

PUBLIC RECORD

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BEFORE THE AUSTRALIAN ANTI-DUMPING COMMISSION

*Alleged dumping of Zinc Coated (Galvanised) Steel exported from
India, Malaysia and Vietnam*

And

*Alleged subsidization of Zinc Coated (Galvanised) Steel exported
from India and Vietnam*

INJURY SUBMISSIONS

On Behalf Of

JSW STEEL COATED PRODUCTS LIMITED

AND

JSW STEEL LIMITED

Filed Through

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I. INTRODUCTION

1. On 7 October 2016, the Australian Anti-dumping Commission (“Commission”) initiated an investigation into the alleged dumping of zinc coated (galvanized) steel (“the goods”) exported to Australia from India, Malaysia and Vietnam (“countries the subject of the application”) and alleged subsidization of the goods exported to Australia from India and Vietnam. The application seeking initiation of the investigation was filed by BlueScope Steel Limited (“BlueScope”) alleging that the Australian industry has suffered material injury as a result of exports of the goods from India, Malaysia and Vietnam at dumped and/or subsidized prices.
2. As per the Consideration Report, the Commission notes that there are reasonable grounds to conclude that the imports of the goods from the countries the subject of the application have been dumped and/or subsidized. Further, it considers that there are reasonable grounds to conclude that the aforesaid dumping and subsidization has caused the Australian industry material injury in the form of loss in sales volumes, loss of market share, price depression, price suppression, reduced sales revenue, reduced profits and profitability, reduced employment and reduced return on investment. Therefore, the Commission initiated the investigation on being satisfied that there are reasonable grounds to support the Australian industry’s claim of material injury caused by imports of the goods from the countries the subject of the application.
3. Thereafter, on 6 December 2016, the Commissioner of the AD Commission (“Commissioner”) issued the Day 60 Report under Section 269TD(1) of the Customs Act 1901 (“the Act”), declining to issue a preliminary affirmative determination (“PAD”). The Commissioner declined to make a PAD as there were insufficient grounds to establish that the goods are dumped or subsidized, or that the allegedly dumped or subsidized goods are causing the Australian industry material injury.
4. Subsequently, on 16 December 2016, the Commissioner issued the Visit Report pursuant to a verification conducted of BlueScope. The key conclusions of the AD Commission pursuant to the verification visit relating to the economic conditions of the industry are as under:
 - a. BlueScope has experienced injury in the form of price suppression and depression as a result of the dumped and/or subsidized exports of the goods from the countries the subject of the application.
 - b. BlueScope has experienced an overall improvement in its profits and profitability but is experiencing reduced profits and profitability.
 - c. BlueScope has lost the opportunity to gain potential sales volumes as a result of imports of the goods from the countries the subject of the application.
 - d. BlueScope has also suffered injury with respect to reduced return on investment and reduced employment numbers.
5. In this backdrop, JSW Steel Limited and JSW Steel Coated Products Limited (“JSW Group”) submit that imports from India are not responsible for any alleged injury being caused to BlueScope. In specific reference to the exports of the goods by the JSW Group, the Commission is requested to determine whether the goods are being dumped based on the detailed questionnaire response provided by the JSW Group. In reference to the subsidy allegations made by the Australian industry, JSW Group requests that the subsidy margin also be computed based on the detailed questionnaire response provided. In

addition, JSW Group submits that the points below should be taken into consideration in its examination relating to the subsidization allegations:

- a. The subsidy investigation against imports from India should be terminated as the volume of imports is negligible.
 - b. The programs availed of by the Dolvi plant of JSW Steel Limited and Amba River Coke Limited (“ARCL”) should not be included in the computation of the subsidy margin for the JSW Group as neither the Dolvi plant nor ARCL are involved in production of the goods. Further, even the sales of any input material by the Dolvi plant of JSW Steel Limited to JSW Steel Coated Products Limited are at arms-length prices and therefore there is no pass-through of the benefits.
 - c. The computation of the margin for the Export Promotion Goods Scheme (“EPCG”) should be segregated into two parts – the first being licenses which have been redeemed and the second being licenses on which the export obligation has not as yet been fulfilled and are not yet redeemed. For the second category, as there is the possibility of the company having to eventually pay the duty exemption if the export obligation is not fulfilled, the duty exemption should be treated as a preferential loan and only interest on the exemption amount should be considered as the benefit.
 - d. The Industrial Promotion Subsidy, Incentives for Mega Projects and the Package Scheme of Incentive program provided by the State Government of Maharashtra (“SGOM”) should not be countervailed as the programs are not specific.
 - e. JSW Steel Coated Products Limited has availed of the Advance Authorization (“AA”) scheme but however not in respect to exports of the goods to Australia. Therefore, AA should not be included in the subsidy computation for the JSW Group.
 - f. The JSW Group has not availed of benefits under the Merchandise Export from India Scheme (“MEIS”) and therefore the same should not be countervailed by the Commission.
 - g. The Focus Market Scheme (“FMS”) and the Market Linked Focus Product Scheme (“MLFPS”) were not in operation during the investigation period and further are not applicable on exports of the goods to Australia. Therefore, the aforesaid programs should not be held as countervailable in the present investigation.
6. Further, the JSW Group submits that BlueScope is not suffering material injury in terms of Article 3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“WTO Anti-dumping Agreement”) and Section 269TAE of the Customs Act 1901 (“Act”), based on the factors below:
- a. Particularly with respect to exports of the goods to Australia from India, the volume of exports are negligible and at prices that are higher than the other countries the subject of the application.

- b. The effect of exports to Australia from India should not be cumulatively assessed with the effect of exports from the other countries the subject of the application.
 - c. The economic condition of the Australian industry has improved significantly in the recent period.
 - d. Even if it is concluded that the Australian industry is suffering material injury, there is no causal link between the exports of the goods from the countries the subject of the application and any injury caused to BlueScope.
7. Further, the Commission is urged in its examination not to cross-cumulate the impact of the allegedly dumped goods with the impact of the allegedly subsidized goods. It is noted that the anti-dumping investigation is concerning exports from India, Vietnam and Malaysia, whereas the countervailing duty investigation is concerning exports from only India and Vietnam. Therefore, when the injury examination is conducted in respect to the allegedly subsidized goods the imports from Malaysia must be excluded. The injury examination conducted for the countervailing duty examination would be flawed if the exports from Malaysia are also included in the assessment. JSW Group requests the Commission to take into consideration each of the points above in its examination.
8. Lastly, it is highlighted that an investigation against exports of the goods from India and Vietnam was terminated on 28 July 2015.¹ The investigation was terminated against the countries for the reasons below:
- a. Exports of the goods by certain Indian exporters, which included JSW Steel Coated Products Limited, were not at dumped prices;
 - b. Exports of the goods by certain Vietnamese exporters were also not at dumped prices;
 - c. Exports of the goods by Vietnamese exporters that were found to be dumped were of negligible volumes;
 - d. The injury caused by exports of the goods by Indian exporters that were dumped was found to be negligible, if any.
9. JSW Group underscores that the grounds for termination of the previous investigation against India and Vietnam are applicable even in the instant investigation. In particular, the volume of exports from the countries the subject in the application is negligible and more importantly the performance of the Australian industry has improved significantly, as shall be established in the submissions below. Therefore, even the instant investigation ought to be terminated by the Commission.

II. EXAMINATION OF SUBSIDY PROGRAMS OF JSW GROUP

10. At the outset, it is submitted that the volume of exports from India of the goods are negligible and therefore the investigation should be terminated against India. Under Article 27.10 of the WTO

¹ Termination Report No. 249 in the investigation on the Alleged Dumping of Zinc Coated (Galvanised) Steel Exported from India and the Socialist Republic of Vietnam.

Anti-dumping Agreement and Section 269TDA(8) of the Act, the investigating authority must terminate the investigation if the volume of subsidized imports is negligible. For developing countries, the import volumes would be considered as negligible volumes if the exports by the developing country is less than 4% of the total export volumes during a reasonable examination period. In the instant investigation, the volume of exports of the goods from India during the investigation period was 9,404 tonnes and the same was 4.9% of the total volume of imports into Australia in the FY2016.

11. It is submitted that the volume of exports from India during the investigation period was around 4% and therefore a reassessment of the import statistics should be undertaken to ensure that the figure is accurate. As the volume of exports is merely a fraction above the negligible volume threshold, it is noted that the Commission should consider whether the volume of exports from India are still capable of causing any injury to the Australian industry.
12. In specific reference to the JSW Group, it is requested that the subsidy margin be computed based on the detailed questionnaire response provided. As was submitted in the questionnaire responses and examined by the Authority during the verification visit, the JSW Group has availed of the programs set out below:
 - a. JSW Steel Coated Products Limited
 - i. Export Promotion Capital Goods Scheme
 - ii. Advance Authorization Scheme
 - iii. Duty Drawback Scheme
 - iv. Section 80IA Income Tax Deduction Program
 - v. Package Scheme of Incentives of the SGOM:
 1. Sales Tax Deferral
 2. Electricity Duty Exemption
 3. Interest Free Loan
 - b. JSW Steel Limited:
 - i. Export Promotion Capital Goods Scheme
 - ii. Duty Drawback Scheme
 - iii. Industrial Promotion Subsidy of the SGOM for Amba River Coke Limited
 1. Electricity Duty Exemption
 2. Value-Added Tax Refund
 - iv. Special Incentives of the SGOM for Mega Projects
 1. Electricity Duty Exemption
 2. Stamp Duty Waiver
 3. VAT Deferral
13. In specific reference to the computation and assessment of certain schemes availed by the JSW Group as noted above, it is submitted that the submissions below must be taken into consideration:

a. *Programs availed of by the Dolvi plant of JSW Steel Limited and ARCL should not be included in the subsidy computation*

14. At the outset, it is clarified that JSW Steel Limited has three plants – Dolvi, Salem and Vijayanagar. In reference to the goods covered within the scope of the instant investigation, it is only the Vijayanagar plant of JSW Steel Limited that manufactures zinc coated (galvanized) steel. Further, even the exports of the goods undertaken by JSW Steel Limited during the investigation period were from the Vijayanagar plant of JSW Steel Limited. It is underscored that the Dolvi and Salem plants of JSW Steel Limited do not manufacture zinc coated (galvanized) steel. Therefore, in light of the same, it is submitted that only the programs availed of by the Vijayanagar plant of JSW Steel Limited should be taken into consideration in the instant investigation while determining the margin for the JSW Group.
15. In reference to the programs availed of by the Dolvi plant of JSW Steel Limited and Amba River Coke Limited (“ARCL”), the same should not be included in the computation of the subsidy margin for the JSW Group. As noted above, the Dolvi plant of JSW Steel Limited is not involved in production of zinc coated (galvanized) steel. The Dolvi plant of JSW Steel Limited supplies intermediate materials, that is hot-rolled steel, to JSW Steel Coated Products Limited. It is underscored that the supply of these intermediate materials by the Dolvi plant of JSW Steel Limited to JSW Steel Coated Products Limited is at an arm’s length price and therefore there is no pass-through effect.
16. Similarly, even the programs availed of by ARCL should not be included in the subsidy computation for the JSW Group. In particular, ARCL is a subsidiary of JSW Steel Limited that is involved in the production of coke and steel pellets and is not involved in the production of zinc coated (galvanized) steel. ARCL supplies these raw materials to the Dolvi plant of JSW Steel Limited at arms-length prices. As the input materials supplied by ARCL to the Dolvi plant of JSW Steel Limited are at arms-length prices, again there is no pass-through effect. JSW Group had provided details of the programs availed of by ARCL in its response as the exporters questionnaire requests for details of benefits received by the company or any entity related to the company business. As ARCL is a subsidiary of JSW Steel Limited, the details were provided in the questionnaire response. However, as there is no pass-through effect, it is submitted that programs availed of by ARCL should not be included in the subsidy computation.
17. As noted in the Dumping and Subsidy Manual issued by the Commission, it states that in determining whether there is “pass-through” the Commission will examine the transactions that take place between the input product on which the subsidy is paid and the final export product. Further, the Commission will determine whether the transaction between the input supplier and the producer are arms-length transactions and whether the price paid was a fair market value. In this regard, it is underscored that evidence was provided during the time of the verification visit establishing that the prices at which the inputs were sold by the Dolvi plant of JSW Steel Limited to JSW Steel Coated Product Limited were at fair market value at prices that were at the same level as those procured from other sources. On this basis, it is submitted that there is no pass-through effect.
18. Therefore, it is submitted that the programs availed of by the Dolvi plant of JSW Steel and ARCL should not be included in the computation of the subsidy margin for the JSW Group.

b. Margin computation for the Export Promotion of Capital Goods Scheme should be based on actual benefits received

19. Under the EPCG Scheme, certain capital goods are exempt from the payment of basic customs duty, additional customs duty under Section 3(1) of the Customs Tariff Act, 1975, customs education cess, customs secondary and higher education cess and additional customs duty under Section 3(5) of the Customs Tariff Act, 1975. The requirements, among other things, for a company to be eligible under the scheme are that the company should export six times the duty saved on the import of capital goods over a period of six years. The aforesaid requirement is termed as the export obligation of the particular license.
20. In this regard, it is submitted that the EPCG licenses can be broadly segregated into two categories – those for which the export obligation has been fulfilled and those for which the export obligation has not been fulfilled as yet. For the licenses for which the export obligation has been fulfilled, it is submitted that the exemption from the basic customs duty may be considered as the benefit received. However, for the EPCG licenses for which the export obligation has not be fulfilled, the company has not received the duty exemption as yet. In particular, if the export obligation is not fulfilled, then the exemption received on the basic customs duty would need to be paid back to the government. Therefore, it is underscored, that in respect to the EPCG licenses on which the export obligation has not been fulfilled, the duty exemption should be treated as a preferential loan and only interest on the exemption amount should be considered as the benefit.
21. JSW Group is also providing as Exhibit 1 [Confidential] details on the segregation of the EPCG licenses into the two categories for JSW Steel Limited and JSW Steel Coated Products Limited. JSW Group requests the Commission to undertake the examination based on the segregation provided in Exhibit 1. Based on the revised examination undertaken, it is submitted that the benefit computed for the JSW Group under the EPCG Scheme would be as under:

	JSW Steel Limited	JSW Steel Coated Products Limited
[*****	*****	*****
*****	*****	*****
*****]	*****	*****]

22. JSW Group also submits that the above methodology has been followed by other authorities as well when computing benefits under the EPCG Scheme. JSW Group submits that computation of the benefits for the EPCG Scheme on the basis of the above methodology would be suitable and fair in the facts of the instant investigation.

c. SGOM Schemes should not be countervailed as the programs are not specific

23. JSW Group submits that the Industrial Promotion Subsidy², Incentives for Mega Projects³ and the Package Scheme of Incentive⁴ program provided by the State Government of Maharashtra should not be countervailed as the programs are not specific. In particular, the eligibility conditions for the aforesaid State Government of Maharashtra schemes are twofold – a specific investment threshold and location of the plant.

24. In terms of Article 2.1(b) of the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”) and Section 269TAAC of the Act, it is submitted that as the programs are extended to any enterprise that meets certain objective criteria or condition and does not favour certain enterprises over others, the programs cannot be considered as specific. Section 269TAAC(3) of the Act provides as under:

(3) Subject to subsection (4), a subsidy is not specific if:

(a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) eligibility for the subsidy is automatic; and

(c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and

(d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

25. Therefore, it is submitted that eligibility conditions for enterprises under the Industrial Promotion Subsidy, Incentives for Mega Projects and the Package Scheme of Incentive administered by the State Government of Maharashtra are not specific for the reasons under:

- a. The eligibility under the various programs are based on objective criteria or conditions based on investment threshold and being located in the region.

² The programs under the Package Scheme of Incentives of the SGOM availed of by JSW Steel Coated Products Limited are:

- Sales Tax Deferral
- Electricity Duty Exemption
- Interest Free Loan

³ The programs under the Industrial Promotion Subsidy of the SGOM availed of by Amba River Coke Limited are:

- Electricity Duty Exemption
- Value-Added Tax Refund

⁴ The programs under the Special Incentives of the SGOM for Mega Projects availed of by JSW Steel Limited:

- Electricity Duty Exemption
- Stamp Duty Waiver
- VAT Deferral

- b. The conditions or criteria are set out in legislations, which have been provided in the questionnaire responses of the JSW Group.
 - c. All enterprises that meet these objective conditions or criteria are eligible under the programs.
 - d. The criteria or conditions are not provided to any particular type of enterprise but rather are purely based on economic conditions namely an investment threshold and location requirements which would be horizontal in application. Importantly, the conditions do not favour any particular type of enterprises over the other.
 - e. Lastly, the conditions are strictly followed by the State Government of Maharashtra in administering the program.
26. In light of the above, it is submitted that the Industrial Promotion Subsidy, Incentives for Mega Projects and the Package Scheme of Incentive cannot be considered as specific. In the absence of the programs being found to be specific, the programs cannot be countervailed as per Article 1.2 of the SCM Agreement and Section 269TAAC(1) of the Act.

d. Advance Authorization Scheme should not be countervailed for JSW Group

27. Under the Advance Authorization (“AA”) Scheme, imported inputs that are physically incorporated in an exported product are exempt from the payment of basic customs duty, additional customs duty under Section 3(1) of the Customs Tariff Act, customs education cess as well as anti-dumping duty and safeguards duty, if any, on satisfying the eligibility criteria.
28. In this regard, only JSW Steel Coated Products Limited has licenses under the AA Scheme. The company however has not availed of the scheme in respect of its exports of the goods to Australia during the investigation period. The exports undertaken for the AA licenses received during the investigation period have been to other destinations. Therefore, JSW Group submits that the AA Scheme must not be included in the subsidy computation for the JSW Group.

e. The Merchandise Export from India Scheme should not be countervailed for JSW Group

29. Under the Merchandise Exports from India Scheme (“MEIS”), exports of notified goods or products to specified markets are entitled to reward credit scrips. Therefore, companies would be eligible for benefits under the MEIS only if the particular product and country is identified as being covered within the scheme. In respect of the exports of the goods covered within the scope of this investigation, Australia was not identified as an eligible market under the MEIS in the period 1 July 2015 to 4 May 2016. Subsequent to 4 May 2016, Australia was included as a market eligible for benefits under the MEIS pursuant to an amendment. However, as the JSW Group did not undertake any exports to Australia in the period after 4 May 2016, it did not avail of the program. Therefore, the MEIS should not be included in the subsidy computation for JSW Group.

f. The Focus Market Scheme and the Market Linked Focus Product Scheme should not be countervailed

30. The Focus Market Scheme (“FMS”) and the Market Linked Focus Product Scheme (“MLFPS”) are programs that are no longer in existence. In particular, both programs were discontinued as of 1 April 2015 and therefore were not in operation during the investigation period.
31. Further, even when both the programs were in force, it is underscored that exports of the goods covered within the scope of the investigation to Australia were not covered under both the FMS and MLFPS. In particular, the goods covered within the scope of this investigation were not considered as eligible products under the FMS and the MLFPS. In light of the same, it is underscored that both the FMS and the MLFPS should not be countervailed in the instant investigation.
32. The JSW Group requests the Commission to take into account the above submissions in its computation of the subsidy margin for the JSW Group. If the above submissions are taken account by the Commission, it is submitted that the subsidy margin computed for the JSW Group will be less than 2%. Under Section 269TDA(2) read with Section 269TDA(16) of the Act, if the subsidy margin computed is not more than 2% of the export price of the goods, then the investigation must be terminated in relation to the particular exporter. Section 269TDA(2) mandates that a countervailing duty investigation against an exporter must be terminated if it is found that the countervailable subsidies received have not at any time during the investigation period exceeded the negligible level of countervailable subsidy. Further, Section 269TDA(16) of the Act provides that the countervailable subsidy received in respect of goods exported is negligible for developing countries if the same is not more than 2% when expressed as a percentage of the export price of the goods.
33. Further, even if the countervailable subsidies are found to be more than negligible, it is submitted that the pursuant injury examination undertaken by the Commission should not cumulate the impact of imports subject to the countervailing duty examination with those subject to the anti-dumping investigation.

III. IMPACT OF IMPORTS SUBJECT TO ANTI-DUMPING INVESTIGATION SHOULD NOT BE CUMULATIVELY ASSESSED WITH IMPACT OF IMPORTS SUBJECT TO COUNTERVAILING DUTY INVESTIGATION

34. It is noted that under Section 269TAE(2C), the Commission is permitted to cumulate the effect of exports if certain conditions are satisfied. In particular, Section 269TAE (2C) provides as under:

(2C) 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:

- (a) each of those exportations is the subject of an investigation; and*
- (b) either:*

- (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or*
- (ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and*
- (c) if the determination is being made for the purposes of section 269TG or 269TH—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and*
- (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*
- (da) if the determination is being made for the purposes of section 269TJ or 269TK:*
 - (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and*
 - (ii) the volume of each of those exportations is not negligible; 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.*

35. In sum, as noted on page 43 of the Consideration Report, the aforesaid provision permits the cumulation of the effects of imports if:
- a. the margin of dumping established for each exporter is not negligible;
 - b. the volume of dumped imports from each country is not negligible;
 - c. the amount of countervailable subsidy in respect of the exportations from each country exceeds the negligible level, and the volume of those exportations is not negligible; and
 - d. cumulative assessment is appropriate in light of the conditions of competition as between the imported goods and between the imported goods and the like domestic goods.
36. In particular, JSW Group draws the attention of the Commission to the requirement that the effect of allegedly dumped and subsidized imports will be examined cumulatively as per the above provision. JSW Group underscores that the above is in direct contravention of the ruling of the WTO Panel in *US*

- *Carbon Steel (India)*⁵ which explicitly stated that neither Article 15.3 of the WTO Anti-dumping Agreement nor Article 3.3 of the SCM Agreement permit the cross-cumulation of the effect of non-subsidized but dumped imports in a countervailing duty investigation. The relevant portions of the WTO Panel Report are as under:

7.350. We note that the United States' arguments relating to Article VI:6(a) place emphasis on the fact that this provision regulates both anti-dumping and countervailing duties. However, the United States has not explained why Article VI:6(a) would support the conclusion that “cross-cumulation” is permitted, when **the relevant provisions on injury determination in the SCM and AD Agreements – which implement the provisions of Article VI of the GATT 1994 in the application of anti-dumping and countervailing measures⁵⁸⁵ – do not refer to “subsidized and/or dumped imports”. Rather, Articles 15 of the SCM Agreement and Article 3 of the AD Agreement refer only to “subsidized imports” and “dumped imports” respectively.**⁵⁸⁶

7.351. Finally, we note that the United States argues that Article 15.3 of the SCM Agreement should be interpreted in light of Article 3.3 of the AD Agreement; the parallel provision regulating cumulation in AD investigations. According to the United States, “cross-cumulation” is permitted because both Article 15.3 and Article 3.3 allow investigating authorities to consider the cumulative effect of unfairly traded imports from multiple sources.⁵⁸⁷ Thus, according to the United States, an investigating authority may “cross-cumulate” the effects of dumped imports in a CVD investigation because dumped imports are unfairly traded imports.⁵⁸⁸ However, **we note that Article 15.3 and Article 3.3 do not refer to “unfairly traded imports”. Article 15.3 allows, under certain conditions, the cumulative assessment of the effects of imports subject to simultaneous CVD investigations. Article 3.3 allows, under certain conditions, the cumulative assessment of the effects of imports subject to simultaneous AD investigations. Since neither provision refers to “cross-cumulation”, it is unclear to us why the authorization to cumulate in each type of investigation would, in addition, allow investigating authorities to “cross-cumulate” the effects of non-subsidized but dumped imports in CVD investigations.**

(Footnotes removed and emphasis supplied)

37. The WTO Appellate Body upheld the findings of the WTO Panel and held as under:

4.629. However, due to the use of the word “and” in Section 1677(7)(G)(iii), it is clear under either reading of the word “or” in this clause that, on its face, **this Section requires the USITC to cumulate the effects of subsidized imports with the effects of dumped, non-subsidized imports when petitions to initiate countervailing duty investigations or anti-dumping duty investigations are**

⁵ Panel Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (WT/DS436/R), 14 July 2014.

filed on the same day and countervailing duty investigations or anti-dumping duty investigations are initiated by the investigating authority. Consequently, we find that Section 1677(7)(G)(iii) of the US Statute to be inconsistent “as such” with Article 15.3 and with Articles 15.1, 15.2, 15.4, and 15.5 of the SCM Agreement.

38. Therefore, JSW Group underscores that in the countervailing duty investigation, the Commission cannot cross-cumulate the impact of imports that are non-subsidized but allegedly dumped imports. In the instant investigation, while exports from India, Vietnam and Malaysia are covered within the anti-dumping investigation, exports from only India and Vietnam are covered within the scope of the countervailing duty examination. Therefore, when the injury examination is conducted in respect to the allegedly subsidized goods, the imports from Malaysia must be excluded. An examination that treats allegedly subsidized and dumped imports in the same basket in the injury examination undertaken in the countervailing duty examination would be inconsistent with the SCM Agreement. JSW Group urges the Commission to undertake the injury examination in a manner consistent with the SCM Agreement.

IV. AUSTRALIAN INDUSTRY NOT SUFFERING MATERIAL INJURY

39. JSW Group submits that BlueScope is not suffering material injury in terms of the relevant legal provisions. Article 3.1 of the Anti-dumping Agreement mandates that a determination of injury be based on positive evidence and involve an objective examination of two aspects – (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for like products; and (b) the impact of the imports on domestic producers of such products. It is submitted that in the instant investigation, the examination on both aspects would indicate that there is no negative impact on the Australian industry.

a. Volume of imports from India has not increased in absolute terms or relative to production or consumption

40. Article 3.2 of the WTO Anti-dumping Agreement mandates the investigation authority to examine “whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member”. Section 269TAE (1) of the Act mandates a similar examination.

41. Based on the aforesaid obligation, JSW Group submits that exports from India particularly has decreased between 1 July 2013 and 30 June 2016 and significantly in the investigation period (1 July 2015 to 30 June 2016) as against the previous year. The table below indicates the same:

Country	2012/13	2013/14	2014/15	2015/16
India (Tonnes)	7,863	52,573	19,934	9,404

Source: Page 42 of BlueScope Application

42. In particular, exports of the goods from India decreased consistently from the FY2014 consistently every year from 52,573 tonnes to 9,404 tonnes in the FY2016, falling by 82%. In the most recent period, the imports from India declined by 53% in the investigation period as against the previous year. Therefore, the JSW Group submits that the imports from India cannot be found to have increased in absolute terms.

43. In the absence of absolute data on the production of BlueScope, JSW Group is unable to enumerate with absolute figures the similar decline in imports from India as against production in Australia. However, from the indexed data, it is apparent that BlueScope's production has increased every year. In particular, BlueScope's sales volumes increased from 100 index points in FY2013 to 134 index points in FY2016. As a result, with the increase in production of the Australian industry and the decline in the imports from India during the same period, even the imports in relation to production should show a downward trend.
44. Similarly, imports in relation to consumption have also experienced a similar trend. As noted on page 15 of the Consideration Report, the market share of imports from the countries the subject of the application began declining in the FY 2015 and continued to decline further in the FY2016. As imports from India have also been declining steadily during the same period, even the imports in relation to consumption would have decreased.
45. Further, India's share of imports in the investigation period as against the other countries the subject of the application as well as other countries is insignificant and are not capable of having any effect on the performance of the Australian industry, as exhibited from the table below:

Country	% of 2015/16 in total imports
India	4.9%
Malaysia	8.0%
Vietnam	9.7%
Japan	16.3%
Korea	10.3%
Taiwan	16.0%
China	0.4%
Other countries	34.2%

Source: Page 42 of BlueScope Application

46. As is apparent from the above, imports from India are a fraction as compared to imports from the other countries. In light of the above data, JSW Group submits that imports from India have not increased in absolute terms or relative to production or consumption.
47. Even if the volume of imports from the countries the subject of the application were to be taken into consideration, it is noted that based on an examination of the intervening trends, a similar result would be arrived at. If the analysis is undertaken from the FY2014 onwards, it would be seen that imports from countries the subject of the application have also declined in absolute terms as well as relative to production or consumption. The table below indicates the same:

Country	2012/13	2013/14	2014/15	2015/16
India (Tonnes)	7,863	52,573	19,934	9,404
Malaysia (Tonnes)	0	2,481	8,553	15,375
Vietnam (Tonnes)	2,949	10,780	2,923	18,560
Total (Tonnes)	10,812	65,834	31,410	43,339

48. JSW Group highlights that imports have declined from the FY2014 onwards. The total imports in the investigation period have declined by 34% as against the imports in the FY2014. In the absence of absolute data, it would not be possible to show the similar trend in the imports in relation to production or consumption. However, it is known that BlueScope has increased its production through the course of the injury analysis period and therefore the same would have also resulted in a similar decline in the imports in relation to production from the FY2014 onwards. Further, it is known that the total demand has also increased over the course of the injury analysis period and therefore the same would have also resulted in a similar decline in the imports in relation to consumption from the FY2014 onwards.

b. No negative price effect with respect to exports of the goods from India

49. In addition to the fact that imports from India have been steadily declining since the FY2014, the price of imports from India are also significantly higher than the imports from the other countries the subject of the application. The table below exhibits the wide gap between export prices from the India and the other countries the subject of the application during the investigation period:

Country	Weighted Average FOB Export Price in FY2016
India	AUD 840 per tonne
Malaysia	AUD 799 per tonne
Vietnam	AUD 776 per tonne

Source: Page 17 of Consideration Report

50. The weighted average FOB export price of exports from India during the FY2016 was between 5-8% higher than the prices of exports from the other countries the subject of the application. Therefore, JSW Group submits that when assessing the impact of exports from Malaysia and Vietnam, the impact of exports from India cannot be considered at the same level. Added to the price difference, the fact that volume of exports of goods from India are half the quantum of the volume of goods from Malaysia and Vietnam, further corroborates JSW Group’s contention that exports from India are incapable of having an effect on the prices of the like product of the Australian industry.

51. As per page 9 of the Visit Report, BlueScope’s unit cost to make and sell was almost at breakeven for the FY2015 and the CTMS increased in FY2016. Further, it has been noted on page 36 of BlueScope’s Application that the company reduced its cost-to-make-and-sell (“CTMS”) in FY2015 based on reductions in raw material input costs and reduced overhead and selling expenses, particularly through reductions in employment levels. Therefore, it is apparent from the same that certain internal issues with BlueScope were responsible for the costs being higher than normal.

52. In light of the significant decline in the CTMS of the Australian industry in the FY2015, it is submitted that the inability of BlueScope to be selling more profitably at prices that are competitive with the prices of imports is not due to imports from the countries the subject of the application but rather due to its own internal matters which have led to higher production costs.

c. *Imports of the goods from India should not be cumulatively assessed with the effect of imports from the countries the subject of the application*

53. Article 3.3 of the WTO Anti-dumping Agreement and Section 269TAE(2C) of the Act set out the requirements for cumulatively assessing the effects of imports from more than one country that are simultaneously subject to anti-dumping investigations. As per Section 269TAE(2C) of the Act, a cumulative assessment of the effect of imports should be undertaken if:

- a. Margin of dumping for each exporter is not negligible;
- b. The volume of allegedly dumped import from each country is not negligible;
- c. The amount of countervailable subsidy for each country exceeds the negligible level and the volume of the allegedly subsidized imports is not negligible; and
- d. Cumulative assessment is appropriate in light of the conditions of competition between the imported goods and the between the imported goods and the like domestic goods.

54. In the instant investigation, JSW Group submits that a cumulation of the effect of imports from India along with the effect of imports from Malaysia and Vietnam would not be appropriate. It is underscored that the Commission has the discretion on whether or not to undertake a cumulation of the effects of imports from countries that are simultaneously subject to anti-dumping investigations and that in the case in hand, such a cumulation exercise should not be undertaken. In particular, Article 3.3 of the WTO Anti-dumping Agreement uses the phrase “only if they determine” and mandates that the same be “appropriate”, which implies that cumulation must not be presumed but rather must be established based on the facts and circumstances of the case.

55. Further, Article 3.3 of the WTO Anti-dumping Agreement uses the word “may” rather than “shall” and similarly Section 269TAE(2C) of the Act uses the word “should” rather than “shall”. Therefore, it is clear that the Commission has the discretion on the decision on whether or not to cumulate.

56. The above interpretation is also supported by the findings of the WTO Panel in *EC– Tube of Pipe Fittings*⁶, where it was noted, in relevant part, as under:

7.239 The ordinary meaning of the word “determine” is to “find out or establish precisely” or to “decide or settle”. We agree with Brazil that the requirement to make a “determination” that **cumulation is appropriate precludes an investigating authority from simply assuming that the cumulative assessment is appropriate. Rather, an investigating authority must consider the facts before it and make a reasoned finding that cumulation is appropriate on the basis of the particular circumstances.**

7.240 The ordinary meaning of the term “appropriate” refers to something which is “especially suitable or fitting”. “Suitable”, in turn, is defined as “fitted for or appropriate to a purpose, occasion...” or “adapted to a use or purpose”. “Fitting” is

⁶ Panel Report, *European Communities – Anti-dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil* (WT/DS2019/R), 7 March 2003.

defined as “of a kind appropriate to the situation”. **Based on the plain meaning of the term, cumulation must be fitting in the particular case.**

7.241 Moreover, the language of the provision makes it clear to us that it is for the investigating authority to determine whether cumulation is “appropriate”. **In light of the general wording of the provision and the nature of the term “appropriate”, an investigating authority enjoys a certain degree of discretion in making that determination on the basis of the record before it.** However, it is clear to us that cumulation must be suitable or fitting in the particular circumstances of a given case in light of the particular conditions of competition extant in the marketplace.

(Footnotes removed and emphasis supplied)

57. In the facts of the present investigation, it is emphasized that based on dissimilarities in the trends of the import volumes and the import prices of the goods from India entering Australia, it is clear that cumulation would not be appropriate. On the issue of trends in the volume of imports from India as against the other countries the subject of the application, it is noted that while imports from India have steadily decreased over the last three years, imports from Malaysia and Vietnam have increased, as exhibited in the table below:

Country	2012/13	2013/14	2014/15	2015/16	% of 2015/16 in total imports
India (Tonnes)	7,863	52,573	19,934	9,404	4.9%
Malaysia (Tonnes)	0	2,481	8,553	15,375	8.0%
Vietnam (Tonnes)	2,949	10,780	2,923	18,560	9.7%

Source: Page 42 of BlueScope’s Application

58. While imports from Malaysia and Vietnam increased significantly from negligible volumes during the injury analysis period, the imports from India increased only marginally over the same period. The Commission has also noted the same on page 50 of the Consideration Report. More importantly, while imports from India declined significantly from the FY 2014 onwards, imports from Malaysia and Vietnam were on upward trends. Particularly, imports from India decreased by 82% in FY2016 as against the FY2014, whereas imports from Vietnam increased by 72% and from Malaysia by 520% in the same period. Even BlueScope has noted the same in its Application on page 31 where it notes that “(t)he increase in imports from Malaysia and Vietnam far exceed any typical ‘ebb and flow’ growth in sales volumes and have been at prices that have undercut BlueScope’s sales values”.

59. In addition to the dissimilarities in the trends of imports volumes of the three countries, the import volumes from India are half the import volumes from Malaysia or Vietnam. As a result, even the market share of imports from India would be insignificant as compared to the market share of imports from other countries, as computed in the table below:

Country	2015/16	% of 2015/16 in imports from countries the subject of the application in investigation period	Weighted Average FOB Export Price in FY2016
India (Tonnes)	9,404	22%	AUD 840 per tonne

Malaysia (Tonnes)	15,375	35%	AUD 799 per tonne
Vietnam (Tonnes)	18,560	43%	AUD 776 per tonne

Source: Page 42 of BlueScope's Application and pages 17 and 50 of the Consideration Report

60. The market share of imports from the countries the subject of the application during the investigation period was merely 6% and added to this the imports from India is one/fifth of the total volume of imports from the countries the subject of the application. Therefore, India's market share in the total Australian demand during the investigation period was merely 1%.
61. On the second issue of prices of imports from India, as noted above, the price of imports from India are higher than the import prices from other countries the subject of the application in the investigation period. Therefore, in addition to the negligible volume of imports from India, the import prices from India are also significantly higher and therefore it is submitted that there are dissimilarities in the trends of imports from India as against the imports from Malaysia and Vietnam. On this basis, JSW Group urges the Commission not to cumulatively assess the effect of imports from India and the other countries the subject of the application.

d. Economic condition of the Australian industry has improved significantly

62. Even if the Commission were to consider the cumulative impact of imports the subject of the application, JSW Group submits that the economic condition of the Australian industry has improved and it cannot be found to be suffering material injury. In its application, BlueScope has contended that it has suffered injury in the form of 'other injury factors' regarding reduced capital expenditure, reduced return on investment, reduced employment and reduced revenues. Pursuant to the verification, the Commission made the observations below as per the Visit Report:
- a. BlueScope's capacity remained at the same level throughout the injury analysis period and the company was able to increase its capacity utilization overall.
 - b. BlueScope's return on investment improved during the injury analysis but remained negative at the end of the financial year 2016.
 - c. BlueScope's employment decreased from the FY2013 to the FY2016 by 28%.
 - d. BlueScope's revenue increased in every year of the injury analysis period, exhibiting an overall increase of 30%.
 - e. BlueScope's productivity increased from 6,197 tonnes per shift in the FY2013 to 11,300 tonnes per shift in the FY2016.
 - f. BlueScope's capital investment for galvanized steel decreased from \$3.10 million in the FY2013 to \$2.52 million in the FY2016.
63. On the basis of the above observations, the Commission concluded that the Australian industry has suffered injury with respect to reduced return on investment and reduced employment numbers. Therefore, it is fairly clear from the above that the only factors which the Commission has considered as grounds to conclude that BlueScope is suffering injury are return on investment and employment. In this regard, it is underscored that the points below need to be taken into account:
- a. The decrease in the employment of the domestic industry has been pursuant to a conscious effort on the part of the Australian industry to decrease its CTMS. In particular, the

company has noted on page 28 and 37 of the Application that it has reduced its CTMS through reductions in its overhead and selling expenses, particularly through reductions in its employment levels. Moreover, the fact that the productivity of the company nearly doubled in the same period from 6,197 tonnes per shift to 11,300 tonnes per shift indicates that the company was previously overstaffed and that the loss of employees has been beneficial for the company rather than having a negative impact. BlueScope has also noted this as a positive aspect of its operations on page 37 of its Application where it notes that it has improved its productivity as it has reduced costs and increased production. If in fact the loss of employees was injurious to the performance of the company, the productivity of the company would not have increased and to such a large extent.

- b. The Commission has noted that the return on investment has remained negative in the end of the FY2016 and the same is an indication of injury being suffered by BlueScope. It should be noted that the return on investment has been steadily increasing each year of the injury analysis period. Further, as shall be established below, imports from the countries the subject of the investigation are not significant enough to be capable of impacting the performance of the Australian industry. More importantly, as the return on investment has been increasing over the course of the injury analysis period, it is fairly clear that imports from the countries subject of the application have had no negative impact on BlueScope’s profitability. The table below exhibits the lack of a link between imports from the countries the subject of the application and BlueScope’s profitability:

Particulars	2012/13	2013/14	2014/15	2015/16
Index of profit variations	100	189.50	1357.64	1988.22
Index of profitability variations	100	199.08	1436.30	1892.17
Index of revenue variations	100	133.48	133.08	129.74
Imports from countries the subject of the application (Tonnes)	10,812	65,834	31,410	43,339

Source: Page 29 of BlueScope’s Application

If in fact the imports from countries the subject of the application were impacting BlueScope’s profitability in any manner, the return on investment would not have consistently improved from the FY 2013 onwards. The profitability has increased by 1888% in the FY2015 since FY2013.

- c. It is noted that there has been a reduction in capital expenditure costs during the course of the injury analysis period. The reduction in the same cannot be considered as a reason for concluding that the company is suffering injury as, similar to the reduction in employees, the company had reduced capital expenditure with the aim of being more cost-competitive. The same has been explicitly stated on page 37 of BlueScope’s application where it mentions that the company has reduced its manufacturing costs by reducing capital expenditure with the overall intention of being cost competitive.

64. JSW Group also underscores that BlueScope’s performance has improved significantly over the injury analysis period on all the key parameters as exhibited in the table below:

Particulars	2012/13	2013/14	2014/15	2015/16
Index of production variations	100	125.61	124.78	136.45
Index of domestic sales volume of the goods	100	127.68	124.76	134.16
Index of domestic sales value of the goods	100	134.14	131.99	127.68
Market Share	59%	No data	No data	75%
Index of profit variations	100	189.50	1357.64	1988.22
Index of profitability variations	100	199.08	1436.30	1892.17
Index of revenue variations	100	133.48	133.08	129.74

Source: Pages 28 and 29 of BlueScope's Application

65. The above table exhibits the extent to which BlueScope's performance has improved significantly in the investigation period as against the beginning of the injury analysis period on the factors mentioned below:

- a. Production has increased by 37% over the period.
- b. Domestic sales volumes have increased by 34% and similarly sales revenue has increased by 27% over the period.
- c. The market share increased from 59% in the FY2013 to 75% in the FY2016.
- d. Profits increased by 1888% over the period.

66. Therefore, JSW Group submits that when the key performance indicators of the company have been improving over the course of the injury analysis period, it cannot be concluded that the company is suffering material injury in terms of the relevant legal provisions. Further, it is submitted that a decline in certain factors in isolation cannot be a basis for concluding that the Australian industry is suffering injury.

67. The findings of the WTO Panel in *Thailand – H-Beams*⁷, provide clarity on the manner in which the examination under Article 3.4 of the WTO Anti-dumping Agreement is to be undertaken. The relevant paragraph in the Panel Report is extracted below:

7.236 We are of the view that the "evaluation of all relevant factors" required under Article 3.4 must be read in conjunction with the overarching requirements imposed by Article 3.1 of "positive evidence" and "objective examination" in determining the existence of injury. Therefore, in determining that Article 3.4 contains a mandatory list of fifteen factors to be looked at, we do not mean to establish a mere "checklist approach" that would consist of a mechanical exercise of merely ensuring that each listed factor is in some way referred to by the investigating authority. It may well be in the circumstances of a particular case that certain factors enumerated in Article 3.4 are not relevant, that their relative importance or weight can vary significantly from case to case, or that some other

⁷ Panel Report, *Thailand – Anti-dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland* (WT/DS122/R), 28 September 2000.

non-listed factors could be deemed relevant. Rather, we are of the view that Article 3.4 requires the authorities properly to establish whether a factual basis exists to support a well-reasoned and meaningful analysis of the state of the industry and a finding of injury. This analysis does not derive from a mere characterization of the degree of "relevance or irrelevance" of each and every individual factor, but rather must be based on a thorough evaluation of the state of the industry and, in light of the last sentence of Article 3.4, must contain a persuasive explanation as to how the evaluation of relevant factors led to the determination of injury.

(Footnotes removed and emphasis supplied)

68. In the backdrop of the above Panel findings, it is submitted that the examination undertaken by the Authority should be based on the overall state of the industry and should not be focused on an improvement or decline in certain parameters. In the present facts, as is apparent from the above, BlueScope’s performance has improved steadily and declines in capital investment and sales revenue have not on the whole negatively impacted the performance of the company. In light of the same, JSW Group emphasizes that the Australian industry is not suffering material injury.

V. NO CAUSAL LINK BETWEEN IMPORTS FROM COUNTRIES THE SUBJECT OF THE APPLICATION AND ANY INJURY CAUSED TO AUSTRALIAN INDUSTRY

69. As has been established above, the Australian industry cannot be found to be suffering material injury in terms of the relevant legal provisions. However, even if it were found that the Australian industry is suffering material injury, it is submitted that there is no causal relationship between the imports from the countries the subject of the application and any injury being suffered by the Australian industry as required under Article 3.5 of the WTO Anti-dumping Agreement.

70. On page 38 of BlueScope’s Application, the company has identified raw material input cost reductions, circumvention of measures imposed on China and Taiwan and the relatively flat demand for galvanized steel in the Australian market as other factors that have influenced the galvanized steel market in the FY2016. However, it has noted that the major influencing factor in the market in the FY2016 was the imports from the countries the subject of the application. Based on the same, BlueScope has submitted that there is a relationship between the alleged injury and imports of the goods from the countries the subject of the application.

71. However, JSW Group submits that imports from the countries the subject of the application cannot be found to be responsible for any injury being caused based on the fact that imports from the countries the subject of the application are negligible. However, imports from countries that are currently subject to measures, that is Taiwan, China PR and Korea, is substantial as noted in the table below:

Country	% of FY2016 in total imports	Volume of imports in FY2016 (Tonnes)
India	4.9%	9,404
Malaysia	8.0%	15,375
Vietnam	9.7%	18,560

Japan	16.3%	31,169
Korea	10.3%	19,762
Taiwan	16.0%	30,638
China	0.4%	859
Other countries	34.2%	65,278

Source: Page 42 of BlueScope Application

72. It is submitted that imports from countries already subject to measures are still coming in substantial quantities, with the exception of China PR. However, BlueScope's consistent submission has been that the imposition of measures on imports from China PR, Korea and Taiwan in 2013 were effective in BlueScope improving its performance. It is agreed that the measure imposed in 2013 were effective in curtailing unfair imports from the aforesaid countries which in turn had resulted in the Australian industry's improved performance. However, the initiation of the circumvention investigation was due to the fact that the measures had become ineffective. The table below sets out the timeline in regard to imposition of measures on galvanized steel:

Investigation Number	Subject Countries	Product	Date when duties were imposed
REP 190a (Anti-dumping investigation)	China, Korea and Taiwan (with the exception of certain exporters)	Flat rolled products of iron and non-alloy steel of specified width, plated or coated with zinc.	5 August 2013
REP 193a (Countervailing investigation)	China (with the exception of certain exporters)	Flat rolled products of iron or non-alloy steel of specified width, plated or coated with zinc.	5 August 2013
REP 290 and 298 (Anti-circumvention investigation)	China, Korea and Taiwan (with the exception of certain exporters)	Flat rolled iron or steel products (whether or not containing alloys) of specified width, plated or coated with zinc.	18 March 2016

73. JSW Group submits that the imports from the above countries are responsible for any alleged material injury. It is only in March 2016 that measures were imposed on imports that were circumventing the anti-dumping measures in force. The measures imposed pursuant to investigations 190a and 193a were only on flat rolled products of iron and non-alloy steel and did not include alloyed steel. However, pursuant to the circumvention investigation, measures were also imposed on alloyed steel that is plated or coated with zinc.

74. Therefore, during the investigation period in the instant investigation, no anti-circumvention duties were in force. It was only for the last three months of the investigation period, from March 2016 to June 2016, that the anti-circumvention duties were in force. As a result, the imports from China PR, Korea and Taiwan were still having an impact on the Australian industry during the investigation period in the instant investigation.

75. In light of the same, it is submitted that based on the obligation under Article 3.5 of the WTO Anti-dumping Agreement, the Commission is mandated to undertake a non-attribution analysis. The WTO Appellate Body in *US – Hot Rolled Steel*⁸ elaborated on nature of the obligation under Article 3.5 of the WTO Anti-dumping Agreement as under:

223. 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.

224. We emphasize that the particular methods and approaches by which WTO Members choose to carry out the process of separating and distinguishing the injurious effects of dumped imports from the injurious effects of the other known causal factors are not prescribed by the Anti-Dumping Agreement. What the Agreement requires is simply that the obligations in Article 3.5 be respected when a determination of injury is made.

(Footnotes removed and emphasis supplied)

76. Therefore, the Commission is urged to assess the injurious effects of other factors and thereafter segregate and separate the injurious effects of these factors when undertaking the examination. In the absence of a non-attribution examination by the Commission, it would not be possible to conclude whether or not the exports from the countries the subject of the application are causing injury to the Australian industry.
77. Further, even when such non-attribution analysis is undertaken, it will become apparent that exports from the countries the subject of the application are not capable of causing the Australian industry any injury. Even if the imports from the countries the subject of the application are found to be causing the Australian industry any injury, JSW Group underscores that such injury is negligible. In such a case if the exports are found to be causing negligible injury, then under Section 269TDA(13A) and 14(A) of the Act, the Commission is required to terminate an investigation if it

⁸ Appellate Body Report, *United States – Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan* (WT/DS184/AB/R)

found that the injury caused by exports from countries the subject of an anti-dumping or countervailing duty investigation is negligible. In particular, Section 269TDA (13A) and (14A) of the Act provide, in relevant part, as under:

13(A) If, in relation to the investigation referred to in subsection (13), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in relation to those countries:

(a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by those exports is negligible—subsection (13) does not apply in relation to those countries;

(b) if the Commissioner is satisfied that such injury or hindrance that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

.....

(14A) If, in relation to the investigation referred to in subsection (14), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in relation to those countries:

(a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country that has been, or may be, caused by those exports is negligible—subsection (14) does not apply in relation to those countries;

(b) if the Commissioner is satisfied that such injury that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

78. Therefore, in keeping with the above requirement, JSW Group submits that even if exports from the countries the subject of the application are found to have caused injury to the Australian industry, the Commission must examine whether the injury caused by the aforesaid exports is negligible. If such is the case, then the anti-dumping investigation must be terminated under Section 269TDA(13A) of Act and similarly the countervailing investigation under Section 269TDA(14A) of the Act.

79. Nonetheless, as submitted in the submission below, the exports from the countries the subject of the application cannot be found to be causing the Australian industry any injury. In particular, the previous investigation against exports of the same goods from India and Vietnam was terminated for reasons of negligible exports and negligible injury. JSW Group submits that the situation in the instant investigation is no different. As a matter of fact, the situation since the previous investigation has improved significantly.

VI. NO CHANGE IN CIRCUMSTANCES SINCE PREVIOUS INVESTIGATION TERMINATED AGAINST INDIA AND VIETNAM

80. As noted above, an investigation against exports of the goods from India and Vietnam was terminated on 28 July 2015.⁹ The investigation was terminated against the countries for the reasons below:

- a. Exports of the goods by certain Indian exporters, which included JSW Steel Coated Products Limited, were not at dumped prices;
- b. Exports of the goods by certain Vietnamese exporters were also not at dumped prices;
- c. Exports of the goods by Vietnamese exporters that were found to be dumped were also at negligible volumes;
- d. The injury caused by exports of the goods by Indian exporters that were dumped was found to be negligible, if any.

81. It is submitted that the performance of the Australian industry has improved significantly in the present investigation period as compared to the previous investigation period and even the volume of imports from the countries the subject of the application has declined significantly. In particular, the investigation period in the previous investigation was 1 July 2013 to 30 June 2014. The table below exhibits clearly the manner in which BlueScope's performance has improved significantly in the present investigation period as compared to the investigation period in the previous investigation which was terminated:

Particulars	2013/14 (Investigation period in Investigation No. 249)	2014/15	2015/16 (Investigation period in current investigation)
Imports from Vietnam and India (countries covered in Investigation No. 249)	63,353	22,857	27,964
Imports from Vietnam, India and Malaysia (countries covered in the current investigation)	65,834	31,410	43,339
Index of production variations	125.61	124.78	136.45
Index of domestic sales volume of the goods	127.68	124.76	134.16
Index of domestic sales value of the goods	134.14	131.99	127.68
Index of profit variations	189.50	1357.64	1988.22
Index of profitability variations	199.08	1436.30	1892.17

⁹ Termination Report No. 249 in the investigation on the Alleged Dumping of Zinc Coated (Galvanised) Steel Exported from India and the Socialist Republic of Vietnam.

Index of revenue variations	133.48	133.08	129.74
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82. The volume of imports in the FY2014 (the investigation period in the previous investigation) as against the volume of imports in the FY2016 (the investigation period in the present investigation) by Vietnam and India reduced from 63,353 tonnes to 27,964 tonnes. The volume of imports has reduced by 56%. Even if the absolute figures of the volume of exports by the countries the subject in the current application were compared against the volume of exports by the countries the subject of the previous application during the that particular period, the exports are significantly less. In particular, exports from India and Vietnam in the FY2014 was 63,353 tonnes and the volume of exports from Vietnam, India and Malaysia is 43,339 tonnes, which is 32% lesser.
83. The decrease in exports is not to be seen in isolation but also in respect to the condition of the Australian industry. As has been established above, the performance parameters of the Australian industry has improved by leaps and bounds, particularly on its profitability. Therefore, if the Commission in the facts of the previous investigation was unable to conclude that the exports were causing the Australian industry any injury that was more than negligible, then JSW Group submits that it would be impossible to conclude that exports from the countries the subject of the application are causing the Australian industry any injury now.
84. Even if the Commission were to find that the exports from the countries the subject of the application are causing the Australian industry, the same cannot be anything more than negligible. Therefore, in keeping with the requirements Section 269TDA(13A) and (14A) of Act, the instant investigation should be terminated.

VII. CONCLUSION

85. On the basis of the submissions above, JSW Group urges the Commission to terminate the anti-dumping and countervailing duty investigation against exports of the goods from India. Further, JSW Group reserves the right to make further submissions on the basis of submissions made by the opposing interested parties through the course of the investigation.

Exhibit 1

[Details of EPCG Licenses of JSW Steel Limited and
JSW Steel Coated Products Limited]