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Director Operations 5
Anti-Dumping Commission
GPO Box 9839
Canberra ACT 2600

Dumping investigation – Galvanised steel exported from Vietnam

Dear Director,

This submission is made by China Steel Sumikin Vietnam Joint Stock Company (CSVC) in response to the Anti-Dumping Commission's preliminary findings in Statement of Essential Facts Report No. 370 (SEF 370). In CSVC's view, the Commission's preliminary analysis of injury and causation is overly simplistic and lacking necessary thoroughness.

1. Reasonableness of applicant's costs

CSVC notes that SEF 370 highlights that BlueScope Steel Ltd (BlueScope) is an integrated steel producer¹ which involves the production of hot-rolled coil from key raw materials such as iron ore, coking coal, coke and limestone. Beyond this simple explanation of the applicant's production process, SEF 370 contains no explanation of the assessment undertaken by the Commission, in establishing whether the transfer of materials between the applicant's various business divisions are reflective of reasonable arms-length costs.

It is also noted that no such assessment was outlined in the Commission's industry verification report, which suggests that no such consideration has occurred. Given the Commission's heavy focus on the trend and movement in BlueScope's costs and profitability for the purposes of determining injury, CSVC considers that it is essential for the Commission to properly investigate and assess whether the internal transfers prices of hot-rolled coil were at arms-length transactions and consistent with market prices. This is considered critical given that the material injury finding outlined in SEF 370 relies heavily on price suppression and depression.

¹ SEF 370, pages 21-23.

The lack of a thorough arms-length assessment is particular concerning in this investigation given the recent strong financial performances by BlueScope². These results during the investigation period should alert the Commission to the possibility of profit-shifting away from BlueScope's galvanised coated products, to its upstream hot-rolled coil division. It is also worth highlighting that the Commission undertook and assessed in this investigation whether CSVC's related-party purchases of hot-rolled coil were at arms length. Likewise, in the recently completed review of galvanised steel from Taiwan, the Commission again examined whether related-party hot-rolled coil purchases were at arms-length transactions. In the case of Chung Hung Steel's hot-rolled coil purchases, the Commission determined that a ■% difference between related and unrelated hot-rolled coil purchase prices was sufficient to consider that the related transactions were not arms-length.

Therefore, it is essential that the Commission apply the same considerations and standards to BlueScope's related party transactions before it can conclude that the submitted costs are reasonable and reliable for assessing material injury. CVSC is concerned then that the Commission has not addressed or appeared to have even considered the issue of whether the applicant's integrated costs are reasonable and whether they are suitable for the purposes of assessing injury in the context of s.269TAE of the Act.

The Commission's policy for assessing injury where related party transactions are evident within the Australian industry is outlined at section 4.2 of the Dumping and Subsidy Manual³. It states:

...transaction values between related parties may be unreliable and inappropriate for assessing injury indicators associated with price effects. (Costs may also be unreliable for example where there are integrated production stages owned by related business divisions).

The purpose for such policy is to ensure that an applicant has not fabricated injury by shifting profits to upstream or downstream businesses through the sale of like goods to related parties or the purchase of inputs from related parties used to produce like goods.

The Dumping and Subsidy Manual⁴ further explains that:

Therefore, it is policy is to examine the degree to which related party transactions involving the producing Australian industry are suitable for the material injury assessment. The Commission will examine whether the association between the parties affects the transaction value. This is reflected in the practice outlined below. It establishes evidentiary benchmarks for examining related party transactions made by the Australian industry.

Therefore, CSVC requests the Commission to observe its own stated policy and practice, and properly assess whether the applicant's costs are reasonable and appropriate for assessing injury.

2. Price movements

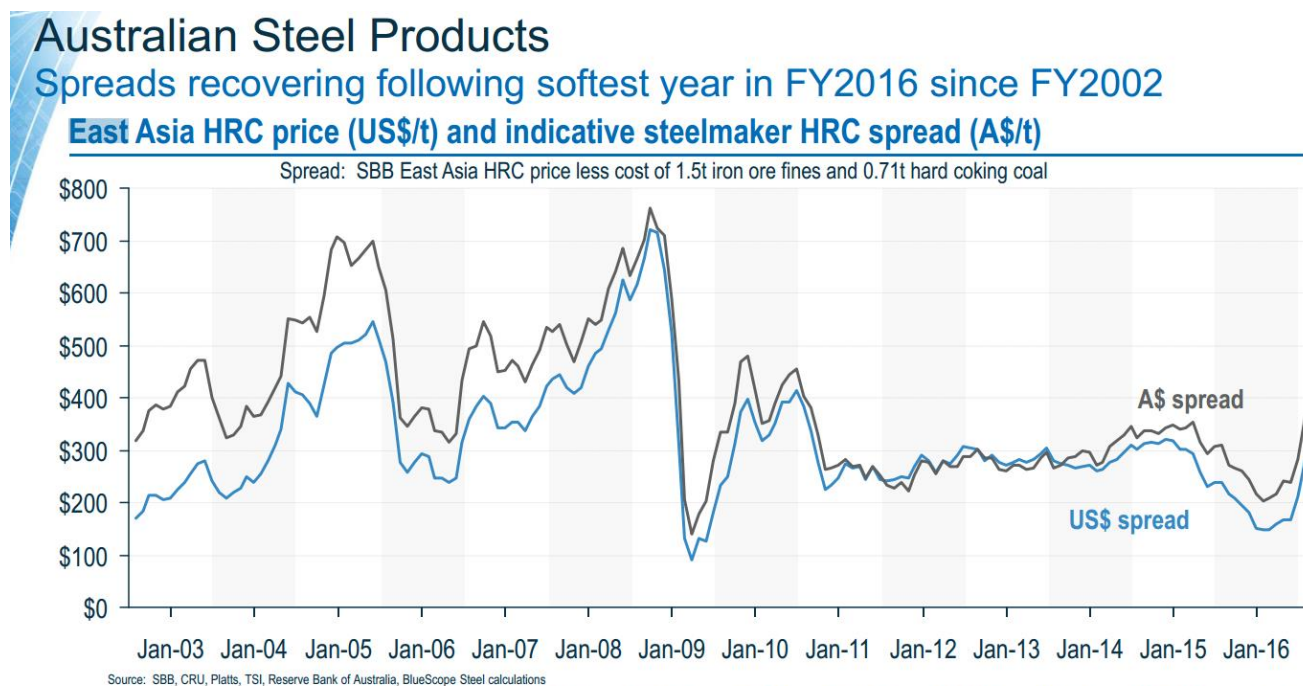
It is noted that the Commission's observations and analysis of BlueScope's price movements and trends contain no reference or comparison with prevailing regional hot-rolled coil prices. This is

² BlueScope Financial Results Presentations: [1H FY2017](#) and [FY2016](#)

³ Dumping and Subsidy Manual; April 2017; pages 16-17.

⁴ Ibid. page 17.

particularly puzzling given BlueScope's prices, where they are based on import parity, would exhibit a strong correlation with regional steel prices. This is supported by BlueScope's own 2016 Financial Presentation shown below, which references steelmaker hot-rolled coil spreads and East Asian hot-rolled coil pricing.



	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	1H FY16	2H FY16	Spot ¹
East Asian HRC price (US\$/t) – SBB	666	665	576	548	442	318	291	346	385
Indicative spread with pricing lags (US\$/t)	272	269	286	276	292	182	198	167	228
Indicative spread with pricing lags (A\$/t)	292	257	278	295	331	247	262	232	296
AUD:USD	0.99	1.03	1.03	0.92	0.84	0.73	0.72	0.73	0.77

Note (1): at mid Aug 2016

Notes on calculation:

- Indicative steelmaker HRC spread¹ representation based on simple input blend of 1.5t iron ore fines and 0.71t hard coking coal per output tonne of steel. Chart is not a specific representation of BSL realised export HRC spread (eg does not account for iron ore blends, realised steel prices etc), but rather is shown primarily to demonstrate movements from period to period arising from the prices / currency involved. ¹ Indicative spread with pricing lags¹ includes three month HRC price lag, three month lag on iron ore price and two month lag on coal price
- Indicative iron ore pricing: 62% Fe iron ore fines price assumed. Industry annual benchmark prices up to March 2010. Quarterly index average prices lagged by one quarter from April 2010 to March 2011; 50/50 monthly/quarterly index average from April 2011 to December 2012. Monthly thereafter. FOB Port Hedland estimate deducts Baltic cape index freight cost from CFR China price
- Indicative hard coking coal pricing: low-vol, FOB Australia. Industry annual benchmark prices up to March 2010; quarterly prices from April 2010 to March 2011; 50/50 monthly/quarterly pricing thereafter



Therefore, it is important for the Commission to compare BlueScope's price trends with regional price trends to understand whether its movements in price are simply a reflection of prevailing international prices.

3. Post-investigation period prices by BlueScope

CSVC notes that the Commission dismissed the contention made by Essar Steel that 'the Commission should have regard to the BlueScope price trend beyond the investigation period. Essar Steel claims that BlueScope's domestic prices have increased more than the international steel prices, reflecting BlueScope's alleged behaviour of increasing prices to take advantage of ongoing dumping investigations.'. The Commission rejects this position on '[d]ue to the tight legislative time frames, it is beyond the scope of this investigation for the Commission to collect, verify and analyse information beyond the investigation period.'

CSVC agrees with Essar Steel and is puzzled by the Commission's apparent disregard to contemporary post-investigation period information for examining and assessing material injury. As the heading at section 11.5 of SEF 370 correctly identifies, an assessment is required to determine

whether material injury will continue. This is a mandatory consideration as anti-dumping measures may only be imposed on future exports of like goods when the Minister is satisfied that material injury to an Australian industry has been caused by dumping, and is satisfied that the dumping and material injury may continue. In considering whether material injury may continue in the future, the Commission must seek to examine and understand whether a change in circumstance has occurred in the post-investigation period, that would or might cause the Minister to doubt that material injury will continue.

By way of simple example, if an issue occurred after the end of the investigation period that directly affected local production such that production was halted for a year, it would be remiss for the Commission to ignore this post-investigation period information when considering whether material injury will continue. Likewise, if post-investigation period changes in circumstance occurred which saw local production reach near or full capacity and corresponding prices and profits increase substantially as a result, it would be remiss for the Commission to ignore this contemporary information when assessing whether material injury will continue in the future.

Finally, it is noted in addressing the question of future material injury continuing, it concludes that price competition from dumped imports 'are *likely* to have a continuing adverse impact on the Australian industry', and 'that this impact *may* be particularly evident in price undercutting, reduced profits and profitability, reduced capital expenditure and reduced employment.' The use of the term 'likely' as defined by the Federal Court⁵ in the context of the likely continuation of future material injury in the absence of measures, relies on positive evidence that is 'more probable than not' to occur. Whereas, the use of the term 'may' suggests a lesser degree of satisfaction and a reliance on information of a lower probative value. On that basis, CSVC contends that the Commission cannot simply ignore or reject to consider post-investigation period information that would be directly relevant to the assessment of future material injury continuing.

4. Causation

4.1 Cumulation of injury

At section 10.6 of SEF 370, the Commission highlights that the effects of imports may only be cumulated if 'the margin of dumping or the amount of countervailable subsidy established for each country is not negligible'. The Commission then states that 'the margin of dumping for India, Malaysia and Vietnam and the amount of countervailable subsidy for India, is not negligible.'

CSVC disagrees with the Commission's finding that the margin of dumping for Vietnam is not negligible. CSVC submits that the Commission has not fulfilled its obligations in respect of the above condition by establishing whether the margin of dumping in relation to imports from Vietnam were more than de minimis. Whilst making clear in SEF 370 that the assessment of the negligible margin of dumping is undertaken 'for each country', the Commission's assessment appears to have incorrectly been performed using only the margins for the dumped exporters from Vietnam. In order to properly establish the margin of dumping for Vietnam as a country, the Commission is required to calculate a weighted average dumping margin taking into account the negative margins of dumping for Hoa Sen

⁵ Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2), 2009, FCA 388 at [49].

Group and Nam Kim Steel, and the positive margin of dumping for CSVC and any other investigated exporters from Vietnam.

Given CSVC’s understanding that exports by Hoa Sen Group and Nam Kim Steel represented the vast majority of total exports to Australia from Vietnam during the investigation period, it is highly unlikely that the margin of dumping for imports from Vietnam is not negligible, and therefore whether the conditions for cumulation are fulfilled as it relates to Vietnam.

CSVC requests the Commission to properly calculate the margin of dumping for each country having regard to the dumping margins for all imports from the respective countries. If it shows that the margin of dumping from Vietnam is de minimis, then the Commission is obliged to undertake a separate causal link assessment for Vietnam which does not include the effects of dumped imports from Malaysia and India.

4.2 Effects of dumped imports from Vietnam

CSVC finds the Commission’s analysis of causation to be overly simplistic, based on unsupported assumptions and lacking the necessary rigor. The only price related evidence relevant to CSVC is shown below in Figure 11 of SEF 370, and that appears to be a single price observation in quarter 3 of 2016. However, that chart shows that the single price observation from dumped Vietnamese imports in that period and was significantly above the prevailing and predominant non-dumped import volume from Vietnam.

Given the clear and significant degree of undercutting by non-dumped Vietnamese exporters and their relatively larger export volumes during the investigation period, it is reasonable to expect that those lower non-dumped prices would have contributed to any price reductions agreed by BlueScope as a result of their import parity pricing model. It is illogical to expect and assume without supporting evidence that BlueScope would reduce its prices in response to a small volume of imports by CSVC which were sold at a premium to the non-dumped imports.

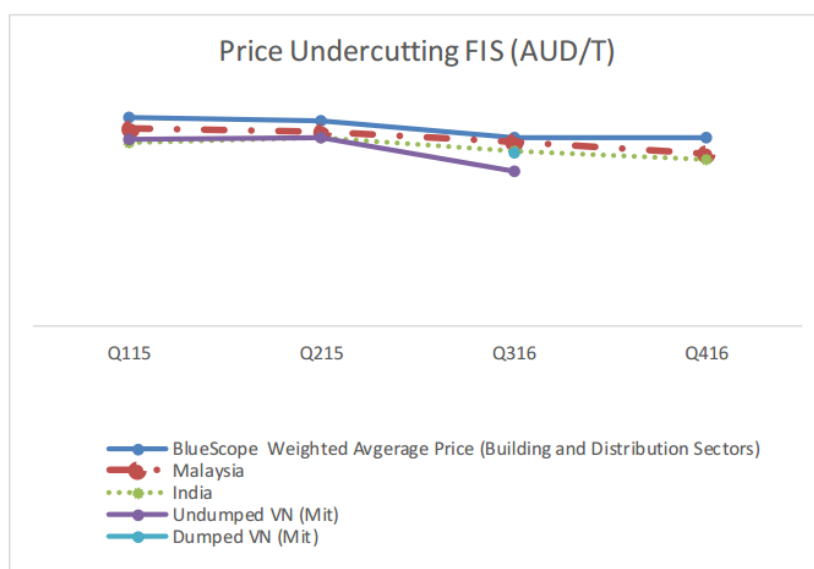


Figure 11: BlueScope’s prices compared to import prices

It is also important to note that the circumstances surrounding the market and price relativities has not changed markedly since the previous terminated investigation (Termination Report 249 – TER

249) involving Vietnam and India. In TER 249, Hoa Sen Group was the dominant supplier from Vietnam and its exports were found to be non-dumped, with the remaining import volume from Vietnam being found to be dumped. The Commission also found in that previous investigation an identical circumstance to that highlighted in Figure 11 above:

The price undercutting analysis detailed in Section 8.5.3 above, demonstrates that BlueScope has been experiencing a significant degree of competition on price from undumped goods from India and, in particular, from Vietnam. The aggregate volume of these goods was greater than the volume of dumped goods from India in the investigation period, and the Australian selling prices of these goods were often lower than the Australian selling prices for the dumped goods from India.

In these circumstances, the Commission considers that the dumped goods from India have not caused material injury to BlueScope in terms of adverse price or volume effects.

Therefore, it is incumbent on the Commission to explain and identify how the similar circumstances between the two investigations could result in a different finding. In particular, the Commission appears to now be placing lesser weight on the effects of non-dumped imports from Vietnam, which were and continue to be the lowest priced imports and continue to represent the largest single import source in the Australian market.

4.3 Local price premium

The Commission confirms at section 10.7.5 of SEF 370 that BlueScope ‘applies a premium on the price of imports for the benefits (such as production and delivery time, quality of goods, credit terms etc.) associated with local production of the goods’. However, the Commission appear to have made no effort to remove the effects of the price premium in assessing whether undercutting was solely or predominantly caused by its inclusion in BlueScope’s prices. Given this, CSVC considers that the Commission’s price undercutting analysis is inadequate as it contains no consideration of the local price premium included in the Australian industry’s selling prices. It is clearly relevant to the Commission’s assessment of the effects of other known factors, to understand the impact that the local price premium had on the degree of undercutting found during the investigation period.

The relevance of price premiums in the examination of price undercutting was addressed by the Panel in *EC – Salmon (Norway)*⁶. In considering the argument by the European Communities that the existence of a price premium was irrelevant to the analysis of price undercutting and could only be taken into account when considering the injury margin, the Panel concluded:

Merely that the price premium was taken into account in calculating the injury margin does not demonstrate that it was considered and deemed irrelevant to the evaluation of price undercutting. Having identified the existence of a price premium for the domestic product over the imports, we consider that an unbiased and objective investigating authority could not conclude, without explanation, that such price premium had no bearing on the issue of whether there was significant price undercutting. Thus, the investigating authority’s finding of significant price undercutting is not consistent with the requirements of Articles 3.1 and 3.2.

Therefore, CSVC submits that the Commission has failed in its requirement to isolate and distinguish the impact of the local price premium on the undercutting found to exist during the investigation

⁶ Panel Report, European Communities – Anti-Dumping Measure on Farmed Salmon from Norway, WT/DS337/R, para 7.640, pages 273.

period. To properly account for the price premium, the Commission ought to adjust BlueScope's prices by deducting the corresponding price premiums and revising the chart at Figure 11, to understand whether it is in fact being undercut at all.

5. Conclusion

In summary, CSVC contends that the Commission's preliminary material injury determination is deficient as it:

- does not properly consider and assess the reliability of BlueScope's costing information given the internal transfer of hot-rolled coil and its impact on arms-length transactions;
- does not properly determine the country margin of dumping for Vietnam;
- does not adequately explain and isolate the effects of non-dumped imports from Vietnam and other non-subject countries; and
- does not isolate the effects of the identified price premium on the price undercutting analysis.

CSVC requests the Commission to have regard to this submission and reconsider its preliminary findings outlined in SEF 370.

Yours sincerely

John Bracic