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Director, Investigations Unit 4
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601
AUSTRALIA

Dumping Investigation into Aluminium Zinc Coated Steel exported from Korea

Dear Director,

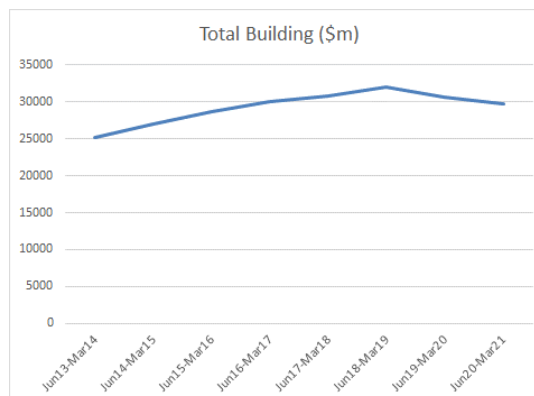
This submission is made on behalf of KG Dongbu Steel Co. Ltd (KG Dongbu) in response to the Commission's preliminary findings outlined in Statement of Essential Facts Report No. 588 ("SEF 588") into aluminium zinc coated steel ($\geq 600\text{mm}$) from Korea, Taiwan and Vietnam.

A. Material injury

KG Dongbu disputes the preliminary finding that BlueScope Steel Limited (BlueScope) has suffered material injury that can be attributed to subject goods exported by KG Dongbu. The material injury assessment outlined in SEF 558 is too rudimentary and does not properly take account of the market dynamics within the Australian market, which would readily explain the circumstances surrounding BlueScope's economic condition during the investigation period.

As noted in SEF 558, BlueScope did not suffer injury in the form of lost or reduced sales volume or market share. This is confirmed at Figure 1 of SEF 558 which shows that sales volumes and market share move consistently with changes in the total market size. This confirms and supports the view highlighted at section 5.3.3 of the SEF, that the main driver of demand in the Australian market, is housing and construction activity.

Further evidence of the link between the change in the Australian market size and construction activity, is supported by published total building activity¹ shown in the chart below.



¹ Source: Australian Bureau of Statistics, Building Activity, Australia March 2021

Whilst the Commission has identified the relationship between construction/building activity and the overall Australian market for the subject goods, the analysis within SEF 558 does not properly take account of the distinct competition in the market segments within the Australian market. As the Commission notes, Bluescope's TRUECORE branded product '*is targeted at the house framing market*'. Bluescope's other main product is ZINCALUME, is used primarily in roofing and walling applications.

Whilst demand for both products can be linked to construction activity, the market dynamics in the framing segment and roofing/walling segment, are substantially different. For this reason, the Commission's preliminary findings are based on, and limited to, a macro analysis which considers the industry's overall performance in the market, relative to total imports. Whilst this approach may be relevant for understanding the economic condition of the Australian industry as a whole, it is less helpful for understanding the specific effects of subject imports within each market segment.

For this, the Commission is required to undertake a micro-analysis which compares prices and competition within each market segment, between particular grades and where possible, direct comparison to common customers. The Commission's price undercutting analysis does not appear to achieve the required micro-analysis as it remains focused at the model control code level, which does not separately identify the destined market segment of the finished good.

Price comparisons at the different market segments is critical given the widely understood effort by BlueScope to offer sharp pricing for its TRUECORE product destined for the framing market, in competition against cheaper timber substitutes. BlueScope's aim was to convert the Australian framing market across to its TRUECORE product.

By contrast, BlueScope's ZINCALUME product and like imports, were competing in a transparent manner, having regard to prevailing supply and demand conditions. As highlighted in our previous submission, prices in this market segment were impacted by global supply chain disruptions and steel shortages.

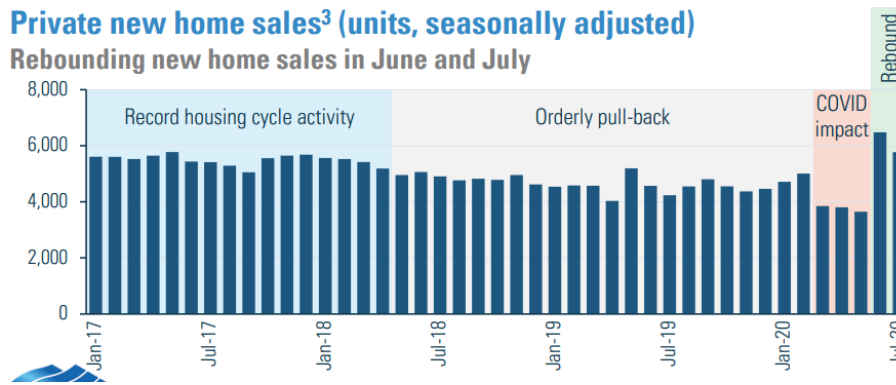
KG Dongbu submits that in examining and assessing injury in the different market segments, injury in the form of price depression or price suppression found to be occurring in the framing market, cannot be attributed to KG Dongbu's subject exports destined for the roofing/walling market segment. This is important as all of KG Dongbu's products are understood to have been destined for the framing/walling.

To highlight further, the price effects analysis at section 8.4 of SEF 558 does not provide an understanding of the specific price trends evident in the framing and roofing/walling market segments. This is particularly relevant given the Commission noting that price depression was '*not evident across the injury analysis period*' but '*appears to be emerging during the investigation period*'. It is important to understand the relative price movements in each segment, in an effort to better understand the factors that contributed to the apparent price trends.

It is also noted that in response to KG Dongbu's submission of 24 August 2021, the Commission considered that '*BlueScope's subsequent overall company performance is not necessarily directly relevant to the considerations that apply to this investigation because a company may be profitable overall and yet still suffer injury*'. KG Dongbu respectfully disagrees.

BlueScope's subsequent vast improvement following the end of the investigation period is relevant, as it helps to understand that the negligible injury found to exist during the investigation period, was undoubtedly transitory. The transitory nature of the injury provides context to the transitory and nature of the causal effects, which include the impact of COVID-19, and Bluescope's offer of lower pricing for its TRUECORE product into the framing market, against cheaper timber alternatives.

For example, BlueScope itself highlights in its 2020 financial presentation that relevant other factors which have contributed to the changes in market characteristics. The chart below highlights the pull-back in the housing market following a period of record housing activity, then followed by the impact of COVID in the March quarter 2020, before a sharp rebound.



BlueScope’s presentation also highlights the company’s marketing effort with regards to TRUCORE, which included:

- Continuing investment in consumer branding and promotion;
- Partnering with builders to promote the benefits through the channel, including co-branding and collateral support.

In KG Dongbu’s view, SEF 558 does not properly examine the impact of injury in the framing market from BlueScope’s TRUCORE product, on their overall economic condition. In failing to properly consider this issue, the Commission has overlooked that BlueScope own commercial decisions with regard to pricing of TRUCORE into the framing market, was the primary cause of any observed price depression evident during the investigation period.

B. Effect of injury should not be cumulated

The Commission proposes to cumulate the effects of injury for subject goods exported from Korea and Vietnam. Critically, the Act allows for cumulation only if the Minister is satisfied that:

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

As noted earlier, there are two distinct market segments for the subject goods and like goods in the Australian market, being the framing segment and roofing/walling segment. KG Dongbu is unaware of details relevant to exports from Vietnam, but notes that the examples of competition with imports submitted by BlueScope, related to goods exported from Vietnam, with all examples appearing to be relevant to slit aluminium zinc coated steel either directly or indirectly.

Based on this information, and subject to the Commission confirming the primary market segment that Vietnamese exports are destined for, KG Dongbu contends that the effects of imports from Korea and Vietnam should not be cumulated.

C. Price undercutting

KG Dongbu provides the following observations on the Commission’s price undercutting analysis which undermines its proposed finding that the subject exports caused material injury.

1. KG Dongbu again reiterates that a meaningful comparison analysis is only achieved by comparing prices of similar products sold into the same market segment. This is important given the distinctive market characteristics and conditions in each of the framing and roofing/walling market segments.
2. The chart at figure 12 of SEF 558 confirms that both dumped and non-dumped goods were undercutting BlueScope’s average prices, and that as confirmed in its submission of 24 August 2021, KG Dongbu’s export prices were not materially different to non-dumped Taiwanese exports.

3. The chart at figure 13 of SEF 558 is flawed as it incorrectly combines the price effects of dumped exports from Korea and Vietnam, whilst merging the price effects of non-dumped exports from Taiwan and a single Vietnamese exporter, without any regard or identification of the relevant market segment into which the goods are sold.
4. The price undercutting highlighted at table 32 of SEF 558, is based on MCCs and compares to BlueScope's corresponding quarterly average prices without any differentiation of market segment. This does not provide an indication of the 'high degree of price competition with the Australian market. Despite this and given KG Dongbu's almost negligible dumping margin, it is noted that Korean exports would continue to substantially undercut BlueScope's prices at non-dumped levels. This confirms that exports by KG Dongbu did not contribute to any observed price depression and suppression during the investigation.

D. Other factors

The Commission's consideration of other possible and likely factors that may have contributed to the observed injury during the investigation period, appears to be lacking analysis which properly isolates and distinguishes the effects of other factors from dumped imports. In particular, given that the investigation period occurs parallel with the impact of COVID-19 and the downstream effect on supply chains, global steel and raw material shortages, the Commission's analysis is inadequate for isolating those impacts and properly identifying the price effects attributable to dumped imports.

Subsection 269TAE(2A) of the Act requires that the Minister must consider whether any injury 'is being caused or threatened by a factor other than the exportation of those goods'. The obligation to ensure non-attribution is found in Article 3.5 of the Anti-Dumping Agreement and has been interpreted by the Appellate Body in *US – Hot rolled steel*², which ruled:

The non-attribution language in Article 3.5 of the Anti-Dumping Agreement applies solely in situations where dumped imports and other known factors are causing injury to the domestic industry at the same time. In order that investigating authorities, applying Article 3.5, are able to ensure that the injurious effects of the other known factors are not 'attributed' to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the Anti-Dumping Agreement, justifies the imposition of anti-dumping duties.

We emphasize that the particular methods and approaches by which WTO Members choose to carry out the process of separating and distinguishing the injurious effects of dumped imports from the injurious effects of the other known causal factors are not prescribed by the Anti-Dumping Agreement. What the Agreement requires is simply that the obligations in Article 3.5 be respected when a determination of injury is made.

The Appellate Body added³:

[A]lthough this process may not be easy, this is precisely what is envisaged by the non-attribution language. If the injurious effects of the dumped imports and the other known

² Appellate Body Report, *US – Anti-Dumping Measures on certain Hot-Rolled Steel products from Japan*, WT/DS184/AB/R, para 223; pages 74-75.

³ *Ibid.*, para 228, page 76.

factors remain lumped together and indistinguishable, there is simply no means of knowing whether injury ascribed to dumped imports was, in reality, caused by other factors. Article 3.5, therefore, requires investigating authorities to undertake the process of assessing appropriately, and separating and distinguishing, the injurious effects of dumped imports from those of other known causal factors.

It is therefore incumbent on the Commission to isolate and distinguish the effects of other factors from dumped imports, and to proactively investigate these other factors, and where possible aim to quantify the effects.

Instead, the Commission makes no effort to segregate the effects of identified other factors and dumped imports, beyond dismissing their relevance. For example, the Commission dismisses the impact of BlueScope's aggressive pricing strategy relevant to its TRUECORE framing product on the basis that indexed prices in table 34 are increasing. Whilst this may address the claim of loss-making, it does not refute that BlueScope's prices of its TRUECORE product were discounted relative to ZINCALUME products.

By dismissing each of the other factors, the Commission is wrongly attributing all of the price effects experienced by the Australian industry during the investigation period, to dumped exports.

E. Minister's discretion to not impose measures

In June 2011⁴, the Australian Government announced reforms to the anti-dumping system aimed at improving the way in which the system was administered. Those reforms were a response to the Productivity Commission Inquiry Report No. 485, Australia's Anti-dumping and Countervailing System.

In response to the Productivity Commission's proposed "bounded" public interest test (Recommendation 5.1), which provided that anti-dumping or countervailing measures would automatically not be imposed where one of five criteria was met, the Government announced⁶ that the Minister's current unfettered discretion not to impose measures was adequate *'to take account of the public interest when circumstances warrant broader matters be considered'*. The Government's report⁷ explains that the Commission *'already examines the effect on the market in determining the causes of injury to the industry and in determining the non-injurious price, and it is now proposed the Branch will provide the Minister with information specifically on these matters.'*

KG Dongbu submits that the circumstances in this investigation and market conditions following the investigation period, warrant a recommendation to the Minister that measures not be imposed on the grounds that:

- the Australian industry does not warrant protection due to substantially improved economic performance; and
- the continuing impact of COVID-19 on constraining supply of steel, which will negatively impact on downstream fabricating industries and the broader construction sector.

The Productivity Commission's report⁸ highlights three specific circumstances:

⁴ Streamlining Australia's Anti-dumping System – June 2011.

⁵ Productivity Commission Inquiry Report No. 48 – 18 December 2009.

⁶ Streamlining Australia's Anti-dumping System – June 2011; page 26.

⁷ Ibid.

⁸ Productivity Commission Inquiry Report No. 48 – 18 December 2009; pages 72-73.

‘where measures would not be effective in removing injury being experienced by the applicant industry, and hence where the ensuing costs for others in the community would be needlessly incurred:

- *The imposition of measures equivalent to the assessed dumping margin (or the benefit from a countervailable subsidy) would result in an import price still well below local suppliers’ costs to make and sell.*
- *‘Like goods’ could be readily obtained from an un-dumped source at a comparable price, meaning that the imposition of measures would simply lead to substitution into un-dumped imports with little or no benefit for competing local suppliers.*
- *Dumped or subsidised imports may be a contributing factor to the material injury being experienced by a local industry, but are not the major cause*

All three of the circumstances highlighted by the Productivity Commission are considered applicable in this case.

The chart at figure 5 of SEF 558, reveals that BlueScope was only marginally profitable during the investigation period. Given KG Dongbu’s very low dumping margin and the identified margins of undercutting over the same period, it is reasonable to conclude that KG Donbu’s non-dumped price levels would have been less than BlueScope’s corresponding cost to make and sell.

As noted in SEF 558, non-dumped imports from Taiwan and Vietnam remain available to the Australian market at substantial volumes. Given the significant share of alternative import sources and the fact that non-dumped imports were themselves significantly undercutting the BlueScope’s selling prices and costs, it is reasonable to expect and conclude that measures would simply result in import substitution.

Finally, there is sufficient evidence that other factors have contributed to transitory injury during the investigation period. The sharp improvement in BlueScope’s economic performance since the end of the investigation period confirms that those factors and dumping, are no longer relevant factors.

Therefore, KG Dongbu requests that the Commissioner consider providing the Minister with its assessment and analysis of the circumstances identified by the Productivity Commission as providing grounds for measures to not be imposed pursuant to subsection 269TL(1) of the Act.

F. Determination of normal values

KG Dongbu reiterates its previously submitted contention that the Commission’s calculation of the specification adjustment is incorrect and inconsistent with its own stated practice. Following publication of SEF 588, the Commission provide amended dumping margin calculations which departed from the verification team’s preference for the use of a gross margin in the adjusting for the difference in costs between exported goods and comparable surrogate like good.

The verification team followed the guidance outlined in the Commission’s Dumping & Subsidy Manual which requires that the specification adjustment includes a ‘gross margin’ and makes clear that this would include ‘the administrative, selling and general costs and profit’.

The Commission has now departed from this stated practice and instead relied solely on the ordinary course of trade (“OCOT”) profit. This is not only inconsistent with the Commission’s state practice, but the calculation itself is incorrect.

Firstly, gross margin is defined as net sales less cost of goods sold, and reflects the amount of profit made before deducting SG&A costs. This is the key point of difference between the gross margin as understood and accepted in the Commission’s guidance, and the Commission’s proposed use of

OCOT profit which reflects a net margin. That is, whilst the gross margin focuses solely on the relationship between revenue and cost of goods, the net profit margin takes all of a business's expenses into account.

The OCOT profit proposed by the Commission is calculated by deducting the cost to make and sell from the sales revenue for each domestic sales transaction. As the cost to make and sell includes the SG&A cost component, the calculated profit reflects a 'net' margin, and not a gross margin. This net profit margin has then been applied only to the cost to make to calculate the grossed specification adjustment. It is mathematically flawed to calculate a net profit margin by comparing to the full cost to make and sell, and then attempt to 'gross up' the cost to make of goods with SG&A expenses exclude.

This approach is incorrect and clearly contradictory to the Commission's stated method of applying a gross margin that reflects the combined SG&A margin and profit margin.

KG Dongbu again requests that the Commission reconsider its approach and recalculate the dumping margin by having regard to its verified gross margin.