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10th March 2017

The Director
Operations 3
Anti-Dumping Commission
GPO Box 1632
Melbourne Victoria 3001

Public File

Dear Sir/Madam,

Re Investigation No. 370 – Galvanised steel exported from India, Malaysia and Vietnam – Submission on behalf of Hoa Sen Group of Vietnam (authored by M J Howard of Staughtons Lawyers)

I. Introduction

I refer to the submission dated 10 February 2017 on behalf of the Vietnamese exporter of zinc coated galvanised steel to Australia. BlueScope Steel Limited (“BlueScope”) seeks to refute a number of incorrect and unsubstantiated statements made by the author.

BlueScope requests the Commission to disregard the submission made on behalf of the Hoa Sen Group (“HSG”) as it is predicated on baseless accusations and claims that are not supported by any evidence.

II. Aims and objectives of HSG submission

It would appear that the purpose of the HSG submission is a brazen attempt at discrediting BlueScope’s claim that it has suffered material injury from dumped exports from India, Malaysia and Vietnam, and subsidised exports from India and Vietnam. The representations have lost focus and allege an abuse of market power by BlueScope, without any evidence of fact. BlueScope strenuously denies and objects to the allegations of abuse of market power in HSG’s submission.

III. Baseless accusations

The HSG submission contends:

- *“the applicant may have intentionally orchestrated the so-called price undercutting examples which obviously include offers in its own Sheet Metal Supplies and a major rollformer end user ‘xxxxx’¹”* and *“offers may have been obtained as simply ‘price bait’²”* inferring BlueScope has engaged in inappropriate conduct and orchestrated injury experienced in its application;
- BlueScope has used the price undercutting offers as a *“form of predatory pricing”³* and that the price injury is *“self-inflicted”* further intimating that BlueScope has orchestrated injury; and
- That *“the collated actions of the Applicant are more consistent with a dominant monopoly that would have the effect of eliminating the remnant of independent competition”⁴* suggesting that BlueScope has engaged in anti-competitive behaviour.

¹ HSG Submission, P.2.

² HSG Submission, P.2.

³ HSG Submission, P.3.

BlueScope submits that the assertions on behalf of HSG, including those listed above, are completely hollow and lack supportive evidence, and strenuously denies engaging in any of the alleged behaviours.

IV. Incorrect assessment of economic performance

It is argued in the HSG submission that BlueScope has not suffered injury as it “has become increasingly profitable with a first half FY 17 forecast EBIT of \$600 Million as per Management guidance dated 24th January 2017⁵”. Additionally, HSG suggests that BlueScope has benefited from the “\$60 million five year tax break from the NSW Government and the Gillard Government in 2011 committed \$300 million for Australia’s two steel producers under the Steel transformation plan (sic) of which around \$164 million was understood to have been paid by the Government”. The HSG submission also references “five profit upgrades since commencement of the period under investigation”⁶.

The claims on behalf of HSG are mischievous. Firstly, it should be noted that BlueScope’s FY 17 profit announcement relates to a six-month period immediately following the 2015/16 investigation period of Investigation No. 370.

Secondly, BlueScope’s first half 2017 profit was announced on 20 February 2017 as \$359.1 million. In an article the following day in *The Australian*⁷, it was highlighted that 60 per cent of BlueScope’s earnings are “outside Australia”. The remaining 40 per cent earnings are achieved within a very competitive Australian environment, and do not reflect the performance of BlueScope’s domestic zinc coated galvanised steel. The Anti-Dumping Commission (“the Commission”) has been provided with BlueScope’s domestic zinc galvanised steel performance (in Appendix A6.1 format) for this period.

Thirdly, the referenced funding under the Steel transformation plan was compensation provided by the Federal government in relation to the impost of the introduced carbon tax. The intimation that BlueScope “profits” under the plan is incorrect.

BlueScope is a large diversified steel company with operations in Australia and internationally. The profit announcement on 20 February relates to the total BlueScope operations, and not only the goods under consideration. It is therefore incorrect to attempt to correlate the economic performance of the total BlueScope portfolio (which is heavily influenced by its outside-Australia operations) with the narrow domestic performance of BlueScope’s zinc coated galvanised steel business.

V. Further matters raised by HSG

BlueScope seeks to comment on the following additional issues raised by HSG.

(a) *Reduced export volumes*

HSG is suggesting that as its export volumes to Australia have fallen in the period following Investigation No. 249 (investigation period of 2013/14), that the decline is grounds for not cumulating the injurious exports with those from India and Vietnam.

HSG would be aware that Subsection 269TAE(2C)(e) of the Customs Act enables the Minister to consider the cumulative effect of the dumped exportations (i.e. from India, Malaysia and Vietnam) having regard to:

⁴ HSG Submission, P.21.

⁵ HSG Submission, P.4.

⁶ HSG Submission, P.24.

⁷ The Australian, 21 February 2017, P.19.

- (i) The conditions of competition between those goods; and
- (ii) The conditions of competition between those goods and like goods that are domestically produced.

On the basis that the dumped exports from the named countries exceeds 3 per cent of the total import volume for the 2015/16 investigation period and the Minister is satisfied as to the conditions of competition as mentioned above, the Minister is permitted to cumulate the dumped and injurious exports for the purpose of injury assessment.

(b) BSL exports of HRC to Vietnam

BlueScope's HRC exports to Vietnam are not the subject of Investigation No. 370. The matters raised on behalf of HSG have no bearing on the Commission's investigation into dumping and injury from exports of zinc coated galvanised steel exported from Vietnam.

(c) Particular Market Situation in Vietnam

BlueScope has made a recent submission in support of its position that a market situation for zinc coated galvanised steel applies in Vietnam. Please refer to EPR Folio No. 65.

(d) Subsidy programs – preferential loans, import duty exemptions, corporate income tax reductions

BlueScope provided prima facie evidence of the existence of the nominated subsidy programs in its application. The purpose of the Commission's inquiries with HSG is to validate whether the receipt of the benefits by HSG relate to the exported goods.

(e) Suggested change in Australian dynamics

BlueScope has noted the suggested percentages of share held by imports during the investigation period.

BlueScope submits that the Commission is best positioned to establish whether the dumped imports exceed the negligible volume levels and whether material injury has been experienced by the Australian industry from the dumping and subsidisation during the investigation period.

(f) Investigation No. 190

It is asserted on behalf of HSG that the material injury experienced by the Australian industry from dumping (that is dumped and subsidised exports from China, and dumped exports from Korea and Taiwan) was remedied via the imposition of measures following adoption of the recommendations by the Minister in Reports No. 190 and 193.

It is well documented in the subsequent investigations No. 249, 290 and 298 that exports from other countries (including India, Malaysia and Vietnam) and circumvention goods (exported from China and Taiwan) were at dumped prices subsequent to Investigations No. 190 and 193.

The 2015/16 investigation period is a separate period to Investigation No. 249 and requires independent analysis of dumping (and subsidisation), material injury and causal link. BlueScope refers to Consideration Report No. 370 detailing the Commission's satisfaction as to likely grounds for the publication of dumping and countervailing notices for the exported goods.

(g) Material injury

It is also contended in the HSG submission that BlueScope has “enjoyed a substantive increase of 7.5 per cent during the PUI; and significantly a 34.2 per cent increase since the 2012/13 reference period⁸” (the 2012/13 period being the investigation period in Investigations No 190 and 193).

BlueScope disagrees with the Vietnamese exporter’s contentions that the material injury experienced in 2012/13 has been remedied by measures imposed. Injurious exports continued from China and Taiwan and were the subject of inquiry in Investigations No. 290 and 298. Exports from India and Vietnam displaced volumes previously sourced from China. Due to the overlap of the anti-circumvention goods and the dumping from India (Essar Steel) and Vietnam (Nam Kim Steel Joint Stock Company), the Commission could not reliably attribute injury to the dumping.

HSG has at length suggested that BlueScope has injured itself due to affiliated party imports from India and the UAE. BlueScope would highlight that the imports have **not** occurred in the 2015/16 investigation period and hence any injury that may be attributed to these imports does not fall within the investigation period.

BlueScope notes HSG’s assessment of price movements for “coated” steel products, including post the investigation period. It is clear from HSG’s assessment that the Australian industry has experienced price depression in the 2015/16 investigation period.

(h) Non-injurious price

BlueScope rejects the proposed methodology for a constructed non-injurious price for zinc coated galvanised steel that includes an export price for HRC supplied into Vietnam. BlueScope’s application (and submission at EPR Folio 65) evidences that the HRC prices into Vietnam are heavily influenced by Chinese HRC export prices. Chinese HRC prices were the catalyst for a particular market situation finding in Investigation No. 190.

BlueScope submits that the appropriate methodology for a NIP is that determined from an unsuppressed selling price assessed from either Australian market selling prices unaffected by dumping or the Australian industry’s CTM&S plus a reasonable profit during the 2015/16 investigation period.

(i) Other factors

The HSG submission references further unrelated matters including the BlueScope share price and the future of the Port Kembla operations. BlueScope does not consider that the HSG submission has detailed how these factors are relevant in the context of Investigation No. 370.

VI. Conclusions

The Submission on behalf of HSG of Vietnam has sought to discredit BlueScope’s material injury claims in Investigation No. 370 by suggesting that BlueScope has engaged in inappropriate behaviour to present examples of injury. It is further alleged that BlueScope’s application for measures is an abuse of market power by a monopolistic supplier.

BlueScope rejects the assertions made on behalf of HSG. The HSG submission fails to provide any supporting evidence of its baseless claims. BlueScope respectfully requests that the Commission disregard

⁸ HSG Submission, P.13.

the HSG submission on the grounds that the assertions and contentions contained therein are not reliably evidenced.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4240 1214, or BlueScope's representative Mr John O'Connor on (07) 3342 1921.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'C Uphill', written in a cursive style.

Chad Uphill
Leader – Trade Affairs