could charge is restrained not only by competition but also by the level of supply and demand. The only scenario where a company can charge as much as it wants is in a monopoly scenario, and even then then some constraint on that ability may exist due to substitutability of other products.

Further, the expectation inherent in the Applicant’s statement that “*the Australian industry has secured an increase in market share in 2013/14 following the imposition of measures in February 2013, and it was expected that this increase in production and local sales would displace further volumes*” is based on the assumption that all competition will be eliminated and that only the Applicant could “*displace*” the volumes left by the exporters forced out by the anti-dumping measures. But the reality is that the Applicant did not eliminate all competition. Many exporters were not subjected to dumping measures. Customers can still choose not to buy from the Applicant.

The Applicant’s expectation of an unlimited “*ability to recover*”<sup>13</sup> is unrealistic, monopolistic and anti-competitive. These expectations were under-delivered by the Minister’s decision to impose dumping duty on certain exporters and not others. Imposing dumping measures is not for the purpose of meeting expectations, and the imposition of dumping measures on imports from India and Vietnam would not deliver those outlandish expectations anyway. The pertinent finding that the ADC would have to make to impose dumping measures on imports from India and Vietnam is that they were dumped, and that the Australian industry was materially injured, and that it was the imports from India and Vietnam that caused material injury. In light of the performance indicators, and the continued presence of a large body of undumped, not-under-investigation, and competitively priced imports, neither that injury nor the required causal link can be demonstrated.

The anti-dumping system is not an instrument for delivering irrational protection to a monopoly domestic

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<sup>13</sup> BlueScope submission, dated 13 October 2014.



producer based on that producer's own sense of entitlement. The Applicant must recognise that it faces competition, and that it cannot remove that competition, and that it does not have the unchecked ability to extract ever-higher prices from its customers.

Indeed, we note that the unrealistic "expectations" and the alleged material injury caused by dumping from India and Vietnam during the investigation period as argued by the Applicant in this investigation can be contradicted with its own statements outside of this investigation. For example the Chief Executive of the Applicant recently said these things in an interview reported in the Australian media:<sup>14</sup>

*This year the company returned to profitability for the first time since 2010.*

*In the past four years, BlueScope has booked impairments totalling \$1.6 billion on its Australian steel operations, closed one of its Port Kembla blast furnaces and pared about 2000 jobs to recover its cost base.*

*But while Mr O'Malley was fighting to keep the company afloat, he was also desperately trying to fend off policies he views as disastrous such as the carbon tax. "If we could divert the time we spend on policy engagement and stopping bad policies we would have much more time to spend on our business beyond a shadow of a doubt," he said.*

...

*BlueScope estimates it has a burden of \$100 million of regulatory costs and inefficient taxes.*

...

*From 2012-13 to 2013-14 BlueScope's Australian business went from a \$30 million EBIT loss to positive \$60 million in EBIT.*

...

*The BlueScope boss said it will take a number of years with a significantly lower dollar for Australian manufacturing to really recover.*

*"The challenge is that we were above parity for so long that there was some destruction of our underlying domestic manufacturing base.*

*"We need three or four years of sustained lower exchange rates and we will get people to invest in businesses that previously went offshore." [emphasis added]*

We believe that these statements clearly indicate:

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<sup>14</sup> Australian Financial Review, "China's steel book over, says BlueScope". See [http://www.afr.com/p/business/companies/china\\_steel\\_boom\\_over\\_says\\_bluescope\\_tn0aSzcNftiMW4qQupGzLN](http://www.afr.com/p/business/companies/china_steel_boom_over_says_bluescope_tn0aSzcNftiMW4qQupGzLN)

- that instead of material injury caused by dumping during the investigation period, the Applicant experienced stellar growth in that period;
- that the Applicant's business will only "really recover" in a number of years, provided that the currency situation is favourable; and
- that factors such as restructure related impairment, currency and regulatory costs are key factors affecting the Applicant's business, not dumping.

## F Conclusion

In summary, we submit that it cannot be said that the Australian industry has suffered material injury caused by alleged dumping during the investigation period. During the POI, the Australian industry – rather than being injured or having its injurious status "deteriorate" - has achieved the most significant recovery and improvement to its economic condition than at any point in time over the last 6 years.

We repeat our client's view that the Applicant was not "materially injured" by the alleged dumped imports from India and Vietnam, when:

- all data shows that the Applicant enjoyed performance improvements in all aspects and further enhanced its dominance in the market;
- the Applicant increased its market share by 24%, to a dominant 71%, not taking into account the market share of the Applicant's New Zealand operation;
- the Applicant increased its sales volume by 25%, whilst the total import volume decreased by 35% during the POI;
- importation from sources not subject to the current investigation accounted for vast majority of the imported volumes; and
- the total imports of the goods from India and Vietnam account for less than 7% of the total market;
- the Applicant's submission suggests that import prices from India were at least on par, if not higher than, its "IPP" – indicating that the prices of the Australian industry could not be raised any faster than they were, regardless of the presence of imports from India.

The information available to the ADC contradicts the Applicant's proposition that the allegedly dumped imports from India and Vietnam have "*displaced*" and "*continued*" the materially injurious exports from China, Korea and Taiwan. Those imports have been mostly displaced by the Applicant's own sales, and there is no evidence of the continuation of material injury.

Accordingly, we respectfully request the ADC to terminate the investigation in so far as it relates to the goods from India as soon as practicable under Section 269TDA(13), on the basis that the injury to the Australian industry that has been caused by those exports is either non-existent or negligible.

Submitted for and on behalf of Essar Steel India Limited by

Daniel Moulis

**Principal**

and

Charles Zhan

Lawyer