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**Director  
Anti-Dumping Commission  
Investigations 1  
55 Collins Street  
Melbourne  
Victoria 3000**

**By email**

Dear Director

## **Dongbu Steel Co., Ltd Zinc coated (galvanised) steel variable factors review – non-injurious price and the lesser duty rule**

As you know we represent Dongbu Steel Co., Ltd (“Dongbu Steel”) in this review inquiry (“Review 521”).

The Anti-Dumping Commission (“the Commission”) has calculated the dumping margin for Dongbu Steel at negative 4.1%, as shown in the verification report now on the public record. Considering this negative margin, and the circumstances of the market generally, Dongbu Steel submits that it is imperative that the non-injurious price (“NIP”) is appropriately assessed, and the lesser duty rule applied.

The application of the lesser duty rule would have the effect of imposing a lesser amount of duty, where the imposition of the lesser amount is adequate to remove the level of injury suffered by the Australian industry. The applicant, BlueScope Steel Limited (hereafter “BlueScope” or “the Applicant”) has presented its view through its application and subsequent submission that the non-injurious price has changed,<sup>1</sup> and that *“the most appropriate NIP is that based on the exporter’s respective normal values”*.<sup>2</sup> The effect of the Applicant’s argument would be, unsurprisingly, that the lesser duty rule would not apply.

The purpose of this submission is to provide the Commission additional context for its assessment of the NIP and the application of the lesser duty rule.

Dongbu Steel welcomes all inquiries from the Commission on these issues.

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<sup>1</sup> Doc 001 – Application at page 15.

<sup>2</sup> Doc 005 - BlueScope submission at page 3.

## A Application of the non-injurious price and the lesser duty rule

The Commission is required under Australian law to assess the NIP, and consider the applicability of the lesser duty rule. The *Customs Act 1901* (“the Act”) details at 269TACA(a):

*The non-injurious price of goods exported to Australia is the minimum price necessary:*

*(a) if the goods are the subject of, or of an application for, a dumping duty notice under subsection 269TG(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG(1)(b) or (2)(b);*

The application of the lesser duty rule is detailed at section 5B of the *Customs Tariff (Anti-Dumping) Act 1975*:

*(5B) If:*

*(b) the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained;*

*the Minister must, in performing that function, have regard to the desirability of specifying a method such that the sum of the following does not exceed that non-injurious price:*

*(c) the export price of goods of that kind as so ascertained or last so ascertained;*

*(d) the interim dumping duty payable on the goods the subject of the notice.*

To assess the NIP, the Commission’s Dumping and Subsidy Manual (“the Manual”) explains that the NIP is generally derived from an unsuppressed selling price (“USP”) – being the selling price the Australian industry could reasonably achieve in the market in the absence of dumped or subsidised imports. The USP can be calculated by different methods:

*In calculating the USP, the Australian industry’s selling prices at a time unaffected by dumping or subsidisation will normally be used. If there are sound reasons for not using this approach, a price may be constructed based on the industry’s cost to make and sell, plus a profit.*

*If either of these methods is not appropriate, the selling prices of undumped and unsubsidised imports in the Australian market will be used. The Commission will also examine USP/NIP issues in the statement of essential facts for the purpose of assessment of material injury and causal link.<sup>3</sup>*

Here the Manual sets a hierarchy for the preferred USP methodology, which is summarised as:

1. The Australian industry’s selling price at a time unaffected by dumping or subsidisation.
2. A price constructed based on the Australian industry’s cost to make and sell plus a profit.
3. The selling prices of undumped and unsubsidised imports in the Australian market.

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<sup>3</sup> Manual at page 137.

## B The Applicant's approach is not "most appropriate" for Review 521

This inquiry encompasses exporters from China, Korea, Taiwan, India, Malaysia and Vietnam, in effect combining into one inquiry exporters that were subject to two different original investigations and subsequent different dumping duty notices.<sup>4</sup> However, at present, anti-dumping measures do not cover all imports of the goods. In fact, a substantial proportion of imports are from countries not the subject of this inquiry, with imports also reported from New Zealand, Belgium and Germany, and subsequent to the review period, from Pakistan.<sup>5</sup> In addition, there are prominent exporters from subject countries that are currently not subject measures, such as **[CONFIDENTIAL TEXT DELETED – names of exporters that Dongbu Steel understand to have large market presence]**, among others.

In establishing the USP and NIP, the Manual explains the significance of past determinations:

*When establishing the USP/NIP in reviews under Division 5 of Part XVB of the Act, the Commission will generally not depart from the approach taken in the original investigation or a previous review, unless there has been a change in circumstances that either makes the earlier USP approach unreasonable, or less preferred amongst the other available options.<sup>6</sup>*

Considering the recent inquiries, in Investigation 370, encompassing exporters from India, Malaysia and Vietnam, the Commission determined neither of the three USP methods were appropriate. Principally this was because a suitable profit for BlueScope could not be determined.<sup>7</sup> Instead it determined:

*... that the most appropriate NIP in this case is the undumped and/or unsubsidised FOB export price for each exporter. As duty set at this level would be equal to that collected under the dumping margin, the lesser duty rule does not come into effect.<sup>8</sup>*

In the more recent Review 457, encompassing exporters from China, Korea and Taiwan, the Commission determined the second USP methodology was available. It stated:

*For the purpose of these inquiries, an unsuppressed selling price for galvanised steel and for aluminium zinc coated steel has been established by reference to BlueScope's CTMS, plus an amount of profit actually realised during the review period for each of the goods. The Commission has then made deductions for the profit obtained and the SG&A expenses and into store costs incurred by the most efficient importer amongst those verified during each review in respect of each of the goods.<sup>9</sup>*

In its submission the Applicant contends that the "most appropriate" determination of the NIP is "based on the exporter's respective normal values, as was accepted by the Minister in Investigation 370".<sup>10</sup> However, considering the positions above, the Applicant's proposed approach is not the method employed in the most recent inquiry concerning the subject goods. The Applicant's approach is expected, as it is not in the Australian industry's interests for the lesser duty to be imposed irrespective

<sup>4</sup> China, Korea and Taiwan were first subject to Notice 2013/66 (and most recently Notices 2018/94 and 2018/96) and India, Malaysia and Vietnam were subject to Notice 2017/99.

<sup>5</sup> Commission Trade Remedy Index September 19 at page 17.

<sup>6</sup> Manual at page 137.

<sup>7</sup> Investigation 370, Final Report at page 83.

<sup>8</sup> Investigation 370, Final Report at page 84.

<sup>9</sup> Review 457, Final Report at page 49.

<sup>10</sup> Doc 005 at page 3.

of whether lesser duty is warranted. However, it is incumbent on the Commission to follow the law and its own policy and consider the preferred USP methodology. The Applicant's presents the least preferred method, and based on the circumstances of the market, this is not the "most appropriate" basis for the USP.

## **C The preferred method of USP and application of the lesser duty rule**

### **1 The need to suit the contemporary circumstances**

As explained, in Review 457 the Commission determined the USP by calculating a constructed price based on the Australian industry's Cost to Make and Sell, plus an amount of profit. However, considering the current circumstances of the market, this is not the most appropriate method for determining the USP. This is principally because post the inquiry period timeframe there has been a significant change in circumstances for the price of raw materials that underlie the cost of producing the goods.

Based on marketing pricing information, the decrease in raw material prices is evidenced in the following hot rolled steel price chart.<sup>11</sup>

**[CONFIDENTIAL CHART DELETED – chart showing decrease in raw material price trend]**

In these circumstances, the Australian industry's cost to make from the inquiry period, as used in the constructed price calculation, would not be reflective of contemporary circumstances. This would result in the determination of a USP, and resultantly, NIP, that is higher than is necessary to redress the impact of the subject goods.

### **2 The most appropriate USP method**

As noted, the Manual details a hierarchy of USP calculation methodology that is available to the Commission. Again, these are:

1. The Australian industry's selling price at a time unaffected by dumping or subsidisation.
2. A price constructed based on the Australian industry's cost to make and sell plus a profit.
3. The selling prices of undumped and unsubsidised imports in the Australian market.

It is open to the Commission to use method one, by taking pricing information from the original investigation (where available for a period unaffected by dumping), and indexing it based on changes to the Australian industry's variable costs from the original investigation to the current inquiry period. This is not a preferred method, as that would require consideration and indexing of pricing data from before 1 July 2011. Additionally, as explained above, the underlying raw material price has changed significantly post inquiry period, and indexing of this variety would not be contemporaneous.

It is open to the Commission to again use method two (as it did in Review 457), by calculating the USP on the basis of a constructed price from the Australian industry's Cost to Make and Sell, plus an amount of profit. This method is not most appropriate as the Australian industry's cost to make, as used in the constructed price calculation, would be too high when compared against contemporary circumstances

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<sup>11</sup> Data sourced from **[CONFIDENTIAL TEXT DELETED – data source name]**.

for the underlying raw material costs. In the current environment, it is best for the USP to be reflective of the prevailing market trend.

Of the options available to the Commission the most appropriate is method three, to use “*the selling prices of undumped and unsubsidised imports in the Australian market*”. As explained, there are significant export volumes from exporters that are not subject to measures. This includes imports from countries that are and countries that are not subject to this review. These exports cannot be considered to have injured the Applicant, as is considered relevant under the anti-dumping framework, and therefore present a suitable foundation on which to calculate the USP.

In particular, Dongbu Steel understands there are significant volumes of imports of the subject goods from Korea, which are exempt from measures. As these exporters are exempt from measures based on past inquiries, these exports can be considered to represent “*undumped and unsubsidised imports in the Australian market*”. Based on its market intelligence, Dongbu Steel understands that with respect to the subject goods:

- approximately [CONFIDENTIAL TEXT DELETED – quantity] MT was imported from Korea in 2018; and
- approximately [CONFIDENTIAL TEXT DELETED – quantity] MT was imported from Korea in 2019.

Taking an average of these quantities for the purpose of the investigation period, that is around [CONFIDENTIAL TEXT DELETED – quantity] MT imported from Korea during the inquiry period of 1 July 2018 to 30 June 2019. Dongbu Steel itself only exported [CONFIDENTIAL TEXT DELETED – quantity] MT during this period. Meaning that, approximately [CONFIDENTIAL TEXT DELETED – percentage %] of imports of the goods from Korea were not by Dongbu Steel, and were likely not subject to measures.

With this level of non-subject Korean imports in the market, the Commission’s consideration of the NIP and lesser duty rule is all the more significant. These non-subject imports represent the best basis of calculation for the USP as they are from a consistent and comparable source to Dongbu Steel’s sales, and they are not subject to measures, therefore they cannot be causing injury to the Australian industry as considered for the purpose of this inquiry.

...

Dongbu Steel submits that the Commission has available the required information to determine a USP following the methodology set out above, which takes into account the current market circumstances and uses the selling prices of undumped and unsubsidised imports into the Australian market.

If further information is needed, Dongbu Steel invites the Commission to ask further questions to allow the discussion and exploration of these issues.

Yours sincerely



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