

PUBLIC RECORD

BEFORE THE ANTI-DUMPING COMMISSION OF
AUSTRALIA

Comments on

“Statement of essential facts no. 370 and preliminary affirmative determination no. 370 alleged dumping of zinc coated (galvanised) steel exported from the Republic of India (India), Malaysia and the Socialist Republic of Vietnam (Vietnam) and the alleged subsidisation of galvanised steel exported from India and Vietnam”.

Concerning

The alleged subsidisation of galvanised steel exported from India and Vietnam.

On behalf of

Government of India (GoI)

Filed Through

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20th June, 2017

Mr. Sanjay Sharma,
Assistant Director, Operations 5,
Anti-Dumping Commission,
SAP House, Level 4, 224 Bunda Street,
Canberra ACT 2600
Australia.

Ref: Countervailing Duty Investigation by Australian Anti-dumping Commission on imports of zinc coated (galvanised) steel (the goods), exported from the Republic of India (India).

Sub: Comments on Statement of Essential Facts the alleged subsidisation of galvanised steel exported from India and Vietnam

Sir,

1. On behalf of Government of India [hereinafter referred to as “GOI”] in respect of the subject CVD investigation, we are hereby submitting the following comments on the Statements of Essential Facts and Preliminary Affirmative Determination issued by Australia Anti-Dumping Commission in May 2017. Gol has earlier filed detailed replies to the prescribed questionnaires and supplementary questionnaires. Such submissions are not being repeated here for the sake of brevity. However, such submissions may be treated as an inalienable part of these comments as well.
2. Without prejudice, our brief comments on the subject SEF are as follows;
 - A. No verification of the schemes of Gol was conducted and Gol was not given adequate opportunity to defend and explain its schemes.**
3. At the very outset, it is submitted that no verification of the GOI schemes being investigated by the Ld. Commission, thus, the Gol was not given adequate opportunity to defend and explain its schemes.
4. The subject SEF and the preliminary affirmative determination shows that the Ld. Commission has found 11 schemes listed therein having element of countervailable benefits in it. After pursuing the examination of schemes as given in the SEF, it our view that the SEF do not establish the existence of element of countervailable benefits in any of the said schemes as envisaged in the Subsidies and Countervailing Measures Agreement (“hereinafter referred to as “SCM”). It is requested to the Ld. Commission to reappraise the submissions of Gol and provide enough opportunity to the GOI to explain its schemes. It is submitted that

B. The view taken on 11 schemes requires further examinations

5. It is requested that the Ld. Commission may reexamine its view on 11 schemes before reaching out to any final determination. Our specific comments to the 11 schemes identified by the Ld. Commission are as follows;

Program No	Comments of Gol
23- Export Promotion of Capital goods:	The GOI reiterates that the benefits availed under EPCG Scheme is not countervailable as the capital goods are used to manufacture the products. EPCGS allows import of capital goods including spares for pre-production, production and post-production at zero duty subject to an export obligation as per Foreign Trade Policy 2015-20. Since there are no restrictions on the goods manufactured by imported machines / parts to be sold in the home market, this scheme is not “specific” as defined under Article 2 of ASCM and thus this scheme cannot be termed as a countervailable subsidy in terms of Article 1 of ASCM. Without prejudice to above it is submitted that the investigating authorities must take it on record that entitlement, if any, in its entirety is not countervailable within the meaning of the ASCM. Footnote 1 to the ASCM states that <i>“the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy”</i> . Hence, we request the Ld. Commission to re-examine its position on this scheme and the calculation may modified accordingly.
25- Advance Authorisation Scheme (“AAS”)	The scheme is available to all sectors and all regions, without any discrimination. The scheme is applicable to a manufacturer exporter as well as the merchant exporter tied up with supporting manufacturer. Eligibility is not limited by sector or region, nor is eligibility confined to particular enterprises. All the applicants/firms that meet the eligibility criteria are given authorisation and the authority does not exercise any discretion. It is submitted that as per the provisions of ASCM footnote 1, AAS cannot be construed as subsidy at all. AAS scheme provides procedure of “which inputs” are consumed in the production of the exported product and in “what amounts”.

	<p>Technical committee consisting of the Inter departmental experts of the administrative ministries determine which inputs are consumed in “what amount” in production of the product concerned.</p> <p>Moreover the Input-output norms are reviewed from time to time by the Technical Committee taking into account various factors including the change in efficiency with the change of technology, the industry average etc. This establishes that there is a system or procedure in place to “confirm” “which inputs” and “in what amounts” inputs are required.</p> <p>The system or procedure is reasonable and effective for the purpose intended as per required under the Annex-II of the SCM Agreement. As a matter of double check, an exporter is required to provide consumption details in respect of inputs imported, its quantity, name of the finished product produced, quantity of finished product, inputs actually consumed for the exported product, duly verified and certified by the Chartered Accountant in Appendix 4H of Hand Book of Procedure (2015-2020).</p> <p>In case of excess import to that of actual consumption, applicable customs duty is required to be paid along with interest at higher rate than the normal commercial interest rate. In addition, there is constant monitoring by the bodies like the Central Excise and the Directorate of Revenue Intelligence on the duty exempted materials.</p> <p>The customs authorities also keep complete record of the duty free imports made and exports effected by the exporter to ensure compliance with the scheme.</p> <p>Furthermore, for some items against Advance Authorization the import and export are restricted/regulated through specified ports by the customs to monitor/exercise proper control.</p> <p>DGFT maintains company specific record of advance authorization issued. In the view of the above it is submitted that the scheme cannot be treated as a countervailable scheme as per the provisions of Annexure- I of the SCM Agreement.</p>
<p>26 Duty Exemption and remission</p>	<p>DEPBS scheme had been on pre export and post export basis. The pre-export DEPBS was abolished with effect from (w.e.f.) 1 April 2000. Similarly, Duty Entitlement Passbook</p>

<p>Scheme/ Duty Entitlement Passbook Scheme</p>	<p>Scheme (post export) has been discontinued for exports made on or after 1 October 2011 [Chapter 4, FTP 2009-2014]. Since the benefits under this scheme were not available during the Investigating Period, In it is submitted that since the scheme has been discontinued, there are no chances of any future benefits under this alleged scheme and the Ld. Commission may exclude this scheme also from the scope of present investigation.</p>
<p>27- Duty Drawback Scheme</p>	<p>Duty Drawback Scheme is restricted to reimbursement of Customs duty and/or Central Excise duty and Service Tax chargeable on any imported or excisable materials and input services used in the manufacture of export goods. Manufacture includes processing of or any other operation carried out on goods. The Duty Drawback may be paid on basis of actual or average incidence of the duty/tax. Gol reiterate its position that this scheme does not grant any countervailbale benefit as per ASCM. Further it may also be noted that duty exemption and remission programs are not inconsistent with the ASCM. In this regard reference is drawn to paragraphs (h) and (i) of Annex I read with Annex II of the ASCM. Specifically, paragraph 1 of Section I under Annex II states that the following schemes can allow for exemption, remission, deferral or refund of indirect taxes or import charges levied on inputs that are consumed in the production of the exported product:</p> <p style="padding-left: 40px;">(a) indirect tax rebate schemes; and (b) substitution drawback schemes.</p> <p>Further, as per paragraph 2 of Section I under Annex II, both indirect tax rebate schemes and substitution drawback schemes can constitute an export subsidy only to the extent that they result in exemption, remission, deferral or refund of indirect taxes or import charges in excess of the amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product. However, normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product.</p> <p>Furthermore, Section II of Annex III provides guidelines for determining whether inputs are consumed in the production of the exported product. Briefly put, it provides:</p>

	<p>“Investigating authorities would proceed on the following basis: The investigating authority would first determine whether the government of the exporting country has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such system or procedure is determined to be applied, investigating authorities should then examine the system or procedure to see whether it is reasonable, effect for the purpose intended, and based on generally accepted commercial practices in the country of export. The investigating authorities may carry out certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied. ... The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.”</p> <p>Therefore, it is clear that duty exemption and remission schemes are not countervailable as long as benefits received on the inputs that are consumed in the production of the exported product can be verified. GOI would also wish to submit that there exist a robust mechanism and adequate checks and balances to ensure that imported goods are consumed or utilized in exported goods. Thus the exemption of duties/taxes as provided in the above stated schemes, is in accordance with Article XVI and the benefit is only to the producers / exporters who are ultimately exporting the subject goods from India.</p>
<p>31- 80 IA Income Tax Deduction.</p>	<p>GOI submits that the Taxation is a sovereign right of a State. Tax policies are framed taking into account the economic situation and development of trade and commerce etc. Accordingly, with a view to give a boost to the manufacturing sector, especially in industrially backward region and also to encourage private participation in setting up conventional centers, hospitals etc. and to promote agro-</p>

	<p>industries etc., tax benefit under section 80-IA of the Income Tax Act has been provided. It would be very apparent that the scheme would not qualify as subsidy under the category of subsidy countervailable as per the ASCM as these are neither export subsidies nor specific to qualify as subsidy. They are general in application. The Ld. Commission may relook into its view on this scheme.</p>
<p>56- Merchandise Exports Incentive Schemes</p>	<p>Objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.</p> <p>In view of the objective stated above, it is submitted that that MEIS is not a subsidy under the ASCM.</p>
<p>State Government of Maharashtra programs 35- Exemption of Electricity Duty, 39- Special Incentives of SGOM for Mega Projects, , 57- Sales tax Deferral Program, ,58- Electricity Duty Exemption,59- Interest Free loan</p>	<p>The Gol has elaborated on the factual position of these SGOM schemes in the response itself. It is reiterated that the assistances extended under these schemes should not be found as a countervailable subsidy under the ASCM as the very nature of the benefits under these schemes do not envisage any specific subsidy. These schemes are general in nature and not limited o any specific sector. The view that the scheme pertains to a particular State do not establish the specificity as envisaged in the ASCM since nothing in the Law bars a particular producer from operating from any of the states in India. Any producer can operate from any place in the territory of India and it is requested that the view of the Ld. Commission on the specificity of the scheme be revisited.</p>

6. Also, it is requested that the Ld. Commissions may uphold the view that view that the other 48 alleged programs did not give any such alleged countervailable benefits to the Indian exporters be upheld in the impending determinations as well.

C. No Break-up of the scheme wise subsidy margin is provided

7. It is submitted that commission has not provided any break of the scheme wise subsidy margins found by the Ld. Commission in the SEF and only total subsidy margin for all the 11 schemes is provided together. It is submitted that a scheme wise margin would have helped the GoI to offer more specific comment. Such break up may be provided before a final view is taken.

D. The subsidy rate for all other exporters is not calculated on Weighted Average basis.

8. It is submitted that the Ld. Commission calculated the subsidy margin for all non-cooperative exporters as the highest individual subsidy rate of the cooperative exporters. It is requested that the Ld. Commission should consider a weighted average approach instead for the non-cooperative exporters.

E. No Public Version/ NCV of the up-stream subsidy is provided to the GOI

9. It is also submitted that the Ld. Commission did not place the assessment regarding the upstream subsidies in the public domain so that GoI can offer its comment and the assessment is apparently provided in the confidential version. GoI may be provided with a copy of such assessment.

F. Subsidy margin found in case of India and the position of exports from India and Vietnam.

10. It is submitted that the view of the Ld. Commission regarding the volume of subsidized goods exported to Australia during the investigation period from India was not negligible is incorrect. It is submitted that the commissions did not take the reality of position of exports from India into consideration and the same need to be re-examined.

11. The SEF states as follows with regard to the position of imports from India;

“Figure 8 above shows that BlueScope’s share in the Australian galvanised steel market increased in FY2016 and throughout the injury

analysis period (i.e. FY2013-FY2016). Figure 8 also shows that there was a marked increase in the market share of imports from Malaysia and Vietnam from FY2013 to FY2016. The market share of exports of the goods from India has increased in FY2014 but then started to decline in FY 2015 and FY2016. (Emphasis supplied)

12. It is very clear from the above finding that the exports from India have been declining since 2014 and throughout the 2016 period. It may be also noted that the alleged subsidies did not cause any increase in export to Australia nor it can be said that alleged subsidies have been a catalyst in the exports of the subject goods to Australia. Also, had the prices offered by Indian exporters been lucrative in view of such alleged subsidies, Indian exports could have increased much, instead it can be seen that the market share of Australian producer and exporters from Vietnam etc. have been on the rise. Thus, the Indian exports was not creating any adverse impacts or distortions in the performance of the domestic producer in Australia and we request the Ld. Commission to terminate the ongoing subsidy investigation against India on this very ground alone.
13. On the contrary, the Ld. Commission has found insignificant margin of subsidy from Vietnam and it is noted that the Ld. Commission has proposed termination of CVD investigation against Vietnam but it may be noted that the exports from Vietnam have been increasing. It is our humble submission that any CVD on India at this juncture would only help the increasing exports from Vietnam to further increase its exports and it may not help the Australian industry as anticipated. We are sure that Australia would not impose a measure only to preclude the Indian exporters from its market and to inadvertently cater to the Vietnamese exporters.
14. A significant exporter like Vietnam will be unduly benefited from any CVD on an insignificant exporter like India and it is desirable that no CVD be imposed on India as well so that level playing field for the product is provided in the Australian market. In any case, the subsidy margin found in the case of India is very low and should not be seen as a substantial margin necessitating CVD measures.

G. The SEF do not show any material injury suffered by the Australian domestic industry on account of alleged subsidized exports from India.

15. A careful reading of the SEF clearly shows that the Australian producer of the subject goods was materially injured because of alleged subsidized exports from India. The sales of Australian producer have significantly increased between 2013 and 2016 and even the profitability has shown significant improvements. So the

case in hand highlights the material improvements in performance and not material injury. The trends of exports from India also have been that the exports were declining that the exports from India was not creating any adverse effects on the Australian industry. The facts as provided in the SEF do not show any price effects created by the Indian exports and it can be fairly concluded that the Indian exports were very minuscule in the Australian market and such minuscule export could not have created any material injury on the performance of the Australian domestic producer.

16. **Conclusion:**

From the foregoing, it is submitted and requested that;

- a) The Gol did not get the ample opportunity to establish its view and had its views been taken into consideration, even the findings concerning 11 schemes also would have been negative or of no subsidy;
- b) The exports from India have been declining and also been very negligible and ought not have adversely affected the Australian industry concerning the like goods;
- c) Even the subsidy margin found are very negligible and the test of negligibility must be carried out with the negligible, declining volume of exports from India also in the context;
- d) The SEF do not show any material injury suffered by the Australian industry on account of alleged subsidy. Rather, the position of Australian industry has been of improving and stable;
- e) Thus, there is no prima facie case brought on record to show that there has been injury on account of alleged subsidized exports from India of the subject goods and this should lead to the termination of the present investigation and we pray for the same.

Submitted please.

With Regards,

(M S Pothal)

For the Government of India



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20th June, 2017

Alternative Government Certification

I, VIVEK JAYASWAL, SECTION OFFICER, currently employed by GOVERNMENT OF INDIA certify that (1) I have read the attached submission, and (2), the information, concerning the Countervailing Duty Investigation on zinc coated (Galvanised) Steel exported from the Republic of India contained in this submission, to the best of my knowledge, is complete and accurate.

(VIVEK JAYASWAL)