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26 June 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 – BlueScope Steel Limited comments re responses to SEF from interested parties

I. Introduction

Following the publication of Statement of Essential Facts No. 370 (“SEF 370”) a number of submissions have recently been placed on the electronic public record (“EPR”) from interested parties. BlueScope Steel Limited (“BlueScope”) has identified a number of matters raised by interested parties that it seeks to address. BlueScope’s response(s) are detailed below.

II. Essar Steel India Ltd submission – 20 June 2017

The submission on behalf of Essar Steel India Limited (“Essar”) seeks to dispute the findings of the Anti-Dumping Commission (“the Commission”) concerning material injury experienced by the Australian industry. As Essar did not cooperate with the Commission’s dumping investigation, Essar’s grounds for challenging the Commission’s findings are limited to material injury and causal link.

Essar has raised a number of items that it asserts the Commission has failed to adequately consider in its injury assessment. These include:

- (a) Australian industry’s price trend;
- (b) Imports of the goods from New Zealand;
- (c) Imports from other countries;
- (d) Other injury indicators – employment and capital raising;
- (e) Injury to Australian industry;
- (f) Materiality of injury;
- (g) BlueScope’s Import Parity Pricing; and
- (h) Cumulation.

(a) Australian industry price trend

Essar contends that BlueScope “*may have increased its price significantly since the end of the nominated POI*”. Essar further suggests that the Commission must exercise great care in its analysis as:

- BlueScope has sought to raise prices “*within such a short period of time*”;

- BlueScope is “a frequent and experienced user of the anti-dumping regime and has substantive control over how the period of investigation is to be set”; and
- BlueScope has ‘market power’ that enables it to “set the prices for the goods under consideration at the level it desires”.

The Essar representations are misleading and incorrect. The claims seek to assert BlueScope is engaging in manipulative behaviour. BlueScope rejects these assertions. The Commission is aware of pricing trends for raw material hot rolled coil (“HRC”) following the investigation period, along with the injury sustained by BlueScope following the end of the investigation period. The information confirms that HRC pricing globally increased dramatically following the decade lows of the investigation period. It is therefore consistent for a supplier that prices on an import parity basis to track prices in accordance with regional price movements – in this case, the prevailing HRC price increases.

(b) Imports from New Zealand

It is incorrectly stated on behalf of Essar that “New Zealand imports are directly controlled by BlueScope” and that “imports from New Zealand are used by the Applicant [i.e. BlueScope] to suppress the price level of other imports, in order to create the appearance of ‘injury’”.

These allegations are mischievous and unfounded. Imports of the goods from New Zealand during the investigation period were – on a weighted-average basis – priced at a higher level than the weighted-average export prices from each of the countries India, Malaysia and Vietnam. The suggestion of Essar that the import prices are used to suppress the price level of other imports is not supported by the facts.

(c) Imports from other countries

Essar contends that the Commission could not attribute injury to dumped and subsidised goods without considering the impact of imports from other countries (including ‘undumped imports’). The Commission has considered the impact of injury from other sources (including imports from other countries) but this did not detract from its assessment that the dumped and subsidised imports had caused material injury to the Australian industry during the investigation period.

BlueScope’s price undercutting analysis confirmed that the selling prices for the goods the subject of the investigation undercut the selling prices of imports sourced from other countries and the Australian industry’s selling prices.

(d) Other injury indicators – employment and capital raising

Essar has sought to argue that “BlueScope cannot have suffered material injury in the form of losses of employees and an inability to attract capital investment” from the dumped and subsidised imports that account for 5 per cent of the market.

It is recalled that the Ministerial Direction on Material Injury (refer ADN No. 2012/24) stated the following:

“I note that in cases where the dumped or subsidised imports hold a small share of the Australian market, it may be difficult to demonstrate material injury. I direct that no minimum standard should be used to determine whether dumped or subsidised imports have a sufficient share of the Australian market to cause material injury.”

The same Ministerial Direction also confirmed that dumping or subsidisation does not need to be the sole cause of material injury, and will be determined upon the circumstances of each case.

Essar's assertion that the share of market held by the dumped and subsidised imports is "miniscule" and the Australian industry could not have suffered material injury from the dumped and/or subsidised goods fails to consider the content of the Ministerial Direction. The extent of material injury is not determined upon a particular threshold or level of injurious imports.

(e) Injury to Australian industry

Essar's argument that the Commission has failed to consider the impact of the dumping and subsidisation on the whole galvanised steel industry is premised upon a failure of the Commission to accurately assess injury in each of the segments of the galvanised steel market.

The Commission has considered each market segment and has concluded that the Australian industry has suffered injury that is material across the total Australian galvanised steel market.

(f) Materiality of injury

Essar argues that injury from the dumped and subsidised imports is "immaterial". Essar details a range of indicators in an attempt to attribute injury to the Australian industry to other factors. Essar's identification of certain "matters" fails to address key price injury indicators evident during the investigation period – that is price depression and price suppression that resulted in reduced profit and profitability per tonne. This oversight significantly understates the impact of the dumped and subsidised exports on the economic performance of the Australian industry.

Essar's assertions fail to include key injury indicators that have been considered by the Commission and were included in the Commission's conclusions on material injury.

(g) BlueScope's IPP

Essar describes BlueScope's representations to the Commission concerning competing import offers as 'targeted' or selective. Essar's claim is based upon presumption and without basis. The Commission was provided with information on import offers from countries the subject of investigation, as well as from other countries.

The assumptions of Essar concerning the alleged selective or targeted IPP claims are therefore inaccurate and cannot be relied upon.

(h) Cumulation

Essar also proposes that it is inappropriate to cumulate the dumped and subsidised imports from India with imports from Malaysia and Vietnam due to the volume and trend of recent imports from India.

Section 269TAE(2C) addresses the considerations of cumulation. Specifically, however, subsection 269TAE(2C)(e) states:

- "it is appropriate to consider the cumulative effect of those exportations, having regard to:*
- (i) The conditions of competition between those goods; and*
 - (j) The conditions of competition between those goods and like goods that are domestically produced."*

The provision requires an assessment of the 'conditions of competition' between the imported goods and the locally produced goods. Essar suggests that the Indian imports have a 'notably different effect on the market' however, has not supported this assertion with any evidence detailing the differences.

Essar's representations have sought to suggest that the dumped and subsidised imports from India are negligible and could not have contributed to injury suffered by the Australian industry. This is not the case. The dumped and subsidised imports from India exceed negligible volumes of injury with non-negligible dumping margins and have been correctly cumulated with the injurious imports from Malaysia and Vietnam.

III. TWM Global Pty Ltd – 20 June 2017

TWM Global Pty Ltd ("TWM Global") has contended that the dumped imports of galvanised steel from Malaysia could not have caused injury to the Australian industry when the volumes are approximately 2 per cent of the Australian market.

BlueScope again refers to the Ministerial Directive as reflected in ADN 2012/24 and the legislative requirements that detail the negligible volume and dumping margin thresholds which, in this instance, the imports from Malaysian exceeded during the investigation period.

The Commission has correctly cumulated the dumped imports from Malaysia with the injurious imports from India and Vietnam in its injury analysis.

IV. JSW Group submission – 20 June 2017

The JSW Group representations contend that the Australian industry has not suffered material injury from the dumped and subsidised exports from India, and the dumped exports from Malaysia and Vietnam, and that the Commission has failed to take account of the Australian industry's improvement.

The JSW Group submission does not detail that the Australian industry has suffered injury in the form of price depression and suppression, which has impacted the profit and profitability on a per tonne basis across the investigation period. As highlighted in (II) above, these omissions have a significant influence on the injury performance of the Australian industry during the investigation period.

It is also argued that the Commission should not have cumulated the injurious Indian imports with the imports from Malaysia and Vietnam. JSW Group argues that as imports from India had declined significantly, this is counter to the import trends from Malaysia and Vietnam. As indicated, the imports from India exceeded negligible volumes and negligible dumping margins, and were considered by the Commission to compete directly with imports from Malaysia and Vietnam, and the Australian industry. As a consequence, the cumulation of imports from India with those from Malaysia and Vietnam is correct.

The JSW Group also contends that the Commission should recommend that the Assistant Minister consider imposing the lesser duty rule. The Commission has detailed in SEF 370 that it is appropriate to recommend measures be applied at the full margin of dumping as the Australian industry determines pricing on an import parity basis. BlueScope concurs with this assessment as competitor prices influence the Australian industry selling prices. It is noted that the JSW Group has not proposed a basis for a non-injurious price that is contrary to import parity pricing that can be established as having influenced local prices.

V. Government of India submission – 20 June 2017

The submission on behalf of the Government of India (“GOI”) suggests that the GOI was not provided adequate opportunity to explain its subsidy programs. BlueScope notes that the GOI provided a government questionnaire response and a supplementary questionnaire response. The cooperative exporters detailed the subsidy programs under which benefits were received.

It is now contended that subsidy program No. 23 was not “specific” and that eligibility for subsidy program No. 25 was not limited by sector or region. Additionally, the GOI argues that subsidy program No. 27 – the duty drawback scheme – is not countervailable. The GOI’s representations are not supported by program eligibility information that demonstrates that the programs are not countervailable. In the absence of this information, the Commission is correct to rely on the information supplied by the cooperative exporters confirming the receipt of countervailable benefits from the GOI.

VI. CSVCS’s submission – 20 June 2017

The China Steel Sumikin Vietnam Joint Stock Company (“CSVCS”) representations seek to challenge the Commission’s findings on injury and causation in SEF 370 as “*overly simplistic and lacking necessary thoroughness*”, and is “*based on unsupported assumptions and lacking the necessary rigor*”. CSVCS further argues that the Commission’s price undercutting analysis is “*inadequate*”.

CSVCS seeks to raise doubt as to the reasonableness of BlueScope’s costs as verified by the Commission. BlueScope’s costs of production for galvanised steel have been the subject of examination and scrutiny by the Commission in Investigations 190, 249 and 370. The Commission has been satisfied in each investigation that BlueScope’s costs are reasonable and reflect actual costs of production.

Interestingly, CSVCS has referred the Commission’s attention to price trends post the investigation period. BlueScope has similarly indicated that it is concerned that proposed measures reflect contemporary prices post the investigation period.

It is noted that CSVCS submits that dumped exports from Vietnam cannot be considered ‘not negligible’. BlueScope anticipates that whether CSVCS’s dumped exports are above negligible levels (i.e. 2 per cent) is a question of fact. The Commission is well placed to determine this matter.

CSVCS suggests that the Commission has failed by not adjusting BlueScope’s selling prices for the apparent premium (if it exists) that it receives on locally produced galvanised steel sales. BlueScope’ selling prices are based upon import parity and reflect competitive prices actually achieved from a negotiation process. It is these prices (inclusive of a local premium) that are appropriately considered in establishing whether price undercutting has occurred (and not a price exclusive of a premium should one exist).

VII. Conclusions

BlueScope has reviewed the submissions of interested parties in response to the recent publication of SEF 370. The submissions contend that the Commission has not adequately considered material injury and causation, and that the analysis is over simplified. The assertions of the interested parties fail to take full account of all of the injury factors experienced by the Australian industry – including price depression and price suppression, resulting in reduced profit and profitability per metric tonne in 2015/16.

Essar, JSW Group and the GOI have argued that the Commission cannot cumulate dumped and subsidised imports from India with the injurious imports from Malaysia and Vietnam. The provisions of section 269TAE(2C) do permit the cumulation of the injurious imports from India, Malaysia and Vietnam having

regard to the competitive conditions that exist between the injurious imports and the Australian industry's locally produced goods.

BlueScope does not consider that the interested party submissions have identified grounds that would cause or result in the Commissioner altering his views to recommend that anti-dumping measures should be imposed on exports from India, Malaysia and Vietnam (except for exports by Hoa Sen Group and Nam Kim of Vietnam).

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