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13 February 2017

The Director
Operations 5
Anti-Dumping Commission
SAP House, Level 4
224 Bunda Street
Canberra
Australian Capital Territory 2601

By email

Dear Director

Essar Steel India Ltd Alleged dumping and subsidisation of zinc coated (galvanised) steel exported from India, Malaysia and Vietnam

We are the lawyers for Essar Steel India Ltd (“Essar Steel”) in relation to this investigation, Investigation 370 (“INV 370”). We make this submission on behalf of our client regarding the allegations of material injury suffered by the applicant, BlueScope Steel Ltd (“the Applicant”).

A	Introduction	2
B	Investigation 249 – exports from India and Vietnam	4
1	Termination of previous investigation	4
2	Reasons for the termination	4
3	Relevance of findings of previous investigation	6
C	Financial position of BlueScope Steel	6
D	Considering allegations	9
1	Volume of exports and price undercutting	9
2	New Zealand	13
3	Other factors	15
E	Cumulation of injury	16
1	Negligible volumes	17
2	Conditions of competition	19
F	Conclusion	22

A Introduction

- 1 On 7 October 2016, the Anti-Dumping Commission (“Commission”) issued ADN 2016/105 which officially initiated this investigation into the alleged dumping of zinc galvanised (coated) steel (“the goods”) from India, Malaysia and Vietnam and the alleged subsidisation of the goods exported from India and Vietnam.¹
- 2 Our client has significant concerns regarding the initiation of this investigation and of the Applicant’s motivations for requesting yet another such investigation. We say this because of the disposal of the previous investigation by the Commission and the Anti-Dumping Review Panel (“ADRP”), with its significantly overlapping features, and because of the ever-improving financial situation that the Applicant has enjoyed since.
- 3 The Commission and the ADRP completed Investigation 249 (“INV 249”)² and Report No 26,³ which investigated and reviewed the alleged dumping of the goods from both India and Vietnam, on 27 October 2015. The application for this investigation (“the Application”) was first lodged only 10 months after the publication of the ADRP’s report.⁴ INV 249 and ADRP Report No 26 respectively terminated that previous investigation, and affirmed that termination. No material injury was found to be attributable to exports from either India or Vietnam. BlueScope Steel has now chosen to “try again”, by way of the request for initiation of this present investigation, with no new justifications apparent and indeed with substantial contradictions to the prospect that injury has been caused since the termination of the previous investigation. Exporters and importers alike, of the goods from both countries, have now been drawn back into another costly and intrusive investigative process.
- 4 In this regard we refer to World Trade Organisation jurisprudence, specifically Article 7.1 of the *Doha Ministerial Decision of 14 November 2001 on Implementation-Related Issues and Concerns* which records that the parties to that Declaration:
- Agree[] that investigating authorities shall examine with special care any application for the initiation of an anti-dumping investigation where an investigation of the same product from the same Member resulted in a negative finding within the 365 days prior to the filing of the application and that, unless this pre-initiation examination indicates that circumstances have changed, the investigation shall not proceed.*⁵
- 5 The Application does not present information that shows a deleterious change in circumstances between the investigation period for INV 370 and INV 249 as it relates to India and Vietnam such that a new investigation might be warranted. We are concerned to find that the special care called for by the Doha Ministerial Decision, and as a matter of correct administrative procedure, might not have been directed towards the decision to initiate this investigation. In our view the Application should not have been accepted for investigation. Be that as it may, the Commission has exercised its power to initiate on a *prima facie* basis, and thus it is now incumbent upon ourselves and other interested parties to demonstrate that the

¹ See ADN 2016/105 INV 370 – *Investigation into alleged dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam.*

² See ADN 2014/55 INV 249 – *Investigation into dumping of Zinc (Coated) Galvanised Steel exported from India and the Socialist Republic of Vietnam.*

³ See ADRP Report No. 26 – *Galvanised Zinc Coated Steel exported from India.*

⁴ See public record document number 005 Application INV 370 - *Investigation into dumping and subsidisation Of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam.*

⁵ See World Trade Organisation – Doha Declarations, ‘*the Doha Ministerial Decision of 14 November 2001 on Implementation-Related Issues and Concerns*, Article 7.1 https://www.wto.org/english/res_e/booksp_e/ddec_e.pdf.

- Applicant's case has no merit.
- 6 The Commission's findings in INV 249 are directly relevant to this investigation. The same goods are subject to this Application, the countries and exporters subject to the Application overlap, and the injury investigation involves overlapping time periods. In these contexts it is hugely disappointing that the Applicant has insisted that the Commission initiate yet another new investigation, just over a year after the Commission's termination of the previous one, and less than a year after its appeal of that decision to the ADRP was rejected.
- 7 We submit that the conduct of the Applicant in repeatedly applying for investigations of this sort is a commercial strategy to try to "lock out" competition and force up the already profitable conditions that the Applicant presently enjoys in the Australian market. This renewed attack on some – but not all - of the "fringe" exporters of the goods that are not presently subject to dumping measures is again unjustified. We submit that this Application seeks to employ the anti-dumping framework to frustrate fair competition. It wrongly attempts to further extend the Applicant's dominance of the Australian market for the goods.
- 8 In so far as the allegations directly overlap with INV 249, the Applicant has neither argued nor established how it is that the Commission and the ADRP were incorrect in making their previous determinations. Nor should the Applicant be permitted the opportunity to have a "pseudo" review of determinations that have already been well-considered and completed.
- 9 The Application alleges that material injury has been suffered as a consequence of dumped exports from Malaysia, India and Vietnam, specifically stating:
- BlueScope is requesting the Commission to undertake a formal investigation into the dumping and subsidisation of exports of galvanised steel from India and Vietnam, and the dumping of galvanised steel from Malaysia. This application demonstrates the rapid escalation in export volumes of galvanised steel from the nominated countries in 2015/16 – at a time when BlueScope had anticipated it would experience recovery from the injurious effects of dumping (and subsidisation) from exports sourced from China, Korea and Taiwan.⁶*
- 10 The Applicant is seeking recompense for a recovery it had "anticipated" after measures were imposed against exports from China, Korea and Taiwan. Those measures were imposed on 6 February 2013.⁷ The facts clearly demonstrate that in the time since then the Applicant has experienced a very significant "recovery" and that it now operates at a healthy and profitable level which is consistent with the removal of material injury caused by dumping. The "normal ebb and flow of business" that the Applicant now enjoys is very favourable. In that light it is evident that the Applicant's "expectations" of how it should be able to perform far exceed those of the statutory framework, which is directed towards the removal of material injury caused by dumping and not the removal of individual competitors who choose to participate in the market under the conditions established by the existing market players. Those market players include the Applicant, which holds a market share of roughly 74%.⁸
- 11 The period after dumping measures were imposed against exports from China, Korea and Taiwan - being the period in which the Applicant's demonstrated financial recovery has taken

⁶ See public record document number 005 Application INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 38.

⁷ See ACDN 2013/11 Preliminary Affirmative Determination and Imposition of Dumping Securities - *Zinc Coated Galvanised Steel exported from China, Korea and Taiwan*.

⁸ This is an estimation of the combined market share of BlueScope Steel (72.78%) and its New Zealand subsidiaries (1.03%), see Section D (2) for further information.

place - was the direct time period relevant to INV 249.⁹ The Applicant has enjoyed a strong financial recovery since then and has maintained and extended its financial performance in the 12 month investigation period of this investigation. Thus, in so far as the Applicant's allegations go back over that period, the present Application appears to disregard the Commission's findings in INV 249.

- 12 Our client submits that the Applicant cannot be said to have suffered material injury in an absolute sense, nor to have been caused material injury by the exports subject to this investigation in a specific sense. If the Commission somehow finds to the contrary – the circumstances for which are not evident to us at this time - then we would say that any material injury has not been suffered as a consequence of exports from India. In particular, any material injury has not been suffered as a consequence of exports from Essar Steel, and there can be no grounds to cumulate exports from India with those of the other source countries, given the findings of INV 249 and Report No 26, and the [CONFIDENTIAL TEXT DELETED – trend] in the volumes of exports from India and from Essar Steel in the interim.

B Investigation 249 – exports from India and Vietnam

1 Termination of previous investigation

- 13 On 30 July 2015 the Commission terminated INV 249.¹⁰ In so far as the termination concerns our client, the stated basis was:

In this case, the Commissioner is satisfied that the injury, if any, caused to the Australian industry by dumped goods exported to Australia from India by all exporters other than JSW Coated, POSCO Steel and Uttam Galva was negligible (Section 8.7 refers). Therefore, the Commissioner must terminate the investigation in relation to India.¹¹

- 14 More generally, as the termination concerned exports from India, the Commission stated:

Accordingly, the Commissioner is satisfied that dumped goods from India have not materially influenced BlueScope's prices and have not (as highlighted by Sections 7.5.1 and 7.9) caused BlueScope to experience reduced sales volumes. It follows that the dumped goods from India have not caused BlueScope to experience adverse profit effects.

Taking this into account, the Commissioner has found that the injury, if any, to BlueScope caused by the dumping of goods exported to Australia from India is negligible.¹²

- 15 The decision made by the Commission in INV 249 was clear. Injury suffered by the Applicant from exports from India, if any, was negligible.

2 Reasons for the termination

⁹ The investigation period for INV 249, 1 July 2013 to 30 June 2014 is within the inquiry period for INV 370.

¹⁰ ADN 2015/93 - Zinc Coated (Galvanised) Steel Exported from India and the Socialist Republic of Vietnam.

¹¹ See public record document number 069 Termination Report No 249 – Alleged dumping of Zinc Coated (Galvanised) Steel Exported from India and the Socialist Republic of Vietnam at page 58.

¹² *Ibid* at page 55.

16 As it relates specifically to our client, the Commission found:

Whilst the comparisons undertaken by the Commission in the preceding sections indicated a level of price undercutting at the aggregate, product and customer levels for dumped goods imported from Essar Steel, it was found that similar, or in some cases more extensive, undercutting was also evident during the investigation period in relation to undumped imports from India and Vietnam, and in relation to galvanised steel containing alloys.¹³

17 In making its determination in INV 249, the Commission chose to compare the weighted average price of imported goods from India and Vietnam with countries not subject of the investigation, stating:

A comparison of aggregate weighted average FIS prices for imported goods from other countries with BlueScope's prices was also considered relevant, given the significant volume of galvanised steel supplied from sources other than India and Vietnam in the investigation period.¹⁴

18 In making this comparison, the Commission found that:

This comparison showed that FIS prices constructed from the ACBPS import database for Taiwan (responsible for the largest proportion of total imports during the investigation period), undercut BlueScope's selling prices at rates that were, in the majority of cases, greater than the rates of undercutting already identified for Essar Steel.¹⁵

19 While the Commission focused its comparison on imports from Taiwan, its determination was not limited in this regard, stating:

Whilst the ACBPS import database is limited in its ability to fully distinguish the different product mixes imported to Australia, the Commission considers that this analysis provides a reasonable indication that prices other than those of dumped goods from India may be influencing the prevailing market prices in Australia, including those for BlueScope. In particular, the volume and prices of goods from Taiwan containing alloys appear to be a contributing factor.¹⁶

20 As illustrated above, the key point found by the Commission was that after comparison of price undercutting by dumped imports with that by other imports, it was determined that the other imports were "undercutting" as much as any dumped imports, if not more so.

21 Further, ADRP Report No 26 states:

There are some factors which favour the conclusion that more than negligible injury was caused, However, on balance, I am satisfied that any injury that was or may have been caused was negligible because:

- (a) *BlueScope's performance in the market as a whole improved during the investigation period;*
- (b) *goods, and dumped goods, from India were not a large portion of the market*

¹³ *Ibid* at page 53.

¹⁴ *Ibid* at page 52.

¹⁵ *Ibid.*

¹⁶ *Ibid* at page 53.

- as a whole;
- (c) injury in the building sector was caused by Taiwanese goods;
 - (d) in relation to the distribution sector:
 - (i) BlueScope's position improved during the investigation period; and
 - (ii) there were a number of other participants the distribution segment of the market whose goods were either not dumped or were not from India, each of whose goods undercut BlueScope's prices.¹⁷

3 Relevance of findings of previous investigation

- 22 Given the clear findings of the Commission and the ADRP, the allegations now made by the Applicant have to be seen as being misleading and unreasoned. In the Consideration Report, the Commission states:

The applicant claims that injury in terms of this application commenced in 2013/14 following the imposition of anti-dumping measures in August 2013 on exports from China, Korea and Taiwan. The applicant further claims that material injury has continued in 2015/16 as the dumped and subsidised imports of galvanised steel from India, Malaysia and Vietnam have prevented BlueScope from achieving adequate returns on sales.¹⁸ [underlining supplied]

- 23 In INV 249 the Commission was not satisfied that the Applicant suffered material injury during the investigation period, which was 1 July 2013 to 30 June 2014. Despite this, the Application claims that material injury commenced in the period of 1 July 2013 to 30 June 2014 and has continued in 2015/16. The Applicant has simply chosen to disregard the determination of the Commission. INV 249 is directly relevant to this investigation and cannot be overlooked.
- 24 Notwithstanding the attitude of the Applicant, as shown in this submission, the performance of the Applicant and that of Indian exporters since the 2013/2014 period directly contradict the Applicant's claims of "continued injury" caused by any exporters, and in particular by Indian exporters.

C Financial position of BlueScope Steel

- 25 The corporate group of which the Applicant forms part has business operations not just in Australia, but around the world. Generally, the last few years have been very positive for the Applicant. As noted in general comments from a representative of Cedex Steel and Metals Pty Ltd ("Cedex") that appear on the public record:

- i. *BlueScope has experienced continual growth over the last five year period. This has been attributed to costs cutting, increased market share and acquisitions of downstream manufacturers.*
- ii. *Sales of galvanised products have increased by 30% since 2013 due to growth of housing and construction market sectors.*
- iii. *BlueScope EBIT has improved from 2013 of \$51.7million to expect \$570 million in 2015/16 with a 1st half market guidance for 2016/17 of \$510 million.*

¹⁷ See ADRP Report No. 26 – *Galvanised Zinc Coated Steel exported from India* at page 13.

¹⁸ See public record document number 002 Consideration Report INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 44.

iv. *BlueScope Market dominance and market share has had a continued growth.*¹⁹

26 This information is supported by public announcements made by the Applicant, one of which states, in relevant part:

*BlueScope announced today that its preliminary unaudited underlying earnings before interest and tax (EBIT) for the six months ended 31 December 2016 is expected to be around \$600 million, compared with prior guidance of at least \$510 million. This represents growth of approximately 160 per cent on 1H FY2016.*²⁰

27 Amongst other things, the statement attributes this increase to:

The improved performance since the Company's last update at the Annual General Meeting on 10 November 2016 is mainly due to:

- *stronger steel prices and spreads across our businesses but particularly benefitting our Australian Steel Products and New Zealand and Pacific Steel operations;*
- *the impact of stronger than expected iron ore prices on export iron sands profitability; and*
- *productivity improvements, including further cost reductions, in the Australian Steel Products, North Star BlueScope Steel and New Zealand and Pacific Steel segments.*²¹

28 There can be no doubt that the Applicant is thriving in the current economic conditions. Despite this, in its Application the Applicant attempts to present itself as a business that is in significant distress due to dumped imports.

29 As noted in the Verification Report for Mitsubishi Australia Pty Ltd ("Mitsubishi"):

The company representative made the following general comments during the visit:

- *The comments BlueScope make in their application are contrary to its ASX announcements, in relation to injury suffered compared to positive ASX announcements.*²²

30 We submit that the Applicant is using the anti-dumping system to "bully" fringe exporters, to reduce fair competition and to increase its dominance over the Australian market for the goods.

31 While the Applicant is not expressive of its fiscal accomplishments in the Application, its economic condition is not hidden. In particular, over the injury analysis period its market share has actually increased, from 59% to 74%.²³ At a time where the Applicant alleges that it has suffered material injury as a consequence of exports from Malaysia, India and Vietnam,

¹⁹ See public record document number 049 - Cedex Metal Verification Report INV 370 – *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 8.

²⁰ See ASX Release, 'BLUESCOPE EXPECTS HALF YEARLY UNDERLYING EBIT LIFT TO \$600M', <https://www.bluescope.com/media/2216/170124-asx-release-earnings-update.pdf>.

²¹ *Ibid.*

²² See public record document number 052 Mitsubishi Australia Pty Ltd Verification Report – INV 370 *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 8.

²³ With the addition of New Zealand imports - see public record document number 002 Consideration Report INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 50, and section D (2) of this submission.

its share of the market for the goods has increased by nearly 15%.

- 32 It is true that an increase in market share is not necessarily accompanied by increased profitability, in that an enterprise may secure its increase by way of reducing its prices. However the Applicant's experience is not of that nature. Both the Applicant's profit and profitability has increased significantly, since the 2013/14 period in particular.
- 33 From the Application, it can be seen that the Applicant has experienced a profit variation with respect to the goods between 2014/15 and 2015/16 of 46%.²⁴

Index of profit variations (model, type, grade of goods)

Year	2012/13	2013/14	2014/15	2015/16
Index	100	189.50	1,357.64	1,988.22

Note: Data from Line 52 of Confidential Appendix A6.1

BlueScope acknowledges that it has experienced an improvement in profit since 2012/13 as anti-dumping measures took effect during the 2013/14 year. Despite the imposition of the measures, however, BlueScope has not been able to obtain selling prices that permit a suitable return on sales.

- 34 The Applicant's recovery is further demonstrated by its profitability variation over the period:²⁵

Index of profitability variations (model, type, grade of goods)

Year	2012/13	2013/14	2014/15	2015/16
Index	100	199.08	1,436.30	1,892.17

Note: Data from Line 54 of Confidential Appendix A6.1

BlueScope's profitability in 2015/16 remains negative and is not adequate in light of a return on assets employed. It is BlueScope's contention that this is due to the availability of dumped and subsidised imported galvanised steel from the countries nominated in this application that suppress and depress prices.

- 35 The comments made by the Applicant in trying to downplay the significance of its financial performance under recent and present market conditions are colourable and self-serving. Essentially, and as admitted by the Applicant, its claim is based on its desire to make even more money, and not on whether it has been caused material injury by alleged dumping. The goods under investigation occupy only a very a small part of a competitive market dominated by the Applicant and by other imports.
- 36 The Applicant argues that:

The injury sustained by BlueScope in 2015/16 due to dumped and subsidised imports from India, Malaysia and Vietnam is considered "material" as it has prevented BlueScope benefiting from savings made in the form of cost reductions that would have typically resulted in improvements in BlueScope's operating margin

²⁴ See public record document number 005 Application INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 29.

²⁵ *Ibid.*

(i.e. selling prices over costs).²⁶

37 This statement betrays the ambition of the Applicant. Competition forces innovation and efficiency. Any and every enterprise should be motivated by competition to invest and to reduce costs so as to bring to consumers the optimal product at the optimal price. If an enterprise reduces its costs and retains and improves its profits and profitability it is operating precisely in the way that the market expects. It must be clear to any observer that the Applicant's profitability has been restored, by a number of factors, over the last three financial years. The allegation that it is being caused material injury by reason of the goods under investigation – which account for 6.51% market share as compared to the Applicant's 74%, and that that the alleged material injury is due to and can be pinpointed to those goods, is insupportable.

D Considering allegations

1 Volume of exports and price undercutting

38 In its analysis of whether the Applicant has suffered material injury, the Commission will need to consider the volume of allegedly dumped exports and whether those allegedly dumped exports undercut the prices of the Applicant so as to cause it material injury. As paraphrased in the Consideration Report, BlueScope Steel submits that:

*...notwithstanding any improvement in its fixed unit costs, it could have further improved the profit and profitability of sales of the goods if not for the loss of sales volume and price undercutting of the alleged dumped and/or subsidised goods exported from India, Malaysia and Vietnam.*²⁷

39 Export volume data has been provided in the Application. We note the Commission's comments that:

*BlueScope's estimated volume of imports from India was higher than ABF data while for Vietnam and Malaysia, BlueScope's estimated volumes were slightly lower as compared to ABF data. BlueScope's estimate of the combined volume of imports from all three countries appears to be understated by approximately 10%.*²⁸
[underlining supplied]

40 The Applicant has provided the following volume data:²⁹

Country	FY 13	FY 14	FY 15	FY 16	% of FY 16 Total Imports
Other	13,155	23,297	90,049	65,278	34.2%
Japan	45,465	37,830	27,399	31,169	16.3%
Taiwan	71,557	72,397	55,005	30,638	16.0%

²⁶ *Ibid* at page 37.

²⁷ See public record document number 002 Consideration Report INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 48.

²⁸ *Ibid* at page 15.

²⁹ See public record document number 005 - Application INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 42.

Korea	17,373	14,064	11,823	19,762	10.3%
Vietnam	2,949	10,780	2,923	18,560	9.7%
Malaysia	0	2,481	8,553	15,375	8.0%
India	7,863	52,573	19,934	9,404	4.9%
China	94,790	8,724	5,725	859	0.4%
Total	253,152	222,145	221,412	191,044	100%

41 The Applicant has alleged that material injury has been caused by exports from India, Malaysia and Vietnam. These three countries accounted for a small proportion of total imports in 2015/2016. Given the Applicant's 73% domestically-supplied market share, the part of the market occupied by goods from those export sources is miniscule. The other imports into the Australian market in that year amounted to approximately 77% of total imports. Accordingly over three-quarters of imports are competing side by side with the Applicant and with the exports of the goods under consideration in this investigation. Clearly, there cannot be an appropriate analysis of the effect of countries subject to this application without comparison with the effect of the presence in the market of the other countries.

42 Based on the market share graph supplied at Figure 6 of the Verification Report with respect to the Applicant, percentage *market shares* – as opposed to percentages of *imports* - can be approximated as follows:³⁰

	FY 13	FY 14	FY 15	FY 16
BlueScope Steel	59.17%	68.64%	69.82%	72.78%
New Zealand (BlueScope subsidiaries) ³¹	2.07%	1.86%	1.07%	1.03%
India	1.18%	7.10%	4.14%	1.18%
Vietnam	0.50% ³²	2.96%	2.96%	2.96%
Malaysia	0.50% ³³	0.50% ³⁴	1.18%	2.37%
Other countries (without NZ)	7.99%	7.02%	7.21%	6.07%
Countries with measures	28.40%	11.83%	13.02%	13.02%

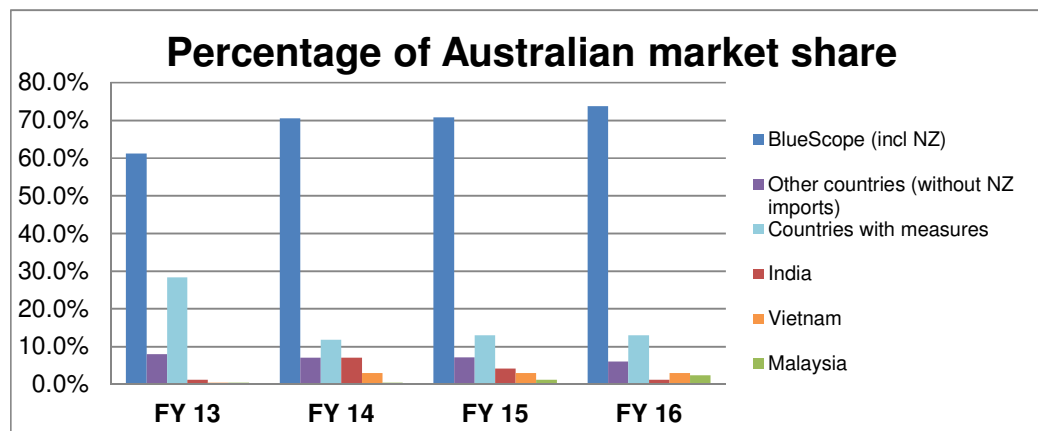
³⁰ See public record document number 055 Verification Report BlueScope Steel INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 14.

³¹ The market share for imports from New Zealand should be regarded as BlueScope's market share for reasons set out in Section D (2) below. New Zealand market share has been calculated on the basis of export data from 'Statistics New Zealand', the official New Zealand Government statistical website. The data is available at <http://www.stats.govt.nz/browse_for_stats/industry_sectors/imports_and_exports/overseas-merchandise-trade/HS10-by-country.aspx>.

³² As the market share is less than 1%, it has been estimated at 0.5%.

³³ Ditto.

³⁴ Ditto.



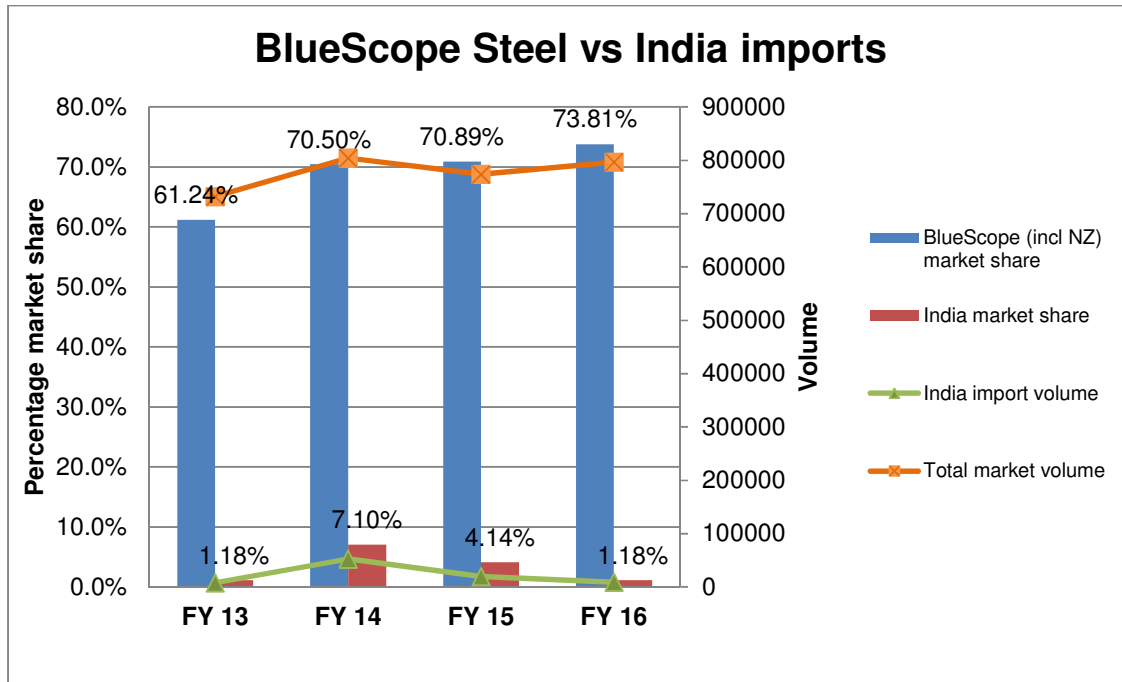
43 The following graph shows the stark contrast in market share between the Applicant and its competitors. Over the period, the Applicant’s market share has risen very considerably.

44 The domestic sales volumes for the Applicant has been approximated on the basis of Figure 5 in the Verification Report for BlueScope Steel,³⁵ and the market share information and the import volume for India supplied in the Application. It shows the following:

	FY 13	FY 14 (IP for INV249)	FY 15	FY 16 (IP)
Total market volume	730,000	800,000	765,000	790,000
BlueScope domestic volume	430,000	550,000	540,000	580,000
BlueScope volume increase	Base	Up 27.5%	Up 25.5%	Up 34.9%
BlueScope market share ³⁶	59.17%	68.64%	69.82%	72.78%
BlueScope market share increase	Base	Up 9.47%	Up 10.65%	Up 13.61%

³⁵ See public record document number 055 Verification Report BlueScope Steel INV 260 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 13.

³⁶ *Ibid* page 14 (estimated).



45 As illustrated by the table and in the graph above, the Applicant’s domestic sales volume has increased significantly over the investigation period, by approximately 35%. Exports from India, Malaysia and Vietnam have occupied an ever-dwindling proportion of the imports and an increasingly microscopic proportion of the overall market. In the case of India, this leads to the expectation that the market is not accepting of the prices on offer, presumably because they are not competitive.

46 This is particularly relevant in the consideration of the INV 249 determination. Referring to an earlier quote, the Commission there found:

Whilst the comparisons undertaken by the Commission in the preceding sections indicated a level of price undercutting at the aggregate, product and customer levels for dumped goods imported from Essar Steel, it was found that similar, or in some cases more extensive, undercutting was also evident during the investigation period in relation to undumped imports from India and Vietnam, and in relation to galvanised steel containing alloys.³⁷ [underlining supplied]

47 This is similarly noted by the Applicant in the Application itself:

...the Commission found that “other products, which represent a higher proportion of the total market, could also be of influence” in BlueScope’s pricing decisions.³⁸

48 In carrying out this analysis, we note the following comment from Cedex:

International price of the goods have been increasing since February 2016 and continue to rise due to the raw material costs escalating. However BlueScope is

³⁷ See public record document number 069 Termination Report No 249 – *Alleged dumping of Zinc Coated (Galvanised) Steel Exported from India and the Socialist Republic of Vietnam* at page 53.

³⁸ See public record document number 005 Application INV 370 - *Investigation into dumping and subsidisation of zinc (coated) galvanised steel exported from India, Malaysia and Vietnam* at page 21.

currently holding the price levels which is creating its own price suppression. Documented price offers have been provided to the ADC of which has shown that Blue Scopes current price level of Galvanised product to be considerable lesser in value than that of imported product (between AUD\$XX - \$XX per tonne).³⁹

- 49 In making these comparisons the price of goods subject to the measures, and those neither subject to the measures nor to the Application, must be considered. The recurrent claim made by the Applicant, which is that its import parity policy is driven by allegedly dumped imports, must be fully interrogated. Moreover, a valid question for the Commission must be whether the adoption of a policy like that is sensible for an increasingly dominant market player such as the Applicant. Rather than being profit motivated it seems to be driven by a self-defeating desire to support anti-dumping applications such as the one presently under investigation. We expect that the Applicant's competitors have no doubts about the aggressive response of the Applicant towards their pricing, meaning that the constant regression to a policy that seeks to undercut imports is itself holding back the Applicant from meeting its "expectations" – as unrealistic as they might be.
- 50 Whether or not the Commission supports the allegations of dumping and of subsidisation, the facts are that the Applicant's performance has been constantly and strongly trending upwards, and that it does not present as an industry suffering material injury at all, regardless of alleged cause. In considering what impacts the goods from the countries under investigation might have, the facts are that imports overall have a minority position in the market, that imports from the countries under investigation have an even smaller position, **[CONFIDENTIAL TEXT DELETED – information on Essar Steel's export volumes]**, and that both the Applicant's market dominance and the pricing behaviour and volumes of other exporters must be carefully taken into account.

2 New Zealand

- 51 One of the categories of imports is referred to as "Other imports" by the Applicant. We submit that a significant amount of these goods are exported from New Zealand. As the Commission will be aware, the Applicant operates a fully owned subsidiary in New Zealand referred to in the Application as "New Zealand & Pacific Steel Products". It is understood that this company also manufactures the goods subject to the Application. In the context of this investigation it is important to consider imports from New Zealand in the analysis, as the price of these imports are also highly relevant to any allegations of price undercutting and material injury.
- 52 In its Verification Report, Cedex commented:
- vii. *New Zealand steel which is a wholly owned company of BlueScope continues to be the greater contributor to the total imports.*
 - ...
 - ix. *Regions such as Taiwan, India and particularly New Zealand Steel have been the price setters in the Australian market.⁴⁰*
- 53 The volume data provided by the Applicant does not separately identify the volume of imports from New Zealand. However, official data is available from the New Zealand Government which provides the volume and FOB value of exports of the goods from New Zealand to Australia. Based on this data, the market share of NZ exports, and the AUD price

³⁹ See public record document number 049 Cedex Metal Verification Report INV 370 – *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 8.

⁴⁰ *Ibid.*

per tonne can be estimated. This information is in the table below.

	FY 13	FY 14	FY 15	FY 16
NZ exports (MT)	15114.61	14,944.45	8,270.87	9,759.94
Aust market share	2.07%	1.86%	1.07%	1.03%
AUD per tonne	\$791.00	\$907.99	\$929.71	\$787.68

- 54 Apart from the GUC imported from the Applicant's New Zealand subsidiary, the Applicant's New Zealand subsidiary also controls an Australian entity known as New Zealand Steel (Australia) Pty Limited. There are concerns amongst importers that goods are being imported from India into Australia through this Australian entity. In its Verification Report, Cedex Steel has commented:

*Currently BlueScope's capacity and ability to supply the domestic market is under extreme pressure. To assist with capacity issues it is widely reported that a recent shipment of xxxxx tonnes+ has been imported by BlueScope Steel under the banner of New Zealand Steel from India for the Melbourne stockist. It is also reported that a second shipment is due shortly.*⁴¹

- 55 The Mitsubishi Verification Report comments:

*BlueScope have recently (through subsidiary New Zealand Steel) imported significant volumes of galvanised steel (the goods under consideration) from India into Australia, which they now claim as dumped. It is requested the Commission examine BlueScope Group's imports to ascertain reason (lack of capacity etc.), what quantity of BlueScope imports from India represent in relation to total Indian imports during the same period and how this should be assessed in relation to causation of material injury (if any).*⁴²

- 56 In this regard, we further note the Commercial Metal Pty Ltd Verification Report stating:

*CMC alleges that the applicant has imported galvanised steel from countries subject of the current investigation. This shows that not all needs for various grades of galvanised steel is met by domestic producers.*⁴³

- 57 The Commission makes the comment in the Verification Report:

*However, no evidence for this was provided.*⁴⁴

- 58 With respect, our client submits that it should not be for an interested party to have to provide evidence of something when the Commission has the unique power, and the responsibility, to discover that evidence for itself. Legitimate concerns have been raised by three separate

⁴¹ *Ibid.*

⁴² See public record document number 052 Mitsubishi Australia Pty Ltd Verification Report INV 370 – *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 8.

⁴³ See public record document number 057 Commercial Metal Pty Ltd Verification Report INV 370 – *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 8.

⁴⁴ *Ibid.*

importers, and are now also being raised by our client. It is difficult for the exporting and importing communities to piece together a full market picture, given the confidentiality of data available from the Australian Bureau of Statistics and the commercial confidentiality observed by market participants. Interested parties must therefore rely upon the investigative ability and good offices of the Commission for that purpose.

59 [CONFIDENTIAL TEXT DELETED – information regarding Indian imports]

60 If a wholly owned subsidiary of the Applicant is importing the goods from India into Australia then that is a material issue in this investigation and should be a material concern for the Commission. It is an issue that must be considered in any analysis involving export volumes and prices from India. It impacts any material injury allegations made by the Applicant in relation to exports from India. It is imperative that the Commission investigate these matters as part of its deliberations on the allegations of material injury suffered.

3 Other factors

61 The Applicant considers that:

...it remains ready to supply increased demand in Australia and considers that the only material factor adversely impacting the Australian industry is the dumped and/or subsidised exports of galvanised steel from India, Malaysia and Vietnam.⁴⁵

62 The Commission has preliminarily considered that the goods have caused material injury to the Australian industry through:

- lost sales volumes;
- loss of market share;
- price depression;
- price suppression;
- reduced sales revenue;
- reduced profit and profitability;
- reduced employment; and
- reduced return on investment.

63 However, we submit that the Applicant has not provided sufficient detail to support these allegations. The Applicant has increased its market share from 59% to 73% over the period. The Applicant's argument, as noted in the Consideration Report, is that as imports from Malaysia, India and Vietnam collectively rose from 2% to 6%:

... in the investigation period BlueScope could have potentially gained an additional 4% of the market share increase experienced by the countries the subject of the application.⁴⁶

64 With the great majority of other imports from countries not being subject to this investigation,

⁴⁵ See public record document number 055 Verification Report BlueScope Steel INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 21.

⁴⁶ See public record document number 002 Consideration Report INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 50.

it is difficult to understand how the Commission would be able to conclusively state that the Applicant would itself have gained an added 4% of market share. This ignores the ability of any of the other export sources to openly and unrestrictedly compete in the market. It also ignores the fact that as an importer of the goods under consideration from New Zealand – if that is proven - the Applicant obviously did not have or does not have the capacity to service the entirety of the market that has become available to it over recent years. Why would the Applicant secure the 4% disputed market share when it is presently importing both from New Zealand, and from India under the guise of its New Zealand subsidiary? How can exports from India have caused injury in the sense of sales not being available to the Applicant when it was the Applicant itself that was importing the goods from India and thereby depriving itself of those sales?

- 65 There are a number of overlapping allegations between INV 249 and INV 370 in relation to injury suffered. In INV 249, it was alleged that the Australian industry suffered:
- price depression;
 - price suppression;
 - reduced profits & profitability; and
 - reduced return on investment.
- 66 The Commission noted in its finding that the Applicant had an increase in production, sales volume and market share.
- 67 INV 249 was concluded a little over a year before the initiation of INV 370. Understandably, similar issues have been raised in the most recent investigation. Due to the parallels in the investigation, it is expected that the Commission, using the same methodology, will remain consistent in its determinations and determine that injury was not suffered by the Applicant from exports from India, or that any injury suffered by the Applicant could only be considered negligible.

E Cumulation of injury

- 68 Based on the preceding information, we submit that the proposition that the Applicant has suffered material injury is far-fetched and has even less foundation on this occasion than it did in INV 249. However, if the Commission should determine that material injury has been suffered, it is our client's position that exports from India are separate, and should be found to have been separate, from those of Malaysia and Vietnam on the question of causation.
- 69 As identified in the Consideration Report, subsection 269TAE(2C) of the *Customs Act 1901* ("the Act") sets out the requirements for the cumulation of injury. The Commission has taken the following preliminary position:

Based on the above points, the Commission has looked at the cumulative effect of the exports from the countries subject to the application to determine whether the Australian industry has suffered injury caused by dumped goods exported from India, Malaysia and Vietnam, and suffered injury caused by subsidised goods from India and Vietnam. Furthermore, the Commission has assessed the combined effect of dumped and subsidised goods on the injury to the Australian industry. Further consideration will be given to this issue during the investigation.⁴⁷

- 70 To assist the Commission in its consideration, we note that the relevant subsections of

⁴⁷ *Ibid* at page 43.

Section 269TAE(2C) of the Act state:

In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportations of goods to Australia from different countries of export, the Minister should consider the cumulative effect of those exportations only if the Minister is satisfied that:

...

(d) *if the determination is being made for the purposes of section 269TG or 269TH - for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and*

...

(e) *it is appropriate to consider the cumulative effect of those exportations, having regard to:*

(i) *the conditions of competition between those goods; and*

(ii) *the conditions of competition between those goods and like goods that are domestically produced.*

1 Negligible volumes

71 We submit that based on the below, the exports of India should not be cumulated with Vietnam and Malaysia as there are reasonable grounds to believe that total imports from India account for less than 3% of the total import volume over the investigation period.

72 Specifically, subsection 269TDA(3),(4) and (5) of the Act state:

(3) *If:*

(a) *application is made for a dumping duty notice; and*

(b) *in an investigation for the purposes of the application the Commissioner is satisfied that the total volume of goods the subject of the application:*

(i) *that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and*

(ii) *that have been, or may be, dumped;*

is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

What is a negligible volume of dumped goods?

- (4) *For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:*
- (a) *when expressed as a percentage of the total Australian import volume, it is less than 3%; and*
 - (b) *subsection (5) does not apply in relation to those first-mentioned goods.*

Aggregation of volumes of dumped goods

- (5) *For the purposes of subsection (4), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped if:*
- (a) *the volume of such goods that have been, or may be, so exported from that country and dumped, when expressed as a percentage of the total Australian import volume, is less than 3%; and*
 - (b) *the volume of goods the subject of the application that have been, or may be, exported to Australia over that period from another country of export and dumped, when expressed as a percentage of the total Australian import volume, is also less than 3%; and*
 - (c) *the total volume of goods the subject of the application that have been, or may be, exported to Australia over that period from the country to which paragraph (a) applies, and from all countries to which paragraph (b) applies, and dumped, when expressed as a percentage of the total Australian import volume, is more than 7%.*

73 We note, that “reasonable examination period” is defined under section 269TDA(17) of the Act as:

...a period comprising:

- (a) *the whole or a substantial part of the investigation period; or*
- (b) *any period after the end of the investigation period that is taken into account for the purpose of considering possible future importations of goods the subject of the application.*

74 The Applicant contends that the volume of imports from India for the investigation period is 4.9% of total imports. Based on the evidence at hand, this percentage is overstated. In the first instance, we refer to the Commission’s comments that the Applicant has overstated the volume of imports from India, with the imports from Malaysia and Vietnam having been understated.⁴⁸

75 Secondly, we refer the Commission to the comments above from different importers, and the evidence provided in this submission, that contend that the Applicant has imported goods via

⁴⁸ *Ibid* at page 15.

its wholly owned New Zealand based subsidiary from India into Australia.

- 76 As advised above, the fact that the Applicant, through its subsidiaries, imported the goods from India – if established – must at least undermine its injury allegation in so far as the goods exported from India is concerned. To that end, the Commission should be alert to any conduct which is intended to or which has the effect of artificially inflating the volume from India, such that it exceed the 3% negligible volume level. We submit that the import volume of goods from India by the Applicant itself must be identified, and excluded from the consideration of whether the volume of alleged dumping and/or subsidisation was negligible.
- 77 After appropriate adjustments the Commission may determine that the goods imported from India account for less than 3% of total imports for the investigation period. If this determination is made, the Commission must not cumulate the imports from India with those of Vietnam and Malaysia. Further, assuming other relevant sections of the legislation are met, the Commission must terminate the investigation in so far as it relates to India, as required by subsection 269TDA(3) of the Act.

2 Conditions of competition

- 78 If the Commission were to consider these issues and find that it was unable to terminate the investigation as against exports from India on the basis that the volume of exports from India was negligible, the Commission must still consider whether it is appropriate to cumulate the exports in determining whether those exports have caused material injury. If the circumstances are such that exports from India should not be cumulated, then it would be incumbent on the Commission to consider whether exports from India had themselves caused material injury – a conclusion which is of course more untenable than the suggestion that the exports from the three countries have together caused material injury.
- 79 The Commission's *Dumping and Subsidy Manual* provides guidance on this point, commenting:

The conditions of competition are assessed between the goods imported from all countries and the conditions of competition between the exported goods and like goods that are locally produced by the Australian industry. Such assessment might be, but is not confined to:

- *Physical characteristics and uses of the domestic like product and imports from each of the countries whose imports may be cumulated, as well as the degree of interchangeability, fungibility, or substitutability. Considerations of customer perception and specific customer requirements; tariff classification may be relevant in this regard;*
- *For the purpose of analysing threat of material injury, the levels and trends in the volume of imports from each of the countries whose imports may otherwise be cumulated, either in absolute terms or relative to production or consumption in the importing country.⁴⁹*

- 80 There are notable differences in volume levels, volume trends and estimated prices between India and the other two countries subject to this investigation, Malaysia and Vietnam, suggesting to us that this is a case in which cumulation is not appropriate.

(a) Decline in India exports

⁴⁹ See Anti-Dumping Commission, *'Dumping and Subsidy Manual'* at page 127

81 As per the import data in the Application:⁵⁰

Country	FY 13	FY 14 (IP for INV249)	FY 15	FY16 (IP)	% of FY 16 Total Imports
India	7,863	52,573	19,934	9,404	4.9%
Malaysia	0	2,481	8,553	15,375	8.0%
Vietnam	2,949	10,780	2,923	18,560	9.7%

82 The data demonstrates that the volume of exports from India have decreased considerably from the 2013/14 financial year. From a high of 52,573, imports from India have dropped to 9,404, representing a decrease of over 80%. In contrast, imports from Malaysia have increased substantially over the period, while imports from Vietnam have also increased. The Commission states that imports from the countries concerned have increased from 2% to 6%.⁵¹ That may be true in a straight comparison with the 2012/2013 financial year, however this ignores import trends in the intervening period. By “grouping” the three countries together, the comparison masks the substantial decrease specifically related to imports from India.

83 The Applicant states that exports from India over the inquiry period have increased by 9%. This is just “playing with numbers”. When the 2015/16 volumes are compared with the volume in the year that was four years earlier, there is a small increase. However, by using such a low-base year the huge downward trend in the more recent years has been glossed over. Further, the most recent periods clearly provide a more relevant context, in light of the Commission’s finding that, even when the imports from India were at their historical high point in 2013/14, being the POI for INV249, there was no evidence that the Applicant suffered material injury caused by dumped imports from India. In addition, we note the Commission’s comments that the Applicant has *overstated* the imports from India for this POI.⁵²

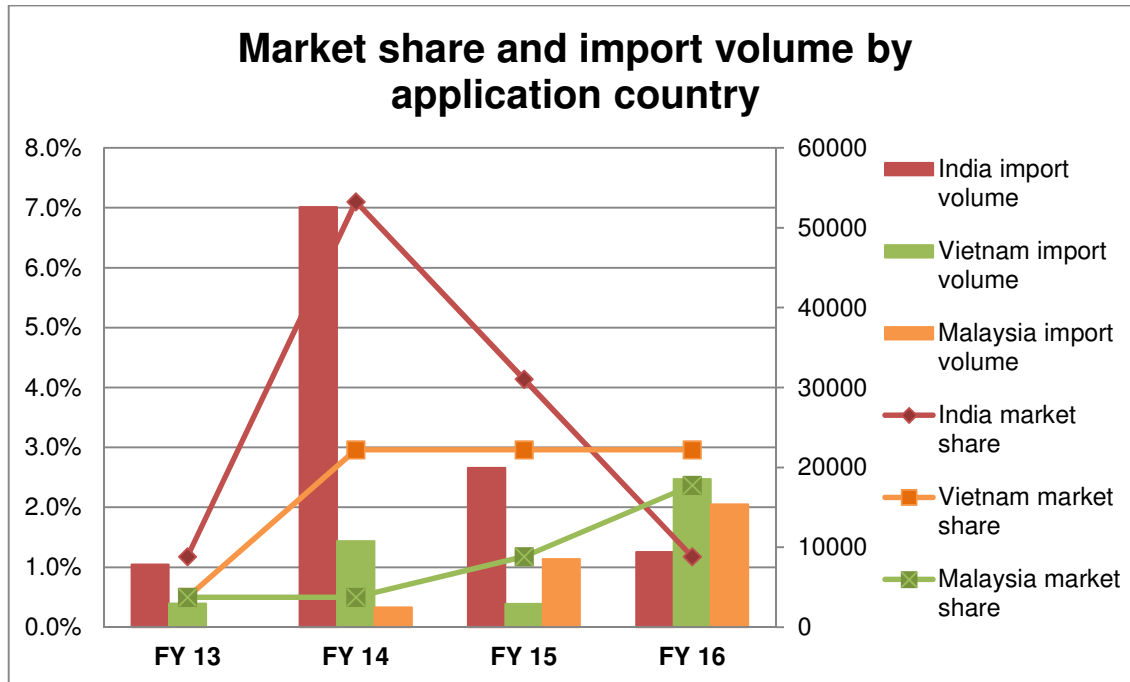
84 **[CONFIDENTIAL TEXT DELETED – information on Essar Steel’s export volumes]**

85 Further, as the graph below shows, trends for both market share and import volume from India are in stark contrast to Vietnam and Malaysia.

⁵⁰ See public record document number 005 Application INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 42.

⁵¹ See public record document number 002 Consideration Report INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 50.

⁵² *Ibid* at page 15.



(b) Higher India export price

86 Further, the Applicant has estimated prices in relation to alleged price undercutting for the three countries as follows:⁵³

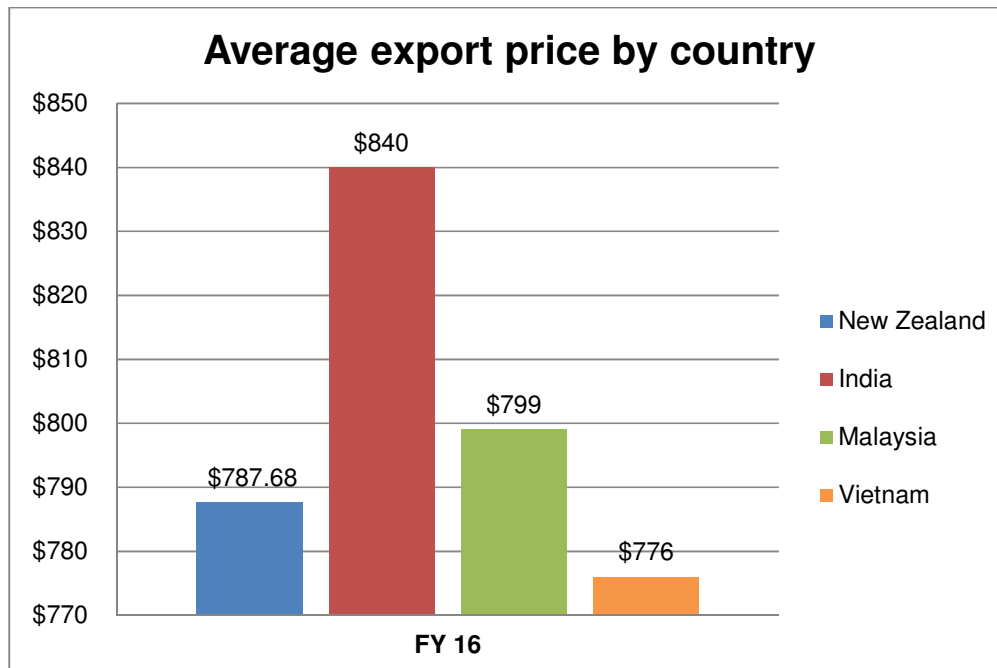
- India: AUD 840
- Malaysia: AUD 799
- Vietnam: AUD 776

87 Notably, the estimated price of exports from India is higher than those of Malaysia and Vietnam. The estimated Indian price is nearly 10% more than that of Vietnam. This presents a strong point of differentiation for any price undercutting analysis.

88 In addition, this information does not consider the export prices of exports from other countries. As mentioned earlier, this is clearly an important consideration given the much larger volume of imports from those other countries, and was considered one of the key factors in the context of the termination of INV 249.

89 As a straightforward example for this investigation, the AUD export price for exports from New Zealand has been calculated based on official New Zealand data. That information for the investigation period has been plotted on the graph below:

⁵³ See public record document number 002 Consideration Report INV 370 - *Investigation into dumping and subsidisation of Zinc (Coated) Galvanised Steel exported from India, Malaysia and the Socialist Republic of Vietnam* at page 17.



90 As illustrated, the average export price calculated for India is considerably more than that of both Malaysia and Vietnam. In addition, there is a significant difference between the India average price and that of New Zealand, which is likely to be prices charged by the Applicant's own subsidiaries. The Applicant has not declared that these exports are dumped, despite their low prices. We submit that they are extremely relevant to this investigation in terms of their price signalling effect on the market and, to whatever degree they are imported, their volume effect.

91 Considering the significant differences in volume trends and estimated prices between India and the other two countries subject to the application, our client submits that it is not appropriate to consider the cumulative effect of the exportations from the three countries. The information supports our client's position that there should not be cumulation of its exports with those of the other countries should the Commission proceed to consider this issue.

F Conclusion

92 The renewed and unwarranted investigation into the goods is of significant concern for our client. Repeated investigations into the same goods and circumstances places a substantial burden on the exporters that become caught up in such investigations. It should not surprise the Commission if exporters continue to withdraw volume from the Australian market, **[CONFIDENTIAL TEXT DELETED – exporter/s]**, due to the risk and cost of regular dumping investigations. The removal of competition from the Australian market is not the goal of the anti-dumping system, and the Commission is requested not to mistake competition and the economic and pricing efficiencies that it encourages with an automatic assumption of injury. The claim that the Applicant would have made even more money if it had no competition is obviously correct but plainly axiomatic.

93 Acceptance of this unjustified Application shortly after the termination of INV 249 is also contrary to the Australian Government's outspoken messages in support of trade between

India and Australia. By initiating this investigation in circumstances of the rude health of the Applicant, and by targeting the smallest importers amongst all exporters, the impression given is that Australia is not at all “open for business”.

94 On behalf of our client Essar Steel, we submit that:

- the Applicant has not suffered material injury in the investigation period, whether absolutely or as a result of allegedly dumped and subsidised exports from the countries under investigation;
- if material injury is found, it cannot be said to have been suffered as a consequence of exports from India in general, nor as a consequence of exports from Essar Steel in particular;
- based on the preceding information, imports from India should not be cumulated with imports from Vietnam and Malaysia for the purpose of material injury analysis.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Zhan', with a large, stylized initial 'Z'.

Charles Zhan
Associate