



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

ANTI-DUMPING COMMISSION

TERMINATION REPORT No. 193A
Investigations 193a(i) and 193b(i)

**ALLEGED SUBSIDISATION OF ZINC COATED
(GALVANISED) STEEL AND ALUMINIUM ZINC COATED
STEEL**

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ABBREVIATIONS

ACBPS	the Australian Customs and Border Protection Service
ACDN	Australian Customs Dumping Notice
ADN	Anti-Dumping Notice
ANSTEEL	Angang Steel Company Limited
BlueScope	BlueScope Steel Limited
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
China	the People's Republic of China
Commissioner	the Commissioner of the Anti-Dumping Commission
Commission	the Anti-Dumping Commission
Injury analysis period	from 1 July 2007
Investigation 193	the original investigation
Resumed Investigations	Resumed Investigations 193a(i) and 193b(i) (subject of this report)
Investigation period	1 July 2011 to 30 June 2012
IP	Investigation period
Korea	Republic of Korea
SEF	statement of essential facts
SEF193	SEF for Investigation 193
SEF193A	the SEF for the Resumed Investigations
SIE	State Invested Enterprise
TAGAL	ANSC TKS Galvanising Co., Ltd
TER193	Termination Report 193
the Act	the <i>Customs Act 1901</i>
the goods	the goods the subject of the application
the Minister	the Minister for Industry
ADRP	Anti-Dumping Review Panel

1 SUMMARY AND FINDINGS

1.1 Introduction

This termination report (TER 193A) sets out the facts and findings on which the Commissioner of the Anti-Dumping Commission (Commissioner) based his decisions to terminate the Resumed Investigations¹.

The Resumed Investigations are in response to the decision by the Anti-Dumping Review Panel (ADRP) to revoke the decisions of the Chief Executive Officer² (CEO) of the Australian Customs and Border Protection Service (ACBPS) to terminate the countervailing investigations in respect of zinc coated (galvanised) steel and aluminium zinc coated steel³ (the goods) as they related to Angang Steel Company Limited (ANSTEEL). As a result of the ADRP's decision, the Anti-Dumping Commission (Commission) was required to resume its investigations as they related to ANSTEEL. Full details of the decision by the ADRP are set out in Section 2 of this report.

1.2 Findings

As a result of the Commission's resumed investigations the Commissioner is satisfied that:

- ANSTEEL, a producer of galvanised steel and aluminium zinc coated steel exported from China, was in receipt of countervailable subsidies in respect of some or all of those goods during the investigation period; however
- the countervailable subsidies never exceeded the negligible level of countervailable subsidy under subsection 269TDA(16)(b) of the *Customs Act 1901*⁴ (the Act) during the investigation period.

Therefore, on 1 June 2015, in accordance with subsection 269TDA(2) of the Act, the Commissioner decided to terminate the Resumed Investigations.

A notice regarding the terminations was published in *The Australian* newspaper on 1 June 2015. Anti-Dumping Notice (ADN) 2015/XX also relates to the terminations.

¹ Resumed Investigations in this report refer to Investigations 193a(i) and 193b(i) in relation to Angang Steel Company Limited. Investigation 193(a)(i) refers to the resumed investigation into the subsidisation of zinc coated (galvanised) steel. Investigation 193(b)(i) refers to the resumed investigation into the subsidisation of aluminium zinc coated steel.

² Prior to 1 July 2013, anti-dumping investigations were carried out by the ACBPS and the CEO was the relevant decision maker. As of 1 July 2013, the Anti-Dumping Commission has the responsibility to carry out anti-dumping investigations and the responsible decision maker is the Commissioner of the Anti-Dumping Commission.

³ Investigation 193a refers to the countervailing investigation for zinc coated (galvanised) steel and Investigation 193b refers to the countervailing investigation for aluminium zinc coated steel.

⁴ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

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1.3 Application of law to facts

1.3.1 Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application for the publication of a countervailing duty notice.

1.3.2 Application and initiation

On 18 October 2012, BlueScope Steel Limited (BlueScope) lodged separate applications requesting that the Minister publish a countervailing duty notice in respect of galvanised steel and aluminium zinc coated steel exported to Australia from the People's Republic of China (China).

The CEO of the ACBPS decided not to reject the applications, and notice of the initiation of the investigations was published on 26 November 2012.⁵

1.3.3 Termination – TER 193(i)

On 17 June 2013, the CEO, after having regard to information including the applications and submissions, was satisfied that:

- in relation to galvanised steel, ANSTEEL and ANSC TKS Galvanising Co., Ltd (TAGAL), exporters of galvanised steel, were in receipt of countervailable subsidies in respect of those goods but the countervailable subsidies never exceeded the negligible level of countervailable subsidy under subsection 269TDA(16)(b) of the Act during the investigation period; and
- in relation to aluminium zinc coated steel from China, ANSTEEL was in receipt of countervailable subsidies in respect of those goods but the countervailable subsidies never exceeded the negligible level of countervailable subsidy under subsection 269TDA(16)(b) of the Act during the investigation period.

Accordingly, under subsection 269TDA(2) of the Act, the CEO terminated the countervailing investigation for galvanised steel so far as it related to ANSTEEL and TAGAL, and terminated the countervailing investigation for aluminium zinc coated steel so far as it related to ANSTEEL. Notice of the terminations was published in *The Australian* newspaper on 17 June 2013. Reasons for the CEO's decision are set out in TER 193(i), available on the Commission's website.

1.3.4 ADRP review

BlueScope appealed the CEO's decisions to terminate the investigations in respect of TAGAL and ANSTEEL to the ADRP. After conducting its review, the ADRP affirmed the CEO's decision to terminate the investigation in relation to TAGAL but

⁵ Subsection 269TC(4)

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revoked the CEO's decisions to terminate the investigations in relation to ANSTEEL. As a consequence of the ADRP's decision to revoke the CEO's termination decisions in relation to ANSTEEL, these investigations were resumed.

1.3.5 Statement of essential facts

On 7 October 2014, the Commissioner placed *Statement of Essential Facts No 193A* (SEF 193A) on the Public Record which is available on the Commission's website. SEF 193A set out the Commissioner's view that there are grounds to terminate the investigations in relation to ANSTEEL due to a preliminary finding of negligible subsidisation of the goods under subsection 269TDA(2) of the Act.

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2 BACKGROUND TO THE RESUMED INVESTIGATIONS

2.1 Initiation – Investigation 193

On 18 October 2012, BlueScope lodged applications for dumping and countervailing duties in respect of galvanised steel and aluminium zinc coated steel exported from China. BlueScope alleged that the Australian industry has suffered material injury caused by the cumulative effects of galvanised steel and aluminium zinc coated steel being exported to Australia:

- from China at subsidised prices; and
- from China, the Republic of Korea (Korea) and Taiwan at dumped prices.⁶

On 26 November 2012, following consideration of the applications, the CEO of the ACBPS decided not to reject the applications and initiated Investigation 193 in relation to subsidies and Investigation 190 in relation to dumping. Public notification of initiation of the investigations was made in *The Australian* newspaper on 26 November 2012. Australian Customs Dumping Notice (ACDN) No. 2012/56 provides further details of the investigations and is available on the Commission's website at www.adcommission.gov.au.

In respect of investigation 193:

- the investigation period for the purpose of assessing subsidisation is 1 July 2011 to 30 June 2012; and
- the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry is from 1 July 2007.

2.2 SEF 193

The SEF for the investigations (SEF 193) was placed on the public record on 15 May 2013.

Six submissions were received in response to SEF193 from the following interested parties:

- China Iron and Steel Association (CISA);
- BlueScope;
- GM Holden Limited;
- Yieh Phui (China) Technomaterial Co., Ltd;
- Union Steel China Co., Ltd; and
- The Government of China (GOC).

⁶ Refer to REP 193 published on 5 August 2013 for the findings that were made in relation to dumping and countervailing.

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Public record version of these submissions can be found on the Commission's website at www.adcommission.gov.au.

2.3 TER 193(i)

Termination Report 193(i) (TER193(i)) was published on 17 June 2013 setting out the findings and conclusions in relation to countervailable subsidies received in respect of the goods exported by ANSTEEL and TAGAL from China and reasons for the decisions to terminate the investigations.

In TER193(i), the delegate of the CEO was satisfied that in relation to galvanised steel:

- countervailable subsidies were received in respect of some or all of the goods exported by ANSTEEL, which during the investigation period never exceeded the negligible level of countervailable subsidy under subsection 269TDA(16)(b) of the Act; and
- countervailable subsidies were received in respect of some or all of the goods exported by TAGAL which during the investigation period never exceeded the negligible level of countervailable subsidy under subsection 269TDA(16)(b) of the Act.

The delegate of the CEO was also satisfied that in relation to aluminium zinc coated steel:

- countervailable subsidies were received in respect of some or all of the goods exported by ANSTEEL which during the investigation period never exceeded the negligible level of countervailable subsidy under subsection 269TDA(16)(b) of the Act.

Therefore, the delegate of the CEO decided to terminate the following parts of the investigations, in accordance with subsection 269TDA(2) of the Act:

- the galvanised steel investigation so far as it related to ANSTEEL and TAGAL; and
- the aluminium zinc coated steel investigation so far as it related to ANSTEEL.

A notice regarding the termination of these investigations was published in *The Australian* newspaper on 17 June 2013. ACDN 2013/50 provides information on the terminations.

2.4 Appeal to the ADRP and revocation of termination

On 15 July 2013, BlueScope applied to the ADRP to review the termination decisions in respect of TAGAL and ANSTEEL. The ADRP accepted the application and conducted a review.

The ADRP revoked the decisions to terminate the investigations regarding galvanised steel and aluminium zinc coated steel as they related to ANSTEEL, and affirmed the decision to terminate as it related to TAGAL. The report outlining the

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ADRP's reasons for the decision is available on the ADRP's website at www.adreviewpanel.gov.au.

The effect of the ADRP's revocation decision was that the Commissioner was required to resume both investigations relating to ANSTEEL. The Commission published Anti-Dumping Notice (ADN) 2013/78 on 4 October 2013 advising interested parties of the resumption and inviting submissions on the resumed investigations by 4 November 2013.

2.5 Statement of essential facts

On 7 October 2014, the Commissioner placed SEF 193A for the Resumed Investigations on the public record.

SEF 193A outlined the facts on which the Commissioner proposed to again terminate the investigations.

SEF 193A made preliminary findings that:

- ANSTEEL was in receipt of countervailable subsidies in respect of some or all of the goods during the investigation period; however
- the countervailable subsidies never exceeded the negligible level of countervailable subsidy during the investigation period under subsection 269TDA(16) of the Act.

SEF 193A is accessible via the Commission's public record (<http://www.adcommission.gov.au>).

Interested parties were invited to lodge responses to SEF 193A by no later than 27 October 2014. The Commission received one submission from BlueScope.

2.6 Relevant Legislation

Subsection 269TDA(2) of the Act provides:

If:

*(a) application is made for a countervailing duty notice; and
(b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:*

- (i) no countervailable subsidy has been received in respect of any of those goods; or*
- (ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time after the start of the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);*

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

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Subsection 269TDA(16) of the Act provides:

For the purposes of this section, a countervailable subsidy received in respect of goods exported to Australia is negligible if:

- (a) the country of export is not a developing country and the subsidy, when expressed as a percentage of the export price of the goods, is less than 1%; or*
- (b) the country of export is a developing country but not a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%; or*
- (c) the country of export is a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3%.*

2.7 Matters considered in this report

In making the decisions to terminate the investigations, the Commissioner has had regard to:

- the applications;
- any submissions concerning publication of the notice to which the Commissioner had regard for the purpose of formulating TER 193(i);
- TER 193(i);
- the ADRP report;
- SEF 193A;
- any submission in response to SEF 193A received by the Commission within 20 days after the day that statement was placed on the public record; and
- any other matters the Commissioner considered relevant.⁷

2.8 Appeal of REP 193 and REP 190 to the ADRP

On 4 September 2013, the Ministry of Commerce of the Government of China (GOC), applied to the ADRP to review the findings of REP 193 and REP 190. The outcomes of these reports was the publication of countervailing duty notices and dumping duty notices, respectively in respect of galvanised steel and aluminium zinc coated steel exported from a number of countries, including China. One of the grounds for review included the characterisation of State Invested Enterprises (SIEs) as public bodies.⁸ The ADRP accepted the application and conducted a review.

Following consideration of the GOC's application for review, the ADRP recommended that the Parliamentary Secretary affirm the decisions to publish dumping duty notices⁹ and revoke the decisions to publish countervailing duty

⁷ Subsection 269TEA(3)

⁸ A full listing of the grounds for the application can be found in the GOC's application available on the ADRP's website.

⁹ Refers to notices resulting from REP 190

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notices¹⁰. The report outlining the ADRP's reasons for the decision was made available on the ADRP's website.

In summary, the ADRP found that there was insufficient evidence to conclude that SIEs were public bodies. As a consequence there were no grounds to find that certain subsidies (being the provision of raw materials at less than adequate remuneration) were countervailable.

On 20 February 2014 the Parliamentary Secretary published a notice that amended the countervailing duty notices in regards to aluminium zinc coated and galvanised steel. The Parliamentary Secretary stated, in response to the ADRP's recommendations from the review of Investigation 193, that:

"The only grounds for review in relation to the countervailing duty notices were in relation to subsidy programs 1 to 3 described in International Trade Remedies Report 193 (Report 193). No complaint was made in relation to the determination of countervailable subsidies under other subsidy programs described in Report 193 and mentioned in the countervailing duty notices. Nor did the ADRP review any of the findings in Report 193 in relation to the other subsidy programs. In these circumstances I have decided to vary the countervailing duty notices so as to reduce the countervailing subsidies by the amounts referable to programs 1 to 3."

¹⁰ Refers to notices resulting from REP 193

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3 ADRP'S FINDINGS IN RESPECT TO TER 193(i)

3.1 ADRP's findings

The ADRP published a report outlining the reasons for the decision to revoke the delegate of the CEO's decisions to terminate the investigations into galvanised steel and aluminium zinc coated steel exported to Australia from China by ANSTEEL.¹¹

3.2 Approach to the resumed investigation

In reaching its decision the ADRP referred one matter to the Commissioner (raised by BlueScope in its application for review of the termination decision) for reconsideration during the resumed investigations. This was in relation to whether the benchmark used in the calculation of the subsidy relating to the provision of coking coal at less than adequate remuneration was appropriate.

The ADRP also concluded that the discount interest rate adopted in SEF 193 in relation to the calculation of the subsidy attributable to Program 30 (capital injections) was not the preferred rate. As indicated in the ADRP report, the Commission recalculated the subsidy margin based on a discount rate selected by the ADRP. This resulted in a subsidy margin that was 0.01% greater than the margins relied on to terminate the investigations. The ADRP noted that this had no material bearing on the decisions to terminate the investigations as they related to ANSTEEL. The Commission has therefore not reconsidered this issue for the purpose of the Resumed Investigations.

The Commission received submissions from interested parties prior to publication of SEF 193A. A complete listing of the submissions considered within the Resumed Investigations can be found at Appendix 1 to SEF 193A.

¹¹ Decision of the Anti-Dumping Review Panel, 11 September 2013.

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4 SUBMISSIONS IN RESPONSE TO SEF 193A

Only one submission was received in response to SEF 193A, from BlueScope. A copy of the submission is available on the public record.

BlueScope submitted that it disagrees with the findings of the ADRP in respect of REP 193. In particular, BlueScope stated it believes that SIEs are public bodies in the circumstances examined in REP 193. It referred to findings of Canadian and American anti-dumping authorities, namely that in those jurisdictions in some cases SIEs were considered public bodies in China's iron and steel industries. It argued that if in this case SIEs producing coking coal were considered public bodies, this would increase the level of countervailable subsidies recognised by the Commission to above 2 per cent.

5 BENCHMARK FOR COKING COAL (PROGRAM 2)

5.1 Background

BlueScope alleged that Chinese exporters of galvanised steel and aluminium zinc coated steel have benefited from the provision of raw material in the form of coking coal by the GOC at less than adequate remuneration.

In particular it was claimed that coking coal, one of the main raw materials used in the manufacture of hot rolled coil, which is in turn used for the manufacture of galvanised steel and aluminium zinc coated steel, was being produced and supplied by SIEs in China at less than adequate remuneration.

In REP 193, ACBPS considered that this program involved a financial contribution that involves the provision of the goods (coking coal) by SIEs, being public bodies, at less than adequate remuneration. In determining an appropriate level of remuneration, ACBPS used the Chinese export price as a benchmark.

This subsidy program was referred to as 'Program 2'.

5.2 ADRP's view

The ADRP considered potential benchmark prices that were available during the investigations, including Chinese export prices. When reviewing the termination decisions, the ADRP examined the pricing of Australian export coking coal from different sources. The ADRP observed that the use of some of the Australian export prices as benchmarks resulted in countervailable subsidies above the negligible level.¹² The ADRP noted that:

*"These calculations, by themselves, are of no real significance. However they do, in my opinion, assume some importance ... [as] it points to a real possibility that the coal for which the export prices were ascertained (and used) as the benchmark to determine adequate remuneration, was not of comparable quality to the coal purchased by the Chinese manufacturers to manufacture coated steel products"*¹³

5.3 The Commission's approach

The Commission considers that the outcome of the ADRP's review of REP 193 (as discussed above in section 2.8) is relevant information that should be considered in the Resumed Investigations.

As a result of the review of REP 193, the ADRP recommended that the countervailing duty notices be revoked. Underlying this finding was the ADRP's conclusion that, in relation to this investigation, state invested enterprises could not

¹² Defined in subsection 269TDA(16)(b) as negligible if countervailable subsidisation is not more than 2%.

¹³ ADRP Report, 11 September 2013, Paragraph 20.

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be characterised as public bodies.

Based in part on the ADRP's finding, the Parliamentary Secretary varied the countervailing duty notices (as published on 20 February 2014), which (among other things) reduced the countervailable subsidy of those exporters that were subject to the notice by the amounts attributable to Program 2.¹⁴

As the Parliamentary Secretary's variation of Investigation 193's finding has the effect that suppliers of coking coal are not considered public bodies, ANSTEEL could not be said to have been in receipt of a countervailable subsidy in the form of Program 2. The Commission considers that the claims surrounding the use of a particular benchmark to quantify the benefit derived from this program are therefore no longer of significance in the Resumed Investigations.

5.4 Conclusion

The Commission considers that, in accordance with the Parliamentary Secretary's notice of 20 February 2014, ANSTEEL was not in receipt of a countervailable subsidy in the form of the provision of coking coal provided at less than adequate remuneration (Program 2).

¹⁴ The countervailable subsidies were further adjusted in relation to programs 1 and 3.

6 CONCLUSION

Under subsection 269TDA(2), the Commissioner must terminate an investigation if a countervailable subsidy has been received in respect of some or all of the goods the subject of a countervailing duty application but it never at any time during the investigation period exceeded the negligible level of countervailable subsidy under subsection 269TDA(16). With respect to goods exported from China, if the level of subsidy, when expressed as a percentage of the export prices is not more than than two per cent, it is considered to be negligible under subsection 269TDA(16)(b).

The Commission has considered the outcome of the Parliamentary Secretary's notice of 20 February 2014, with regard to Program 2.

In light of the ADRP finding relating to public bodies, in determining the amount of countervailable subsidy received by ANSTEEL, the Commission has not included any subsidy received in respect of Program 2. The Commission has not made an adjustment with regard to Program 30 as the ADRP considered that the use of a different interest rate was immaterial.

In order to determine if the countervailable subsidy received in respect of some or all of the goods had, at any time during the investigation period, exceeded the negligible level of countervailable subsidy in accordance with subsection 269TDA(16)(b), the Commission quantified the subsidies as follows:

- in relation to galvanised steel exported from China, ANSTEEL was in receipt of countervailable subsidies in the amount of 0.08% during the investigation period; and
- in relation to aluminium zinc coated steel exported from China, ANSTEEL was in receipt of countervailable subsidies in the amount of 0.07% during the investigation period.

Based on the information before him, the Commissioner has decided to terminate the investigations as they relate to ANSTEEL in accordance with subsection 269TDA(2) because the countervailable subsidies received in respect of the goods never at any time during the investigation period exceeded the negligible level of countervailable subsidy as defined in subsection 269TDA(16)(b).