

**BEFORE THE AUSTRALIAN ANTI DUMPING COMMISSION**

**ANTI DUMPING INVESTIGATION CONCERNING IMPORTS OF  
ZINC COATED (GALVANISED) STEEL FROM INDIA AND VIETNAM**

**INJURY SUBMISSIONS**

**ON BEHALF OF:**

**JSW STEEL COATED PRODUCTS LTD./JSW STEEL LIMITED  
(‘JSW GROUP’)**

**THROUGH**



**Economic Laws Practice**

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## **Introduction**

1. The Australian Anti-Dumping Commission ("AD Commission") has officially initiated a dumping investigation into zinc coated (galvanized) steel ("GI"/"GUC") exported to Australia from India and Vietnam vide the Australian Customs Dumping Notice No 2014/55 ("ACDN 2014/55") on 11<sup>th</sup> July 2014.
2. ACDN 2014/55 sets out that the Australian industry, BlueScope Steel Limited ("the Complainant"), had alleged in its application that GI exported from India had been imported at dumped prices causing material injury to the Australian industry material injury affecting the following factors:
  - price suppression;
  - reduced profit and profitability;
  - reduced return on investment;
  - reduced employment numbers; and
  - reduced ability to raise capital for re-investment.
3. The AD Commission made its verification report of the Complainant public on 18<sup>th</sup> September 2014 in which the list of factors causing injury to the Complainant have been reduced from five to three as enlisted below:
  - price suppression;
  - reduced profit and profitability;
  - reduced return on investment

The AD Commission has also stated that there was no evidence at the time of verification which suggested that the Complainant experienced injury in the form of reduced employment numbers and reduced ability to raise capital for re-investment. There is clear indication that the alleged injury to the Complainant is merely a subterfuge to have Anti-dumping duty levied on India and Vietnam so that it can capture the entire market share of the Australian market and thereby consolidating its position as a sole and thenceforth, monopolistic player in Australia.

4. JSW Group has filed a comprehensive response to the Exporter Questionnaire with the AD Commission on 3<sup>rd</sup> September 2014. Without detracting from the primary position of our client, JSW Group, which is that it has not exported GI to Australia at dumped prices – this submission is intended to establish that its imports have not caused any injury, material or otherwise to the Australian industry. For this reason, JSW Group requests the AD Commission to terminate the instant investigation forthwith. JSW Group also requests the AD Commission to analyse such factors other than alleged dumped imports which may be causing injury to the Complainant, including but not limited to aspects relating to self inflicted injury by actions of the Complainant that are not related to imports of GI from India.

### **A. Base year used to analyse injury to the Complainant not appropriate**

5. An investigation into the dumping of galvanised steel and aluminium zinc coated steel exported to Australia from the People's Republic of China (China), Korea and Taiwan was concluded on 30 April 2013 (refer Trade Measures Report No. 190) (REP 190). Subsequently, a dumping duty notice was accordingly published for all exports of galvanised steel from:
  - China by all exporters;
  - Korea by all exporters, other than Union Steel Co., Ltd; and

- Taiwan by all exporters, other than Sheng Yu Co., Ltd and Ta Fong Steel Co., Ltd.

6. It should be noted that exports from India have increased on the back of anti dumping duty levied on Chinese, Korean and Taiwanese imports into Australia. It is pertinent to note that all the injury factors presented by the Complainant use 2008-09 as base year for all its injury analysis, whereas impact of any alleged injury to the Complainants due to imports from India should be analysed from 2011-12 onwards as occurrence of any injury prior to 2011-12 are attributable to imports from China, Korea and Taiwan, as already recognized by the AD Commission in the above mentioned investigation.

#### **B. Injury based on Market Segmentation**

7. The Complainant alleges that dumping of GI began to cause it material injury during FY 2013-14. There is no evidence of this on record. Additionally, the financial statements and the investor presentation of the Australian industry show a positive performance in FY July 2013-June 2014 ("FY2014") as compared to recent years. In any event, JSW Group reiterates that it has not engaged in the "dumping" of goods on the Australian market in either period.
8. The Complainant has identified two major sectors viz. the construction industry and the general manufacturing industry as major consumers of the goods under consideration, whereas the automotive sector has completely been ignored despite comprising about 9% of the Complainant's share of sales in Australia<sup>1</sup>. Sales to all of these industries should be treated as sales into separate markets for the purposes of undertaking any material injury analyses.
9. It is also pertinent that sales to each of these industries differ greatly in terms market dynamics and the factors that influence the same. Therefore JSW Group submits that treating the sales to each sector independently will lead to a more accurate understanding of the factors impacting on the Australian industry, including that of imported GI.
10. While it may appear a complex process from the AD Commission's perspective to distinguish between sales to different segment of markets, a controlling mechanism may be devised to put a system in place for tracking the end use. It is submitted that an accurate material injury analysis based on the effect of products going into different markets should be undertaken.

#### **C. No Injury to the Complainants from Overall Financial Position**

11. As per Article 3.4 of the WTO Anti Dumping Agreement,
 

*"The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."*

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<sup>1</sup> Investor Presentation FY2014, Slide 11 accessible at the following hyperlink:  
<http://www.bluescopesteel.com/media/328990/fy2014%20investor%20presentation%20-%20final.pdf>

12. As per Section 269TAE(3) of the Customs Act, the following economic factors need to be analysed in order to make an assessment of material injury in an anti-dumping investigation:

- “(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”.*

13. Out of the numerous factors listed above as per Section 269TAE(3) of the Customs Act, the Complainant has alleged material injury only based on following factors:

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

14. The AD Commission has recognised only three of the five factors listed by the Complainant in the Application to be actually causing injury to the Complainant in its verification report of the Complainant put on the public records on 18<sup>th</sup> September 2014:

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

15. The AD Commission had, in the previous investigation, established material injury<sup>2</sup> to the Complainant based on following factors with respect to GUC:

- loss of sales volume;
- reduced market share;

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<sup>2</sup> See page 103 of Report 190 relating to Dumping of Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel exported from the People's Republic of China, the Republic of Korea and Taiwan

- reduced sales revenues;
- price depression;
- price suppression;
- reduced profit and profitability;

Other economic/injury factors<sup>3</sup> that were analysed in the previous investigation and deemed to have reasonable grounds to support the claim that Complainant had experienced injury are enlisted below:

- reduced revenues;
- reduced ROI;
- reduced production capacity; and
- reduced employment.

16. JSW Group notes that, while in the previous investigation, the Complainant had suffered injury based on several factors (ten factors), it has only been established to have suffered injury based on fewer factors (three). There is no merit in the claim of the Complainant that imports from India are causing “continuation of material injury to the Australian industry in 2013/14”<sup>4</sup>.

#### Volume effect

17. Although the Complainant does not claim any volume effect and the AD Commission has found in the Consideration Report that there is no evidence of injury in the form of loss of sales volume or market share, the fact that the volume of imports of the subject goods from India remained insignificant throughout the injury analysis period (ie 31 July 2008 – 30 June 2014) suggests strongly that any alleged price effects or loss of profit and profitability suffered by the Complainant were unlikely caused by the imports of the subject goods from India.
18. Further, the increase in the volume of imports of the subject goods from India in April 2013 – March 2014 is not abnormal and does not seem to be a result of dumping; rather, it appears to be a result of the application of anti-dumping duties on galvanised steel exported from China, Korea and Taiwan since 5 August 2013. In this regard, Figure 6 of the Consideration Report (page 31) clearly shows that in April 2013 – March 2014, the market share of the Complainant and the market share of Indian exports of the subject goods to Australia both increased taking the market share of imports of the subject goods from the other countries. The Complainant’s market share increased much more significantly than the market share of Indian exports suggesting that, if price is the determinative factor that affects consumers’ choice, the Complainant had a price advantage over India’s exporters of the subject goods, or in other words, it was unlikely that imports of the subject goods from India had undercut the selling price of BlueScope.

#### Price Suppression

19. The price effect alleged by the Complainant and assessed by the AD Commission was price suppression since 2011-12. As an initial matter, it must be noted that in the investigation into Galvanised steel exported from China, Korea and Taiwan, the ultimate dumping duties were applied to exports of the subject goods since 5 August 2013. This means that the alleged price suppression

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<sup>3</sup> See page 106 and 107 of Report 190 relating to Dumping of Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel exported from the People’s Republic of China, the Republic of Korea and Taiwan

<sup>4</sup> Page 29 and 30 of the BlueScope Steel’s application

between 2011-12 and 2012-13 may have been caused by exports from China, Korea and Taiwan and not by exports from India.

Further, the “Index of cost variations” and the “Index of price variations” on page 30 of the Application show that:

- between 2011-12 and 2012-13, while the Complainant's CTMS remained stable, its selling price decreased significantly indicating a price suppression. However, as mentioned above, this price suppression was likely to be caused by imports from China, Korea and Taiwan. In this connection, it must be noted that in both 2011-12 and 2012-13, the volume of imports from India remained negligible;
- between 2012-13 and 2013-14, while the Complainant's CTMS decreased, its selling price increased indicating no price suppression. The reason that the Complainant did not suffer price suppression during this period seems to be the application of anti-dumping duties on galvanised steel exported from China, Korea and Taiwan since 5 August 2013.

Accordingly, the alleged price suppression seems to have occurred only in one period during the entire injury analysis period (ie between 2011-12 and 2012-13), and for that period, the price suppression was likely to be caused by factors other than exports of the subject goods from India at dumped prices.

20. The AD Commission should note that the sales realisation of the Complainants in FY2014 have generally improved due to higher sales volumes in the domestic market as stated in its full financial report. It is quite unfathomable why the Complainants should consider price suppression on account of imports from India as one of the factors causing injury as the prices at which JSW Group has sold to Australia are extremely competitive and reflects general trends in global pricing of like goods as GUC in the instant investigation.
21. During the verification conducted by the AD Commission, the Complainant has confirmed that it includes a premium on its sales to the Australian market<sup>5</sup> to cash in on the advantages it offers to the customers of purchasing from a local producer. However it is setting lower premiums than its usual target for customers who traditionally source from offshore mills in a bid to consolidate its market share and displace imports. JSW Group notes that the Complainant is claiming price suppression for charging a lower 'premium' on its sales to certain customers in Australia for gaining their patronage, rather than as a restraint on increasing its prices as an effect of increase in cost of sales.
22. In addition, as mentioned above, given the insignificant volume of Indian exports of the subject goods, it was unlikely that these exports may affect the price of exports of the subject goods from other countries or the selling price of the subject goods in Australia.

#### Profitability and Return on Investment

23. Furthermore, the allegations of Complainant in its application to the AD Commission are completely contradictory to the facts highlighted in the Complainant's investor presentation for FY 2014. The following aspects are relevant and may be considered by the AD Commission in this regard:
  - a. The underlying Earnings before Interest and Tax (“EBIT”) of the Complainant in the segment ‘Coated & Industrial Products Australia’ for FY2014 was ascertained at \$65.4 Million, up \$95.7M as compared to FY2013, mainly due to higher domestic volumes, lower export volumes and

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<sup>5</sup> Page 30 of Visit Report - Australian Industry BlueScope Steel limited, Investigation 249

increased spread. This performance has been the Complainant's first positive EBIT result since FY2010. The following excerpt is relevant in this regard:

"\$95.7M increase in underlying EBIT was largely due to:

- i. Lower loss making export volumes combined with higher domestic volumes.
  - ii. Higher spread driven by:
    1. Favourable foreign exchange impact on export revenues from a weaker AUD:USD exchange rate (FY2014 US\$0.918; FY2013 US\$1.027) combined with the flow-on benefit to domestic prices.
    2. Lower coal and iron ore purchase prices.
    3. Lower net realisable value provisions for inventory on hand at June 2014 compared to June 2013.
  - iii. Partly offset by:
    1. Lower average global steel prices.
    2. Unfavourable raw material yield due to planned maintenance activities.
  - iv. Favourable timing of maintenance activities.
  - v. Delivery of cost improvement initiatives combined with tight control of spend rates offset cost escalation."<sup>6</sup>
- b. It is important to note that the increase in EBIT was partly offset because of factors which are completely unrelated to imports of GUC from India such as – (i) lower average global – this factor is a global macroeconomic aspect which has no relevance/significance with respect to imports from India; (ii) unfavourable raw material yield due to planned maintenance activities – this factor that has lead to an offset to increase in EBIT pertains to internal policy of the Complainant and any injury emanating from this aspect should be considered 'self inflicted' by the Complainant as this activity has no relevance to imports from India.
- c. More importantly, JSW Group notes that the turnaround in EBIT levels has been attributed by the Complainant to improvement in sales volumes and product mix by means of higher domestic volumes (predominantly galvanized (emphasis supplied), painted ZINCALUME® steel and coil plate driven by an lift in market share and activity levels partially offset by lower HRC sales into the pipe & tube market and lower plate volumes driven mainly by the slowdown in mining investment) and lower export volumes.<sup>7</sup>

24. Further, the Complainant has claimed that its profit and profitability decreased in 2012-13 and 2013-14 and this loss was a consequence of price suppression during these periods.

25. However, as discussed above, the alleged price suppression during 2012-13 cannot be said to be caused by Indian exports but by exports from China, Korea and Taiwan. In relation to 2013-14, Figure 8 of the Consideration Report shows that the Complainant's profit and profitability increased significantly as compared to 2012-13. Again, this was likely due to the application of anti-dumping duties on galvanized steel exported from China, Korea and Taiwan since 5 August 2013. Further, it is worth noting that the increase in profit and profitability occurred despite the significant increase in the volume of Indian exports in 2013-14 suggesting that it was not imports from India that had affected the Complainant's profit and profitability.

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<sup>6</sup> Page 12 of BlueScope Steel's earnings report for FY2014 which can be accessed at hyperlink: <http://www.bluescopesteel.com/media/328978/fy2014%20earnings%20report.pdf>

<sup>7</sup> *Ibid*

26. With respect to reduced return on investment, AD Commission noted that the Complainant has increased its capital investment during the period FY2009 to FY2014<sup>8</sup>. Despite the increase in capital investment, the Complainant has recorded its best performance since FY2011 and its 'Underlying Return on Invested Capital' for Coated & Industrial Products Australia<sup>9</sup> has improved from -8.3% in FY2011 to 3.1% in FY2014, a staggering increase of 11.4%.

Ability to raise Capital for Re-investment

27. As regards reduced ability to raise capital for re-investment, it is earnestly submitted that the Complainant has made following investments towards growth initiatives, which underlines its capacity to raise capital for reinvestment and lays its claims of injury on account of imports from India to rest:
- (i) acquired Orrcon and Fielders from Hills Holdings on 28 February 2014 (acquisition may relate to GUC);
  - (ii) acquired OneSteel sheet and coil distribution assets on 1 April 2014 (acquisition may relate to GUC); and
  - (iii) acquired the downstream long-products rolling and marketing operations of Pacific Steel Group in New Zealand on 3 June 2014, and targeting commission of billet caster during 1H FY2016.
28. The AD Commission has already established that at the time of verification, there was no evidence to suggest that the Australian industry has experienced injury in the form of reduced ability to raise capital for re-investment<sup>10</sup>.

**D. Inclusion of Entire Coated Steel Category in the Injury Investigation**

29. A material injury analysis requires consideration of the:
- quantity of like goods produced, or manufactured in Australia and sold and consumed in Australia (Section 269TAE(1)(c)(ii) and 269TAE(3)(a));
  - the effect that the exportation has had, or is likely to have had on the price paid for like goods produced and manufactured in Australia and sold in Australia (Section 269TAE(1)(f));
  - the conditions of competition between those goods (ie the goods under consideration) and like goods that are domestically produced (Section 269TAE(e)(ii)); and
  - the levels of profit earned in the industry, that are attributable to the production or manufacture of like goods (Section 269TAE(3)(h)).
30. It is a well known fact that the Complainant's pre-painted GI steel is sold in huge volumes and is reported to be highly profitable. The substrate of pre-painted GI steel is coated GI steel, which only further undergoes a process of 'paint coating'. It is earnestly submitted that such coated steel which is used for further processing to pre-painted GI steel must be included into AD Commission's material injury analysis especially given the fact that pre-painted GI steel is known to have overlapping uses with unpainted GI steel.

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<sup>8</sup> Page 29 of Visit Report - Australian Industry BlueScope Steel limited, Investigation 249

<sup>9</sup> Page 5 of Financial Dispatch History of BlueScope Steel from 2003-2014 accessible at following hyperlink: [http://www.bluescopesteel.com/media/328923/financialdespatchhistory\\_\\_2003to2014.pdf](http://www.bluescopesteel.com/media/328923/financialdespatchhistory__2003to2014.pdf)

<sup>10</sup> Page 50 of Visit Report - Australian Industry BlueScope Steel limited, Investigation 249



31. It is submitted that Complainant's claim that pre-painted versions of the goods under consideration be purged from the investigation cannot be taken to construe that the same or at least its substrate should be excluded from the purview of injury analysis of GUC.
32. The Complainant has stated in the Investor Presentation that it has received a very positive response to its update to pre-painted coated steel generally referred to as "COLORBOND"<sup>11</sup>. JSW Group considers that there is no basis on which it can be said that coated steel used for painted GI is not coated steel of the type that is subject to this investigation. The Complainant is within its rights to confine its dumping allegation to whatever products it believes have been dumped. However, by this means, the Complainant cannot restrict AD Commission in its material injury consideration.
33. JSW Group submits that while it is entirely upon the Complainant to focus on its more profitable product, to the expense of other less profitable products, the Complainant can very well exercise the option to sell its GI at a lower price, and absorb the loss of revenue through the premium available to it on its other value added offering. Moreover, since coated GI steel is a substrate of pre-painted GI steel, the Complainant can easily plan its production of painted coated steel in a way when it should be increased, and its unpainted steel decreased, depending on the relative profitability of each product. The actual value of coated steel within the Complainant's production process – at the point that it is transferred for further processing to its paint lines – must reflect the overall profitability of the final product. Otherwise the analysis will be unduly favourable to the Complainants if only the production of that coated steel in respect of which the Complainant claims to have been injured is considered – and show a perpetual injury on the product it seeks application of duty, whereas the production of all of its coated steel should be taken into consideration for a more objective analysis. If this were not the case, applicants for anti-dumping duties could engineer injury outcomes and its results. This aspect can be elaborated from the following table:

Particulars of Complainant	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Production variations (indexed)	100	93.89	113.39	94.17	81.21	96.89
Capacity Utilisation (indexed)	100	113.6	119.24	97.93	101.74	120.03

Source: Page 32 of the Application

34. It is worthy to note that the production variation has improved in FY2013-14 as compared to FY2011-12 and so has the capacity utilisation. What is more interesting is that the capacity utilisation for GUC in FY2013-14 is 20.03% higher than base year FY2008-09, while production is 3.11% lower during the same period. This fact further lends to the probability that the Complainant has downsized its capacity to manufacture GUC in order to allocate capacity to manufacture more lucrative pre-painted products.
35. JSW Group makes a request that the AD Commission investigate all aspects of the Complainant's business behaviour relating to its value added products. In particular the trends in prices of its value added products in comparison to the price of GI should be considered. The consideration must not be limited only to the information that the Complainant opts to provide to the AD Commission. We submit that the Application was materially flawed. The exclusion of such value added coated steel production from the Application presents a misleading impression of the Australian industry's production and sales, and of its financial performance.

<sup>11</sup> Investor Presentation FY2014, Slide 10 accessible at the following hyperlink:  
<http://www.bluescopesteel.com/media/328990/fy2014%20investor%20presentation%20-%20final.pdf>

36. Without considering the overall financial performance of the Complainant in all of its production of coated steel, AD Commission will not be able to understand the true placement of the Complainant in the production of either of the GI substrates or the market thereof. This will adversely affect the accuracy of AD Commission's material injury assessment, and will lead to conclusions that do not reflect the factual position.
37. Without prejudice, it is pertinent to highlight that the Complainant has not complained about the dumping of painted steel in its application is not the point. The point is that it is the production and sale of coated steel and of goods "like" coated steel that is the subject of the injury analysis under the Act and has been presented by the Complainant to the AD Commission by the use of some accounting methodology which ignores reality.

#### **E. Causal Link**

38. The Application outlines many forms of material injury that have allegedly been suffered by the Complainant as a result of the subject imports. As well as those addressed above, these include:
- reduced profit and profitability;
  - reduced return on investment;
  - reduced ability to raise capital for reinvestment; and
  - reduced employment.
39. The law requires that the alleged injury be caused by the dumped goods. Section 269TAE(2A) provides that AD Commission must also consider whether the claimed injury is attributable to factors other than dumping. If there are any other factors that may have caused injury, AD Commission must not attribute that injury to the exportation of those goods. If there is no price suppression/depression caused by the dumping, then the reduction in profits and profitability cannot be linked to the dumping, nor can the reduced return on investment, reduced ability to raise capital and reinvestment, or reduced employment.

#### Cross-subsidising Profits of other Coated Steel Products

40. JSW Group submits that none of the claimed injuries were caused by the subject imports. As a matter of fact, the outlook of the Complainant has been improving as the Anti dumping duties on China, Korea and Taiwan are taking full effect and there is no injury attributable to imports from India. It is also pertinent to note that despite exports from India, the Complainant has turned up its best results since 2010. The aspect that Complainant may even be "cross-subsidising" profits on its painted coated steel in order to pursue a downward price strategy in unpainted coated steel should be evaluated by the AD Commission as it may be a major chink in the causal link towards the alleged injury claimed by the Complainant.

#### Cash Outflow Due to Investing and Financing Activities

41. JSW Group submits that the cash flow from operating activities of the Complainant in FY2014 have improved significantly as compared to FY2011 as evident from the table below. As a matter of fact, the cash flow from operations have increased by 1438% in FY2014 as compared to FY2011. On the other hand cash flow from investing activities has deteriorated significantly in FY2014 as compared to FY 2010-FY2013 and the cash flow from financing activities is also negative. This clearly evidences that operationally the Complainant has had its most optimal performance in FY2014 as compared to FY2010-FY2013, from a cash flow perspective. The AD Commission should evaluate whether Complainant's decisions relating to its investing activities and financing activities might be attributing

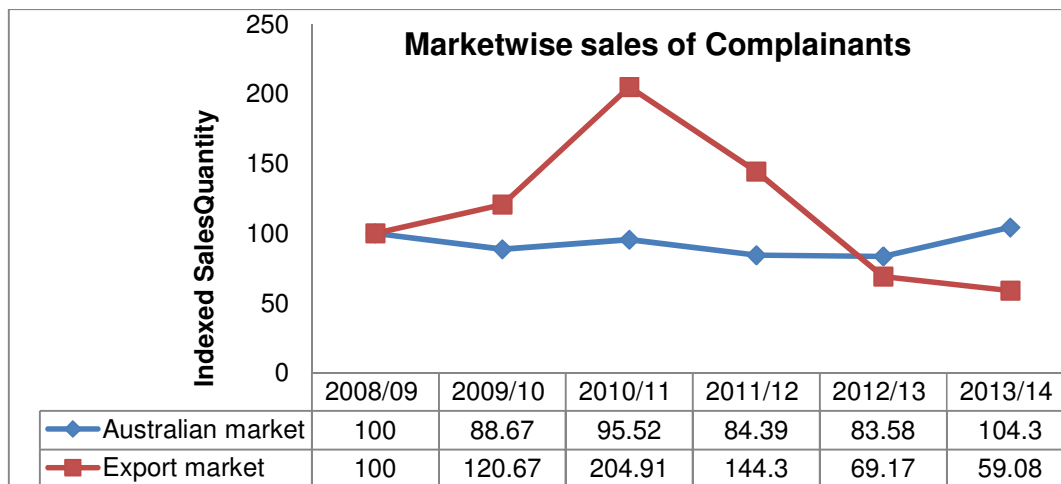
to any alleged injury. Either ways, imports from India should not be deemed liable to be causing any injury to operational aspects of the Complainant.

Particulars of Cash Flow of BlueScope Steel Limited	FY2010	FY2011	FY2012	FY2013	FY2014
Cash Flow from Operating Activities (A\$Million)	376.9	28.3	267.4	161	407.1
Cash Flow from Investing Activities (A\$Million)	-326.6	-366.5	-79.7	-309.5	-437.9
Cash Flow from Financing Activities (A\$Million)	-159.8	273	-148.2	429.4	-14.5

Source: Financial Dispatch History of BlueScope Steel from 2003-2014<sup>12</sup>, Page 11

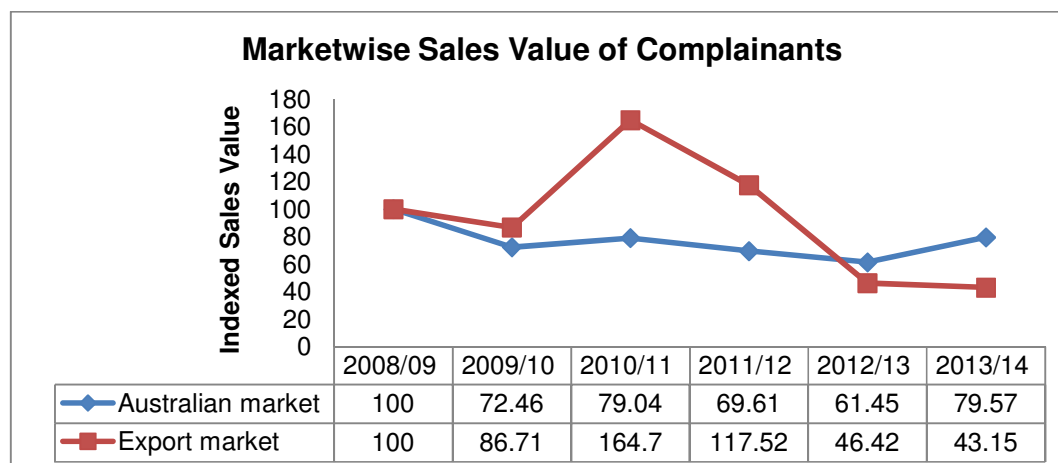
#### Export Performance of the Complainant

42. The export performance of the Complainant both in terms of volume and value has dwindled from its high in FY2010-11, which is be one of the attributing factors to any alleged injury. The Australian market has in FY2013-14, both in terms of volume and value, shown improvement as compared to FY2011-12. The imports from India have only entered the Australian market in increased number since FY2011-12 and this has not had any negative impact on the Complainant as can be observed in the graphical representation below. The Complainant has skewed the analysis in its favour by comparing indexed values for FY2013-14 to FY2008-09, whereas comparison from FY2011-12 to FY2013-14 would portray a more rational injury consideration.



Source of Data: Page 23 of Complainant's Application

<sup>12</sup> [http://www.bluescopesteel.com/media/328923/financialdespatchhistory\\_\\_2003to2014.pdf](http://www.bluescopesteel.com/media/328923/financialdespatchhistory__2003to2014.pdf)



Source of Data: Page 23 of Complainant's Application

#### Exports from Countries Other than India and Vietnam

43. JSW Group notes that quantum of exports from Taiwan (47,135 MT or about 25.9% of total imports into Australia), on which dumping and injury is proven, is still sizeable in so much so that the volumes exceed the combined exports from India and Vietnam, which are the subject countries in the instant case. These exports could have an effect of exacerbating the injury that it is proven to cause to the Complainant. The Complainant has conveniently chosen to ignore imports from Taiwan but stating the following at page 33 of the Application:

"It is difficult to estimate the volume of exports of galvanised steel from Taiwan that may have been legitimately entered at non-dumped prices in 2013/14 of the total 47,135 tonnes exported to Australia. It would be expected, however, that the exports from Taiwan are at non-dumped levels (in the absence of information to the contrary)."

44. It is also worthy to note that the Complainant has not analysed dumping or injury resulting from imports of about 57,806 MT which is about 31.8% of total imports into Australia, which have been classified as being sourced from 'Other Countries' at page 46 of the Application, without any details about the break-up of volume and price from such sources. The Consideration Report No. 249 of the AD Commission also has not analysed this factor before initiation of the instant investigation.

45. JSW Group understands that it is the onus of the Complainant to analyse and prove to the AD Commission whether imports from Taiwan and other sources are being imported at dumped prices or not, which is causing injury to the Complainant or not. The Complainant has merely stated at page 22 of the Application that,

"It is further noted that galvanised steel exports from other countries (mainly Japan and New Zealand) have also declined in 2013/14. Exports of galvanised steel from India and Vietnam, therefore, have increased at a time when exports from other countries and, the market overall, have decreased."

Decrease in imports from Japan and New Zealand does not absolve the Complainant from analyzing the probable dumping from these sources and resultant injury it may cause the Complainant.

46. Further analyzing imports from Taiwan and other countries is important to the injury analysis because Section 269TAE(2A) of the Act provides:

*“(2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:*

*(a) the volume and prices of imported like goods that are not dumped;*

*...*

*and any such injury or hindrance must not be attributed to the exportation of those goods.”*

The Act also stipulates that it is important to consider whether any injury to an industry is being caused or threatened by the volume of and prices of imported like goods that are not dumped. The onus for the same is not on the exporters. AD Commission, as the investigating authority, must investigate or seek clarification in this regard from the Complainant. The aspect of not investigating other factors that may have caused injury to the Complainant is highlighted in the jurisprudence surrounding the “non-attribution” Article of the World Trade Organisation’s Anti-Dumping Agreement. As was noted by the Appellate Body in US – Hot Rolled Steel<sup>13</sup>:

*“The non-attribution language in Article 3.5 of the Anti-Dumping Agreement applies solely in situations where dumped imports and other known factors are causing injury to the domestic industry at the same time. In order that investigating authorities, applying Article 3.5, are able to ensure that the injurious effects of the other known factors are not “attributed” to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the Anti-Dumping Agreement, justifies the imposition of anti-dumping duties.”*

If AD Commission does not fully investigate the effect of other sources of GI, it cannot have a rational basis to conclude that dumped imports are the cause of the injury. Therefore, any imposition of dumping duties could not be legitimately made.

#### **F. Exclusion of ‘Zero’ Spangled products**

47. It is submitted that certain types of coated steel that were not produced by the Complainant during the period of investigation should be excluded from the scope of the investigation. As the Complainant is the only producer of coated steel in Australia, it can be said that if it does not produce certain products, then it should not be entitled to “protection” in the form of dumping measures against such products.
48. In the earlier investigation concerning GUC on imports from China, Korea and Taiwan, the Complainant had acceded that it does not manufacture zero spangled steel. JSW Group also exports zero-spangled coated steel to Australia. The Complainant has afforded no reason as to how it is that

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<sup>13</sup> See Paragraph 223 of Appellate Body (WT/DS184/AB/R) in United States - Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan

sales of a product that it does not manufacture can have caused material injury to it. Zero-spangled coated steel can also be easily identified by inspecting the surface of the steel as the floral pattern is not visible on it as it is on spangled steel. These surface traits can also be recognized through the mill certifications to support the simple eye testing by the Customs Authorities.

49. The Complainant cannot allege to have suffered any injury in relation to zero-spangled product supplied by JSW Group as it is a product that services a sector of the market which the Complainant does not cater to.

G. **Conclusion**

There is inadequate substantiation to prove that the Complainant has suffered material injury in the form of exports of Galvanised steel from India and Vietnam. As a matter of fact, the Complainant is on its way to recovery from the injury suffered due to dumping from China, Korea and Taiwan. JSW Group requests the AD Commission consider injury factors beyond the identified three factors that are potentially causing injury to the Complainants as per its Domestic Industry verification report as the WTO Anti Dumping Agreement requires a more comprehensive consideration of injury factors.

All the data shows that the Complainant enjoyed performance improvements in all aspects and further enhanced its dominance in the market. Imports from sources which are not subject countries in the instant investigation comprise a majority of the imported volumes, leading to fractioned consideration of injury and causal link. There should be evaluation whether imports from such sources which were subject to an earlier anti dumping investigation are causing continued injury alleged by the Complainant.

JSW Group also requests the AD Commission to analyse the performance of the Complainant with a macro perspective in relation to all of its production of Galvanised steel, and not restrict its consideration to the perspective portrayed by the Complainant.

JSW Group respectfully requests that the AD Commission give full consideration to the information provided in Exporter Questionnaire response which will lead to a conclusion that JSW Group has not engaged in dumping of GUC, and to this submission which substantiates that material injury cannot be said to have been caused by JSW Group's exports of GUC to Australia. Accordingly, we respectfully request the AD Commission to terminate the investigation in so far as it relates to the goods from India, on the basis that the injury to the Australian industry that has been caused by these exports is non-existent.

Sincerely,

**Sanjay Notani**

**Partner**

**21<sup>st</sup> January 2015**