

8 October 2020

Mrs Olivia Tsang
Assistant Director, Investigations Unit 4
Anti-Dumping Commission
GPO Box 1632
Melbourne Victoria 3001

Public File

Dear Ms Tsang,

Anti-Dumping/Subsidisation Investigation No. 558 – Aluminium Zinc Coated Steel exported from Korea, Taiwan, and Vietnam

I. Introduction

BlueScope Limited (“BlueScope”) the sole member of the Australian industry producing like goods to the goods the subject of the above-noted inquiry, refers to the recently published Exporter Questionnaire Response (“EQR”) for POSCO (“POSCO Korea”) and makes the following observations and comments in response.

These comments are made to assist the Anti-Dumping Commission (“the Commission”) in its review of data and information at this stage of the investigation, and to provide BlueScope’s preliminary views on the record to date. BlueScope will continue to review existing and new exhibits as-and-when published and may update its position and comments prior to the final determination.

II. Product Exclusion Request – PosMAC

BlueScope notes POSCO Korea’s claim that its aluminium-zinc equivalent product PosMAC is not the goods under consideration in this investigation. This claim is misplaced and does not accord with the facts. Simply put, PosMAC is just one of the many aluminium zinc alloy coated steel products manufactured and sold around the world. These aluminium zinc alloy coated steel products are variants of the generic aluminium-zinc coated steel made either with or without the addition of magnesium.

PosMAC is POSCO Korea’s variant of an aluminium zinc alloy coated steel product that has a coating composition of aluminium, zinc and magnesium. It is these coating elements of aluminium, zinc and magnesium that comprise the essential character of the product, in that its corrosion performance is superior to that of zinc coated (i.e. galvanised or GI) steel.¹

PosMAC is also a similar and competing product to a number of other steelmakers products, such as Arcelor Mittal’s Magnelis®, Tata Corus’s Magi Zinc®, Nippon Steel’s ‘SuperDyma® and Nishan’s ZAM®’ product; all of which have a coating comprised of aluminium, zinc and magnesium. Each of these manufacturers have developed and patented their own variant of an aluminium zinc and magnesium alloy coated steel product, with the key distinction being the varying amounts of aluminium and magnesium elements contained within the coatings.

¹ Non-Confidential Attachment 1: PosMAC 3.0; POSCO Magnesium Aluminium alloy Coating product; p.4, 7-15.

ZINCALUME® steel is BlueScope's Australian made variant of an aluminium zinc alloy coated steel product that also has a coating composition of aluminium, zinc and magnesium.

In POSCO Korea's EQR, it is asserted that the PosMAC product is "different" to the goods the subject of BlueScope's application. Whether the goods are "different" is not the issue. The Commission is required to examine with the Australian industry manufactures "like goods" to the imported goods. In examining whether the locally produced goods are alike to the imported goods, the Commission has regard to the essential characteristics of the locally produced and imported goods. The Commission (in Consideration Report No. 558 at Section 2.5.3) examined the essential characteristics of whether the goods are *alike*, including:

- physical likeness – the locally produced and the imported goods appear to be traded in a similar range of steel grades, coating types, lengths, widths and thicknesses (i.e. the same physical characteristics);
- commercial likeness – the locally produced goods and the imported goods compete directly in the Australian market – there exists a commercial likeness;
- functional likeness – the locally produced and imported goods are used interchangeably in the same end-use and compete for sales to the same customers – there exists a commercial likeness;
- production likeness – the production process and the raw material inputs are substantially identical for the locally produced and imported goods. Both goods are manufactured using similar processes.

Having examined the key requirements of physical, commercial, functional and production likeness, it is reasonable to conclude that the locally produced goods are alike in all respects to the imported goods. The goods are used interchangeably in the same end-use applications and compete directly for supply with the same customers.

Steel products that are coated with an alloy of aluminium zinc and magnesium also compete against steel that is coated with an alloy of aluminium zinc that does not contain magnesium, such as Taiwanese steelmaker Yieh Phui's PhuiFan® product, which is their own branded version of the more generically recognized GALFAN® product sold into the Australian market.

POSCO Korea's PosMAC data sheet defines this product as an aluminium zinc with magnesium alloy coated steel² and whilst it is true that the PosMAC product that was developed around 2016 does not comply with the current 2011 version of AS1397 standard's definition on aluminium zinc magnesium alloy coated steel (type ZM), this is only due to the fact that the PosMAC product contains 2.5% aluminium in its coating, whereas the AS1397-2011 type ZM coating stipulates a 5% to 13% aluminium content.

PosMAC does however conform and is certified to the domestic Korean Standards Association's KS D 3030 standard – *Hot-dip zinc-aluminium-magnesium alloy-coated steel sheets and coils*, as an aluminium zinc magnesium alloy coated steel product.

It is also noted that this domestic Korean standard D 3030 mirrors the AS1397-2011 standard for the range of steel base mechanical properties offered and the range of coating mass availability. PosMAC® is also offered across a very wide range of thicknesses. On a cold rolled steel base, this base metal thickness ranges from 0.45 millimetre ("mm") thick to 2.3mm thick (and from 1.1mm to 4.5mm on a hot rolled steel base).³

² Non-Confidential Attachment 1: PosMAC 3.0; POSCO Magnesium Aluminium alloy Coating product; p.4-6, 37.

³ Ibid, p.10.

POSMAC was developed by POSCO Korea as its own variant of an aluminium zinc magnesium alloy coated steel product, that is marketed and sold into the Australian market and as such is one of the products specifically identified to be within the goods under consideration in this inquiry.

BlueScope affirms the Commission's assessment in Consideration Report 558 that the locally produced goods are alike to POSCO Korea's PosMAC – that is, whilst perhaps not identical in composition, they contain the same essential characteristics as the imported goods and are therefore "alike".

III. Exporters and Importers – General Comments

BlueScope submits that the Commission should carefully examine the relationship between producers, trading companies, and importers when determining who is the importer and who is the exporter. Where manufacturers, trading companies and importers are related, the Commission should pay particular attention to the role played by the entity in the transaction and whether or not an entity is merely the agent or transactional intermediary of a related entity or a distinct principal in the transaction.

1. Exporter

The Commission's Dumping and Subsidy Manual ("the Manual") states, "*The Commission will generally identify the exporter as a principal in the transaction located in the country of export from where the goods were shipped and who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia*".⁴ The Manual further states that the principal need not be the owner at the time of shipment so long as they previously owned the goods.⁵

In the case of trading companies, the Manual states that an intermediary will be identified as an exporter where:

1. it has purchased the goods from the manufacturer;
2. the manufacturer has no knowledge that the goods are destined for export to any country; and
3. the essential role of the intermediary is that of a distributor rather than a trader, and because it is acting more like a distributor the intermediary would usually have its own inventory for all export sales.⁶

2. Importer

Section 6.1 of the Manual provides that the "*Importer is defined in Section 269T(1) as the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed. The beneficial owner is considered to be entitled to all the benefits associated with ownership even though they may not be the legal owner of the goods*".⁷

3. Determination of the Importer and Exporter

BlueScope submits that the Commission should treat certain claims that a particular entity is the exporter or importer of the goods with caution. As required by the Manual, the Commission must establish the function of each entity within the transaction and determine who is the exporter, who is the importer, and whether any entities claiming to be either are merely an agent of another entity.

In particular, where an associated entity is involved in the export transaction, the entity should be required to complete an EQR so as to ensure that adequate information is on the record and the correct exporter is relevantly identified. In the case where an entity is an agent, that agent's costs, revenues and profits should be accounted for when determining normal values.

⁴ The Manual, section 6.2.

⁵ Ibid.

⁶ Ibid.

⁷ The Manual, section 6.1.

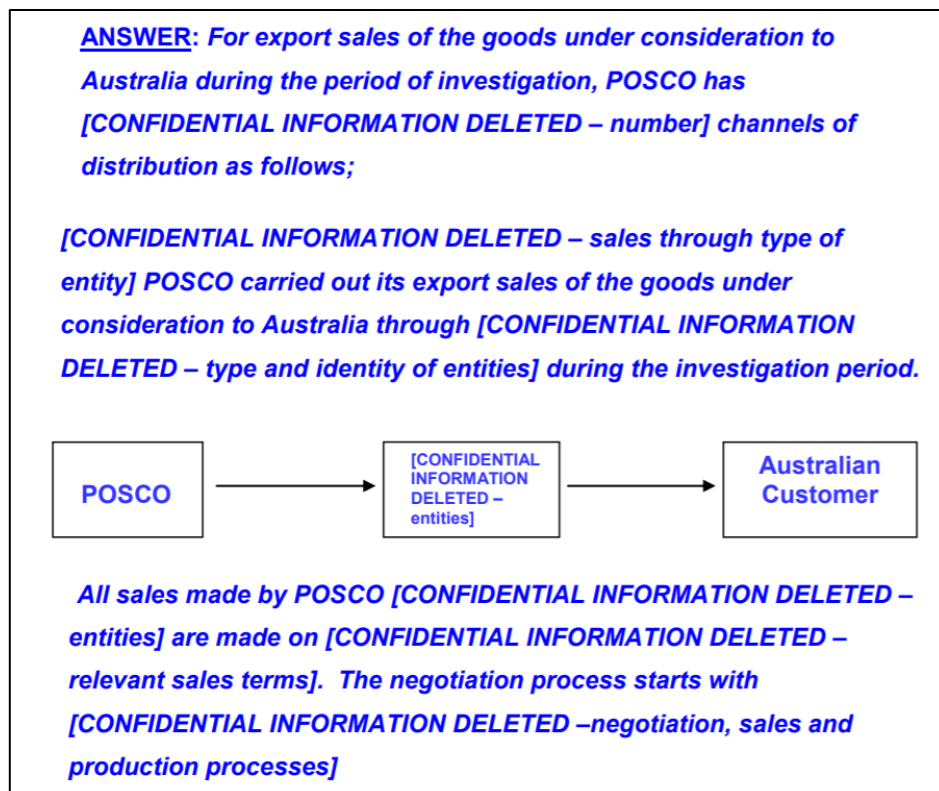
IV. Exporters and Importers – Specific Comments

1. *POSCO – Importer Determination*

POSCO Korea’s EQR states that it had one distribution channel for the exportation of PosMAC during the investigation period,⁸ and that these export sales were made through related trading companies.⁹ On the Australian importation side, BlueScope understands these related parties to be either one of, or both of, [REDACTED] and [REDACTED] (collectively, “the related party importer”). Both entities are [REDACTED] POSCO Korea.

BlueScope’s understanding of POSCO Korea’s Australian import supply channel has been informed by earlier anti-dumping inquiries undertaken by the Commission, to which POSCO has been a respondent. In investigation No. 188,¹⁰ POSCO stipulated that it had two channels of distribution to the Australian market; firstly, via its related trading company in Australia, and secondly via domestic (i.e. Korean) trading companies.¹¹ These details were repeated in POSCO’s EQR response in investigation no. 198.¹²

In investigation no. 284,¹³ POSCO Korea represented its two Australian export supply channels as follows:¹⁴



⁸ POSCO EQR, section B-1(5).

⁹ POSCO EQR, section B-1(1).

¹⁰ Hot Rolled Coil Steel from Japan, Korea, Malaysia, and Taiwan (Electronic Public Record (“EPR”) 188).

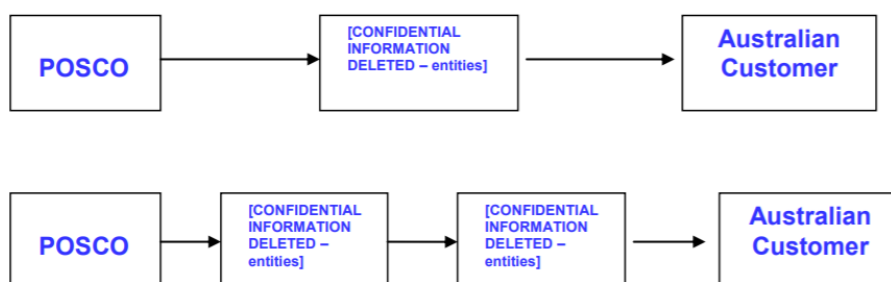
¹¹ EPR 188, POSCO EQR, folio no.36.

¹² Hot Rolled Plate Steel from China, Indonesia, Japan, Korea and Taiwan (EPR 198).

¹³ Hot Rolled Plate Steel from Korea and Taiwan (EPR 284).

¹⁴ EPR 284, folio no.12.

[CONFIDENTIAL INFORMATION DELETED – export sales though type of entity] POSCO made its export sales of the goods under consideration to Australia through [CONFIDENTIAL INFORMATION DELETED –type of entities] companies, [CONFIDENTIAL INFORMATION DELETED – identity of entities] during the investigation period. And [CONFIDENTIAL INFORMATION DELETED – entity] also made its export sales to Australia through [CONFIDENTIAL INFORMATION DELETED – entities] during the POI.



All sales made by POSCO to [CONFIDENTIAL INFORMATION DELETED – type of entity and identity of entities] are made on [CONFIDENTIAL INFORMATION DELETED – sales terms]. The negotiation process starts with [CONFIDENTIAL INFORMATION DELETED –negotiation, sales and production processes].

BlueScope submits that one of the above channels was utilised for the subject goods in the current inquiry.

Whilst importer questionnaire response(s) are yet to be published relating to POSCO Korea’s exports, the likely sequence of commercial events on importation of the subject goods is as follows, and should be clarified by the Commission:

1. The related party importer receives a purchase order from its Australian customer;
2. They then place an order with POSCO Korea; then
3. Assign back the purchase order placed with POSCO Korea to the Australian customer.

Assigning the purchase order then prescribes ownership benefits to the Australian customer. The true function of the related party importer then is as a sales agent for POSCO Korea. While it may appear to have a re-seller role on paper, and *may* be an importer for Customs purposes, it does not function as the importer for anti-dumping purposes.

BlueScope further submits that the related party importer’s SG&A, financial expenses, and profit be included in addition to any POSCO Korea costs and profit where the Commission constructs normal values. As an agent of POSCO Korea, the Australian related party importer incurs costs, revenues, and profits for its selling services. If the related party importer and POSCO Korea were non-related and at arms-length, the importer’s selling expenses (plus an amount for profit) would be invoiced to POSCO Korea and would form part of POSCO Korea’s costs. It is relevant to consider whether the relationship between the exporter and the importer affects the export price.

However, what is potentially occurring given this associated relationship is that POSCO Korea does not directly pay its Australian agent. Instead, there exists a paper transaction (notwithstanding that the purchase is assigned back to the Australian customer) whereby the agent re-sells the subject goods to the customer, and the revenue from this paper transaction covers the agent’s costs plus profit. The profit margin on the

agent's service is then transferred back to the parent in the form of a dividend or other capital return. In summary, because of the related-party relationship between POSCO Korea and its Australian agent, and the nature of their corporate structure, costs that would appear on POSCO Korea's books if its agent were arm's length do not, and profit from the agent's services appear on POSCO Korea's books as dividend income.

BlueScope acknowledges that there may be legitimate business reasons for POSCO Korea to have organised itself in this manner. Irrespective, for the purposes of this inquiry, it is critical that these corporate arrangements do not colour a correct normal value calculation.

2. POSCO – Exporter Determination

As noted above, POSCO Korea's production exported to Australia is sold to related party Korean trading companies, who were responsible for shipping the subject goods from Korea to Australia during the period of investigation. What is not clear from POSCO Korea's EQR is the extent of these related export trading relationships, what the delivery and payment terms are, what the export channels of distribution are, how export distribution might be transacted from inventory holdings etc.

During the course of this inquiry, the Commission will assess whether the sales between POSCO Korea and the Korean trading companies were at arms-length. BlueScope submits that if the sales between POSCO Korea and the trading companies are found to be unprofitable/non arms-length, it would affect the export calculation for those transactions. This situation could imply a reimbursement from POSCO Korea to the trading companies for unprofitable/non arms-length sales, resulting in a deductive export price as lower than the price paid.

BlueScope further submits that if the sales between POSCO Korea and the trading companies are found to be profitable and at arms-length, then an upwards adjustment to the normal value is required for the trading companies' margins to ensure comparability between export prices and normal values.

BlueScope also requests that the Commission further investigate and validate whether these trading companies are in fact exporter's in their own right. To the extent that they are, the Commission must consider the costs, expenses, and profits of those traders, in addition to POSCO's production costs, expenses, and profits, when calculating normal values.

V. Third Country Sales & Mill Specific Dumping Margins

POSCO Korea's EQR states that it manufactures the subject goods at both its Pohang and Gwangyang facilities,¹⁵ and that its export sales to third countries are similar to those for Australian sales. POSCO has made similar representations regarding third country sales in earlier subject goods and other flat steel inquiries undertaken by the Commission.

BlueScope submits that POSCO Korea's export channel to market (whether that be Australia or elsewhere) for aluminium zinc coated steel would be similar to/if not the same as its export channels to market for other upstream steel products (for example, hot-rolled coil and plate steel); this being that flat steel products are manufactured at the Pohang and Gwangyang facilities, and those destined for export markets are distributed by related parties.

In *Certain Hot-Rolled Carbon Steel Plate and High Strength Low Alloy Steel Plate from the Federative Republic of Brazil, The Kingdom of Denmark, The Republic of Indonesia, The Italian Republic, Japan, and the Republic of Korea*,¹⁶ the Canada Border Services Agency ("CBSA") made a final positive dumping

¹⁵ POSCO EQR, section A-1(9).

¹⁶ Pursuant to subsection 41(1)(a) of the Canadian *Special Import Measures Act*, the President of the Canada Border Services Agency made a final determination of dumping on April 17, 2014, respecting certain hot-rolled carbon steel plate and high-strength low-alloy steel plate originating in or exported from the Federative Republic of Brazil, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan, and the Republic of Korea. On the same date, pursuant to paragraph 41(1)(b) of SIMA, the President terminated the dumping investigation of the above-mentioned goods originating in or exported from Chinese Taipei.

determination against POSCO Korea. The CBSA assigned two separate dumping margins; a 12.7% margin for the Pohang mill (given its related party trading relationship with Daewoo International), and 20.8% to the Gwangyang mill.

Whilst POSCO Korea's EQR in the current inquiry notes the inclusion of related party trading entities in its Australian export supply chain, it is silent on how the Pohang and Gwangyang production facilities (clearly separate and distinct exporters in the CBSA's view on plate steel) interrelate (or otherwise) vis-à-vis the subject goods.

BlueScope therefore requests that the Commission review and verify these relationships in the current inquiry.

BlueScope submits that the Commission must determine, based on the facts in this case, who is the exporter of the goods. Determinations by other authorities, based on different factual records not before the Commission, are not determinative. Irrespective, relevant and established precedents by other jurisdictions require consideration.

VI. Claim for Model Control Code ("MCC") Confidentiality

POSCO Korea has sought to justify the EQR confidentiality of its Australian export and domestic market MCC information by claiming that:

- The MCC information is confidential, and it is not practical to provide a non-confidential summary thereof;
- Publication of Australian MCC information would disclose commercial details not ordinarily made available, thereby affecting POSCO Korea's competitive advantage and market position;
- Release of the MCC information has "...special value..." to certain parties; and
- With non-disclosure of Australian export MCC's, disclosure of domestic Korean MCC's serves no purpose.¹⁷

Claiming an inability to provide a non-confidential summary, when all other respondent exporters are required to and have done so, is not a justifiable ground for confidentiality. POSCO Korea's submission advising the above reasons is also itself heavily redacted (specifically referencing point three), providing little convincing clarity that it should be excluded from providing what is otherwise a mandatory cooperating respondent requirement in Australian anti-dumping investigations.

On 9 August 2018, the Commission advised in ADN No. 2018/128 that an MCC structure would be implemented in new investigations, reviews, and continuation inquiries.¹⁸ Integrated into the EQR proforma, the Commission states that the MCC listing must be disclosed in the public version of the response. BlueScope therefore requests that the Commission require POSCO Korea to provide non-confidential Australian export and domestic market MCC details on the grounds that:

- Absent adequate MCC EQR disclosure, BlueScope will be denied natural justice during the course of the inquiry;
- Absent adequate MCC disclosure, BlueScope will be constrained from providing a comprehensive briefing to the Commission prior to it undertaking selected exporter verifications. BlueScope highlights with the Commission the recent Exporter Briefing conducted for investigation No. 550 (Precision pipe & tube), where MCC categorisations were reviewed at length, and where the applicant domestic industry highlighted EQR MCC classification errors, omissions and inconsistencies vis-à-vis product and commercial realities;¹⁹ and
- Article 6.4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* states that investigating authorities shall provide timely opportunities for interested

¹⁷ EPR 558, folio no.20.

¹⁸ Full guidance on the Commission's application of an MCC structure is provided per ADN 2018/128.

¹⁹ The Commission's EPR clearly communicates this.

parties to access all information relevant to an investigation, to the extent that it is not confidential (to which MCC's are not confidential information).

A failure to provide non-confidential MCC details would deem the EQR incomplete and non-compliant, and POSCO Korea consequently assessed as a non-cooperative exporter.

If you have any questions concerning this submission, please do not hesitate to contact me on [REDACTED] [REDACTED].

Yours faithfully,

[REDACTED]