

**Canberra**  
6/2 Brindabella Circuit  
Brindabella Business Park  
Canberra International Airport  
Australian Capital Territory 2609

Canberra +61 2 6163 1000  
Brisbane +61 7 3367 6900  
Melbourne +61 3 8459 2276

[www.moulislegal.com](http://www.moulislegal.com)

**Brisbane**  
Level 4, Kings Row Two  
235 Coronation Drive  
Milton, Brisbane  
Queensland 4064

**Melbourne**  
Level 39, 385 Bourke Street  
Melbourne  
Victoria 3000

Australia



commercial + international

3 April 2017

The Director  
Operations 5  
Anti-Dumping Commission  
Industry House, Level 7  
10 Binara Street, Canberra  
Australian Capital Territory 2601  
Australia

By email

Dear Director

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

As you know we represent Essar Steel Ltd ("Essar Steel") in relation to this investigation ("INV 370").

We refer to our previous letter on behalf of Essar Steel dated 13 February 2017 ("our First Submission"),<sup>1</sup> in which we made detailed comments concerning the claims made by BlueScope Steel Limited ("the Applicant"/"BlueScope") to the effect that it suffered material injury caused by dumped and subsidised imports from India.

In this letter, we wish to bring to your attention a number of other factors that are relevant to your consideration of the Applicant's injury claims.

### **1 The Applicant's ever strengthening financial position**

We commented on the Applicant's financial position in our First Submission. This has also been the subject of commentary from other interested parties,<sup>2</sup> as well as in the Commission's consideration report and verification report for the Applicant.<sup>3</sup>

With the turn of the year further information showcasing the robust financial position of the Applicant has become publicly available. All information that has been released by the Applicant illustrates the continued upward trajectory the Applicant is enjoying. This reality has been well reported.<sup>4</sup>

In our First Submission we noted that the Applicant had revised its earning predictions for the first half of financial year 2016-2017 from \$550 million to \$600 million. Based on the Applicant's

<sup>1</sup> See public record document number 063, submission by Essar Steel.

<sup>2</sup> See public record document number 062, submission Cedex Steel and Metal Pty Ltd and document number 064, submission by Hoa Sen Group.

<sup>3</sup> See public record document number 002 Consideration Report and document number 055 Verification Report BlueScope Steel.

<sup>4</sup> See '*BlueScope Steel delivers another profit upgrade*', Australian Financial Review (online) 24 January 2017 <<http://www.afr.com/business/infrastructure/bluescope-steel-delivers-another-profit-upgrade-20170123-gtxcvj>> and '*BlueScope posts strong first half result*', The Australian (online), 20 February 2017 <<http://www.theaustralian.com.au/news/latest-news/bluescope-posts-strong-first-half-result/news-story/fdcdf2e8a9ea9fed2ccea05eb19d97>>.

“1HFY2017 Results Press Release”,<sup>5</sup> the Applicant announced that it has not just met but even exceeded this very significant earning expectation. In that Press Release the Applicant declared:

*BlueScope lifted underlying EBIT by 162 per cent over 1H FY2016 to \$603.6 million. The strong growth was generated through delivery of productivity and cost improvements, sales growth, improved steel spreads and the benefit of the North Star acquisition.*<sup>6</sup> [underlining supplied]

This information correlates directly to the six month period *immediately after* the investigation period for INV 370. The stellar financial performances in a period with such proximity to the investigation provides a strong indication of the strength of BlueScope’s business in the investigation period. Indeed, the upward financial trajectory of the Applicant has been notable for a prolonged period, with each period building on the last.

We note that similar information has been brought to the Commission’s attention by the Hoa Sen Group (“HSG”).<sup>7</sup> In response, the Applicant has stated the following:

*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, 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.*<sup>8</sup> [references omitted]

There can be no doubt that BlueScope’s overseas operations have performed well. However this cannot detract from the equally evident proposition that BlueScope has enjoyed upward-trending performance in the key financial indicators for the goods subject to the investigation, as detailed in our First Submission.<sup>9</sup> The Applicant’s financial performance is amongst the best of the world’s steel industries, and this includes the performance of its Australian operations. The Applicant confirms that 40% of its earnings have been made “*within a very competitive Australian environment*”. This amounts to AUD143.64 million in profit, in the six month period immediately after the investigation period. This is a significant amount.

Indeed, specifically in relation to the Applicant’s Australian market operations, its ASX announcement states:

*The Australian steelmaking business has done an excellent job in boosting profitability and the business delivered good results, supporting the 2015 decision to continue operations at Port Kembla.*<sup>10</sup>

The Applicant does not operate only in the market for the goods under investigation. However, the Applicant is the only steel flat-product manufacturer in Australia. It dominates in most market sectors, especially in those sectors that correlate and cross-compete with the goods under consideration, such as in the aluminium zinc coated steel market, and in the downstream market with its flagship “COLORBOND” products. This means that the Applicant is in a position to make its own commercial

<sup>5</sup> BlueScope ASX Release ‘1HFY2017 Results Press Release’, 20 February 2017 <<https://www.bluescope.com/investors/asx-announcements/>>.

<sup>6</sup> Ibid, at page 1.

<sup>7</sup> See public record document number 064 submission by Hoa Sen Group, at page 4.

<sup>8</sup> See public record document number 072 submission by BlueScope, at page 2.

<sup>9</sup> See public record document number 063 submission by Essar Steel, at page 8.

<sup>10</sup> BlueScope ASX Release ‘1HFY2017 Results Press Release’, 20 February 2017 <<https://www.bluescope.com/investors/asx-announcements/>>, at page 2.

decisions as to how it prioritises and prices different goods. The end result of those commercial decisions has been the generation of significant profit for its Australian operations as a whole.

The Commission is reminded that the Applicant:

- controls over three quarters of the market for the goods;
- is in an increasingly healthy financial position; and
- openly states that the anti-dumping regime is part and parcel of its business strategy to maintain its controlling market position.<sup>11</sup>

We respectfully urge the Commission not to allow the anti-dumping framework to be used by the Applicant to boost its already stunning profit, and to put all competition in a convenient “stranglehold”.

## 2 Is the Applicant’s alleged injury an example of unnecessary self-harm?

The Applicant adopts what it calls an “import parity pricing” policy in relation to the goods. The Applicant maintains that it cannot raise its prices as high as it would like, because of the effect of the allegedly dumped imports in the market. As per our First Submission, the claim that the policy is driven by the allegedly dumped imports must be closely interrogated by the Commission. We highlight the fact that the Applicant controls the predominant market share for the goods, and that in all recent times its market share and market volume have been steadily improving. Indeed evidence would also indicate that BlueScope’s throughput is at maximum levels, or has been at maximum levels, given the apparent need to import from one of the very countries it is alleging dumping against.<sup>12</sup> This has been accompanied by better and better profitability. None of these key performance factors indicate that the Applicant is merely chasing and matching import competition. Rather, we submit that the Applicant *is* the price setter in the market, backed up by the fact that it can make money and improve its volumes of sales under current conditions, supported by its market dominance and existing trade remedy protection.

The Applicant is not subject to the same pressures and insecurities as other market players. It controls over 75% of the market, and is actually growing its market share. It must be the case that it is the Applicant’s own price setting and its “import parity” policy which has been driving the price level in the market, and not the opposite.

In this regard we note HSG’s submission that *after the investigation period* the Applicant has increased its prices for the goods by 35%.<sup>13</sup> The Applicant has not disputed this statement in its own response submission.<sup>14</sup> Indeed, its only response appears to confirm that scenario:

*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.*<sup>15</sup>

<sup>11</sup> For example, see BlueScope’s ‘Australian Steel Products - Briefing Day Presentation’ presented to investors on 15 November 2016, which stated that domestic volume growth can be driven by three areas, one of which is “*increased competitiveness and offer compared to imports*”, and specifically listing “*Action taken by Anti-Dumping Commission on unfair trade*” as an element of this area <[https://www.bluescope.com/media/2212/1-briefing-day-presentation\\_main-asp-final.pdf](https://www.bluescope.com/media/2212/1-briefing-day-presentation_main-asp-final.pdf)>, at page 44.

<sup>12</sup> See public record document number 064 submission by Hoa Sen Group, at pages 14 to 16, and document number 072, submission by BlueScope, at page 4.

<sup>13</sup> See public record document number 064 submission by Hoa Sen, at page 17.

<sup>14</sup> See public record document number 072, submission by BlueScope.

<sup>15</sup> *Ibid*, at page 4.

The significance of this price movement – in an otherwise stable market – must not be brushed off simply because it occurred subsequent to the period of investigation. This price movement must be considered with great care by the Commission from a number of aspects:

- the level of increase achieved within such a short period of time *despite* the Applicant's claims that it is forced to adopt "import parity pricing", and is experiencing price "suppression" from the import competition;
- the timing of the price movement – which occurred *immediately after the period of investigation* as designated by the Applicant itself – in the sense that Applicant is known to be a frequent and experienced user of the anti-dumping regime and has substantive control over how the period of investigation is to be set; and
- the Applicant's market power, which has allowed it to "set" the prices for the goods under consideration at the level it desires – even to the extent of imposing a 35% increase on the market which BlueScope evidently believes the market will absorb and accept.

We submit that the evidence that is plainly available in the public domain casts serious doubt on the Applicant's claim that it has suffered "material injury" caused by "dumping" in the form of "price suppression". The price movements in the designated investigation period compared to those immediately after that period strongly undermine the genuineness and authenticity of the Applicant's claim:

- initially, the Applicant's prices cause there to be a "non-profitable" position for the goods under consideration;
- this is blamed by the Applicant on the prices of allegedly dumped imports, which it says cause it to reduce prices due to its "import price parity" policy;
- this is creative of the conditions for an application for an anti-dumping and countervailing investigation;
- the Applicant increases its prices after the expected investigation period, with no apparent correlation between the Applicant's prices and the prices of the allegedly dumped goods;
- an anti-dumping and countervailing investigation is initiated, immediately posing increased commercial risk for the Applicant's importer competitors and deterring import competition; and
- the stifling of import competition allows the Applicant to maintain and further enhance its position as a major domestic monopoly producer, and its financial performance.

The Applicant's performance and the price trends in the market both during and after the investigation show that it has been untrammelled and that it continues to be untrammelled in its sales performance in recent times. We submit that it has not suffered material injury from dumped or subsidised imports from India.

### **3 BlueScope's performance in other product lines must be taken into account**

In addition to the goods subject to the investigation, the Applicant is also well known for its aluminium zinc coated steel and its commercially successful "COLORBOND" range of products. These products have an overlapping usage with the goods subject to this investigation. In particular, the

“ZINCALUME” product line,<sup>16</sup> a substrate used for the “COLORBOND” range of products, has replaced the use of zinc galvanised steel in many traditional applications. We note that this consideration has also been raised by HSG.<sup>17</sup>

The Application also clearly states that the aluminium zinc coated steel and the goods under consideration are completely substitutable.<sup>18</sup> Accordingly, it makes little sense for the examination of the Applicant’s claimed injury to be isolated to galvanized product, and to ignore its performances in other closely related product lines. Particular care must be taken to detect any attempt to shift profit amongst its own product lines such as might create the impression of “injury” in one sector despite “profitability” in the other or others.

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In conclusion, the Applicant’s statements and conduct, in view of the surrounding facts and circumstances, raise concerns as to the adequacy and authenticity of its complaint that must be closely interrogated by the Commission.

Yours sincerely



Charles Zhan  
Associate

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<sup>16</sup> We note that “ZINCALUME” steel was stated by BlueScope to be a name used to describe the (aluminium zinc coated steel) goods under consideration in Investigation 190. The Commission determined these goods were “like” the zinc coated (galvanised) steel goods under consideration, to the extent exports of both were investigated in the same investigation. See public record document number 003 Application of BlueScope Steel – Aluminium Zinc Coated Steel, at page 10.

<sup>17</sup> See public record document number 064, submission by Hoa Sen Group, at page 10.

<sup>18</sup> See public record document number 003 Application, at page 19.