



BlueScope Steel Limited
Sirius Building
Five Islands Road, Port Kembla NSW 2505
PO Box 1854, Wollongong NSW 2500
P +61 2 4240 1214 | M +61 412 377 603
E Chad.Uphill@bluescopesteel.com

28 April 2017

The Director
Operations 5
Anti-Dumping Commission
Industry House
Binara Street
Canberra ACT 2601

Public File

Dear Sir/Madam,

Re Investigation No. 370 – Galvanised steel exported from India, Malaysia and Vietnam – Comments re submission by JSW Steel Coated Products and JSW Steel Limited

I. Background

I refer to the submission received by the Anti-Dumping Commission (“the Commission”) dated 28 March 2017 on behalf of JSW Steel Coated Products Limited and JSW Steel Limited (“JSW Group”). The submission asserts that BlueScope Steel Limited (“BlueScope”) has not suffered material injury that can be attributed to dumped and subsidised exports during the investigation period. Additionally, it is contended by the JSW Group that countervailable subsidies received by the JSW Group:

- Are not above negligible levels; and
- Any injury that can be attributed to subsidised goods should not be cumulated with dumped exports (from India, Malaysia and Vietnam).

The JSW Group has therefore sought the investigation be terminated into relation to its exports to Australia.

BlueScope rejects the JSW Group claims that the goods exported by the JSW Group during the investigation period were at dumped and subsidised levels (confirmed by the Commission as 9 per cent and 5 per cent respectively¹) and, are correctly cumulated with dumped and subsidised exports from other exporters in the investigation.

II. Subsidy programs received by JSW Group

(i) *Introduction*

The JSW Group representations seek to dismiss the volume of exports from India as negligible on the basis that, as a percentage of total imports during the investigation period, India volumes are “around 4 per cent”. The JSW Group nominates the import volume from India at 4.9 per cent which is above the negligible volume level as prescribed in subsection 269TDA(8)(b) of the Customs Act of “less than 4 per cent”.

The JSW Group has stated that it received countervailable benefits as follows:

¹ JSW Group Exporter Visit Report, March 2017 (EPR Document No. 78).

(a) JSW Steel Coated Products Limited:

- (i) Export Promotion Capital Goods Scheme;
- (ii) Advance Authorisation Scheme;
- (iii) Duty Drawback Scheme;
- (iv) Section 901A 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 Amber 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.

(ii) *Program coverage*

The JSW Group is not contesting that it has received countervailable subsidy benefits. JSW Group, however, is seeking to limit the subsidies received to those that directly benefit the zinc coated galvanised steel plant at Vijayanagar. The JSW Group submission states “*It is underscored [sic] that the Dolvi and Salem plants of JSW Steel Limited do not manufacture zinc coated (galvanised) steel.*”² BlueScope notes that the JSW Group operates at six production sites in India – Dolvi, Kalmeshwar, Salem, Tarapur, Vasind, and Vijayanagar. It is the latter works that the JSW Group is seeking the Commission to only determine that the relevant subsidy programs apply.

The works at Kalmeshwar, Tarapur and Vasind manufacture galvanised and galvalume product (to which no reference is made in the JSW Group submission). The Dolvi works manufactures hot rolled coil, the raw material input into zinc coated (galvanised) steel. The subsidies received by the JSW Group cannot be considered in isolation to one zinc coated galvanised steel plant as the subsidies readily benefit the production of inputs produced at another JSW Group plant, or in fact zinc coated (galvanised) steel produced at one of the plants not referenced in the JSW Group submission.

(iii) *EPCG Program*

The JSW Group has requested that the Commission treat benefits received under the Export Promotion of Capital Goods (EPCG) Scheme that have not been fulfilled be treated as a ‘*preferential loan and only interest on the exemption amount should be considered as the benefit*’. It would appear from the JSW Group exporter verification report that the Commission has adopted this methodology.

BlueScope would highlight, however that the Commission’s practice is to account for subsidies in the period in which they are received. It would be expected that the JSW Group would have had subsidy benefits that

² Refer JSW Group submission 28 March 2017, P. 7.

had not been fulfilled in the period immediately preceding the investigation period and that these benefits were received during the 2015/16 investigation period. The full amount of these benefits (less any amount for interest on a preferential loan) is required to be identified for the investigation period (i.e. any unfulfilled benefits from the preceding period 2014/15).

(iv) *SGOM subsidies*

JSW Group – although acknowledging it had received countervailable benefits from the State Government of Maharashtra (“SGOM”) – has requested that these programs be treated as not specific. It is asserted that that the conditions of the subsidies (i.e. Industrial promotion subsidy, Incentives for Mega Projects, and Package Scheme of Incentives) ‘do not favour any particular type of enterprises over the other’. The programs are, however, specific as they are contingent on the level of expenditure required and the location of the plant within the State.

The programs therefore cannot be considered ‘non-specific’ as there are particular pre-conditions required for eligibility.

(v) *Advanced Authorisation Scheme*

It is claimed by the JSW Group that exports of zinc coated (galvanised) steel to Australia should be exempt from benefits received under the Advanced Authorisation Scheme as only goods produced by JSW Coated Products Limited are eligible under the scheme. It is noted that the scheme provides for the exemption of duties on imported raw material inputs that are incorporated into further manufactured items and subsequently exported.

JSW Group has sought the Commission to not treat benefits received under the program as countervailable as the goods were not exported to Australia. This does not discount JSW Steel from qualifying for the benefit.

(vi) *Further programs*

JSW Group has also argued that benefits received under the Merchandise Export from India Scheme (“MEIS”), the Focus Market Scheme (“FMS”) and the Market Linked Focus Scheme (“MLFS”) should not be countervailed by the Commission as the benefits received either did not fall within the investigation period (i.e. for MEIS) or ceased to operate during the investigation period.

The Commission must be satisfied that the exporter did not receive benefits under these schemes during the investigation period in order for JSW Group’s assertions to be affirmed.

III. Cumulation of dumping and subsidisation goods

The JSW Group submission contends that the cumulation of non-subsidised and dumped goods cannot be undertaken as this would be contrary to the WTO Anti-Dumping Agreement and the SCM Agreement to do so. It is further argued that the injury resulting from dumped Malaysian exports cannot be cumulated with injury that may be attributed to subsidised exports from India and Vietnam.

In its injury assessment, the Commission will have regard to the provisions of subsection 269TAE(2C) that permits the aggregation of the injurious effect of subsidised goods (above negligible levels) with dumped goods (above negligible levels) having regard to the level of competition between the exported goods and the locally produced goods manufactured in Australia.

The Commission, therefore, in accordance with subsection 269TAE(2C) may cumulate the dumped and subsidised exports of the goods under consideration with dumped goods from other countries included within the investigation.

IV. Material injury to Australian industry

JSW Group claims that the Australian industry has not suffered material injury from the volume of the dumped exports and the impact of those exports on the locally produced goods. BlueScope rejects these assertions.

JSW Group contends that declining export volumes from India in the investigation period cannot be a cause of injury to the Australian industry. The Commission has conducted a verification visit with BlueScope. The findings as to the 'Economic Condition of the Industry' are contained in Section 5 of the BlueScope Industry Visit Report³. The Commission has verified that BlueScope has suffered injury in the following forms:

- Price depression;
- Price suppression;
- Lost profit;
- Lost profitability;
- Lost opportunity to gain sales volume;
- Reduced return on investment; and
- Reduction in employment numbers.

Contrary to JSW Group's assertions, the Commission has confirmed that BlueScope has suffered injury during the investigation period. In Consideration Report No. 370, the Commission examined BlueScope's claims concerning price undercutting from the dumped (and subsidised) exports from India, Malaysia and Vietnam. The Commission calculated reasonable estimates of Free Into Store ("FIS") prices for imports from the three countries and compared these with BlueScope's unit selling prices.

The Commission concluded that the imports from India, Malaysia and Vietnam undercut BlueScope's selling prices between 13 per cent and 19 per cent during the investigation period.

Across the injury analysis period (financial years 2013 to 2016) imports from India, Malaysia and Vietnam increased market share from 2 per cent to 6 per cent. According to the Commission, the imports from India, Malaysia and Vietnam accounted for approximately 24 per cent of the total import volume into Australia during the investigation period. The import volume as a percentage of total imports is not insignificant and has had a significant impact on Australian industry prices through significant price undercutting (from XX to XX per cent) resulting in price depression and price suppression.

BlueScope notes the comments of JSW Group⁴:

"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".

³ BlueScope Industry Visit Report, EPR Document No. 55.

⁴ JSW Group submission, EPR Document No. 75, P.16.

The JSW Group does not detail what the asserted “internal issues” may be. It should also be noted that JSW Group’s claims about increasing ‘production costs’ is not borne out by the data as detailed in BlueScope’s application as per “Index of cost variations⁵”.

The JSW Group has relied upon mere conjecture in suggesting that BlueScope has not experienced injury as a direct consequence of competing with the injurious imports from India, Malaysia and Vietnam. JSW Group’s claims cannot be supported by the data available to the Commission and must be ignored.

V. Ministerial Directive on Material Injury

BlueScope notes the Commission’s comments about the Australian industry potentially increasing its market share but for the injurious imports from India, Malaysia and Vietnam. The Ministerial Directive indicates that the Commission is required to have regard to factors including “*where an Australian industry would have been more prosperous if not for the presence of dumped or subsidised imports, I direct that you be mindful that a decline in an industry’s rate of growth may be just as relevant as the movement of an industry from growth to decline*⁶”.

BlueScope’s profit in the investigation period is similar to the previous year, however, due to price suppression evident throughout the investigation period, BlueScope has been unable to increase its margin on improved sales volumes.

VI. No change in circumstances since investigation No. 249

The JSW Group has further suggested that the performance of the Australian industry has improved following Investigation No. 249. As the import volumes from India, Malaysia and Vietnam are lower in the current investigation period, JSW Group submits that “*it would be impossible to conclude that exports from the countries the subject of the investigation are causing injury to the Australian industry now*⁷”.

BlueScope rejects this suggestion. The dumped (and subsidised) exports from India, Malaysia and Vietnam account for a substantial proportion of the total import volume into Australia in the investigation period, have undercut the Australian industry’s selling prices by significant levels, and account for a not insubstantial share of the Australian market for zinc coated (galvanised) steel. The Australian industry has experienced price depression and price suppression in the investigation period, resulting in an erosion of profit and profitability. There have been no other causes of injury to the Australian industry in the 2015/16 investigation period and it is recognised that zinc coated (galvanised) steel pricing is sensitive to import pricing.

BlueScope reiterates its claims detailed in its application that the exports from India, Malaysia and Vietnam at dumped (and subsidised) prices have caused material injury to the Australian industry during the 2015/16 investigation period. The Commission has verified the injury experienced by BlueScope (as per the Industry Visit Report). It is BlueScope’s position that the injury verified by the Commission can be directly attributed to the price undercutting experienced from the injurious exports from India, Malaysia and Vietnam.

VII. Conclusions

The JSW Groups’ assertions that certain countervailable programs, for which it has received benefits and which are not countervailable for the purposes of this inquiry, cannot be accepted. Additionally, the programs that provide benefits to the JSW group are not negligible.

⁵ Refer BlueScope Application, EPR Document No. 5, P. 28.

⁶ Refer Australian Customs Dumping Notice No. 2012/24.

⁷ JSW Group submission, EPR Document No. 75, P. 27.

The JSW Group has also submitted that the exports from India cannot be cumulated with the dumped exports from Malaysia, however, subsection 269TAE(2C) permits the Commission to cumulate said exports.

The assertions by the JSW Group that the Australian industry has not suffered material injury in the investigation period cannot be accepted. The Commission has verified that BlueScope has suffered injury in the investigation period. BlueScope has demonstrated that the injury is material and that the shares held by the injurious volumes from India, Malaysia and Vietnam are significant and influential in a price-sensitive market.

BlueScope re-affirms its earlier requests that the Commission publish a Preliminary Affirmative Determination ("PAD") and impose provisional measures to prevent further injury to the Australian industry.

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

Yours faithfully,

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

Chad Uphill
Leader – Trade Affairs