

6 June 2022

Received 6 June 2022

Ms Jasna Halilovic  
Assistant Director – Investigations 2  
Anti-Dumping Commission  
GPO Box 1632  
Melbourne Victoria 3001

Email: [Investigations2@adcommission.gov.au](mailto:Investigations2@adcommission.gov.au)

### Public File

Dear Ms Halilovic,

### Anti-Dumping/Subsidisation Continuation 592 – Zinc Coated (galvanised) Steel exported from India, Malaysia, and Vietnam

#### 1. Introduction

BlueScope Limited (**BlueScope**) is the manufacturer of zinc coated (galvanised) steel goods (**the goods** and/or **galvanised steel**) in Australia. BlueScope was the applicant company that requested the Anti-Dumping and Subsidisation continuation inquiry applicable to exports of the goods from the Republic of India (**India**), Malaysia, and the Socialist Republic of Vietnam (**Vietnam**) – refer ADN No. 2021/127.

BlueScope agrees with the Statement of Essential Facts No. 592 (**SEF 592**) finding by the Commissioner of the Anti-Dumping Commission (**the Commission**) that the expiration of the anti-dumping measures in respect of the goods exported to Australia from India, Malaysia, and Vietnam would be likely to lead to a continuation of, or a recurrence of, dumping and subsidisation and the material injury that the measures are intended to prevent.

Notwithstanding BlueScope's overarching agreement with SEF 592, BlueScope makes the following comments and representations on issues it believes require reconsideration by the Commission.

#### 2. Variable Factors Assessment

SEF 592 proposes to recommend not altering the variable factors ascertained in the previous review of measures (**REV 521**)<sup>1</sup> on the basis that no suppliers or exporters that may have exported the goods to Australia from the subject countries have cooperated with the Commission.<sup>2</sup> SEF 592 notes that the Commission has limited information and data to determine how the variable factors relevant to the determination of duty payable have changed – the Commission does not have contemporary information to precisely determine export prices, the Commission cannot determine normal values, and the Commission cannot reliably ascertain non-injurious prices.<sup>3</sup>

BlueScope submits that the Commissioner's proposal to recommend that the dumping duty notice (**the notice**) remain unaltered automatically renders the measures non-contemporaneous, and that the Commission does has available to it legislative means to ascertain variable factors during the continuation inquiry period. The following comments are made within this context.

<sup>1</sup> Review of the Anti-Dumping Measures applying to zinc coated (galvanised) steel Exported to Australia from the People's Republic of China, The Republic of India, The Republic of Korea, Malaysia, Taiwan, and the Socialist Republic of Vietnam. REV 521 had a review period of fiscal year 2019.

<sup>2</sup> SEF 592, p. 16.

<sup>3</sup> Ibid, p. 17.

## i. India

In its assessment of the likelihood of dumping by Indian exporters in the absence of measures, the Commission assessed a Free on Board (FOB) normal value for the continuation inquiry period with reference to trade data from MEPS International Ltd,<sup>4</sup> represented as an index in SEF 592. Given the lack of exports of the goods to Australia from India since May 2019, the Commission had regard to the Australian export prices of galvanised steel from all other countries, to which it then compared to the determined normal values so as to form a view on the level of dumping. SEF 592 stated that:

*Although prices of galvanised steel exported to Australia have increased in the inquiry period and are higher than they were in the original investigation period and in FY 2018-19 (the period of review in Review 521, in which goods exported from India were found to be dumped), Indian domestic galvanised steel prices have increased by a greater amount. **This suggests that a greater dumping margin than that established in Investigation 370 and Review 521 is likely.**<sup>5</sup> (emphasis added).*

Irrespective of this assessment, the Commission's proposal to leave the notice unaltered translates into the carry-forward of the 12 per cent dumping margin ascertained for all Indian exporters in REV 521. By the Commission's own account, the margin of dumping by Indian exporters is now higher – BlueScope respectfully submits that this should be reflected in a revised home market variable factor.

In REV 521, the Commission did not receive Indian exporter questionnaire responses. Having regard to all relevant information,<sup>6</sup> the Commission calculated the export price based on the weighted average FOB prices declared by importers of the goods over the review period from India.<sup>7</sup> For the normal value, the Commission established a price under section 269TAC(6) using the verified normal value information from original Investigation No. 370 (INV 370), with a timing adjustment made for the movement in export prices between INV 370 and REV 521.<sup>8</sup>

BlueScope submits that the Commission should establish new variable factors for the current continuation inquiry in a similar manner to REV 521. For the normal value, the Commission can adjust the price ascertained in REV 521 by the MEPS benchmark movement in Indian galvanised steel prices. Over the comparison REV 521 and CON 592 periods, this price has trended as follows:

[Confidential Chart 1 – Indian Domestic Galvanised Steel Prices – MEPS]<sup>9</sup>

This trend represents a [XX]% appreciation in price between the comparison periods. This is a material normal value price movement which should be reflected in contemporary variable factors. In further support of this approach, the Commission's reliance on published steel price indices in making timing-related variable factor adjustments for galvanised steel is not without precedent. In the REV 521 verification report for the Vietnamese exporter *China Steel And Nippon Steel Vietnam Joint Stock Company (CSVC)*, the Commission's preliminary export price assessment was as follows:<sup>10</sup>

*The verification team notes that global steel prices have moved since the investigation period in INV 370 (i.e. 1 July 2015 to 30 June 2016) and HRC is the primary cost input to the production of like goods. Subject to further enquiries by the case management team, the verification team therefore considers that a timing adjustment is required to reflect what CSVC's export price would have been during the review period of 1 July 2018 to 30 June 2019. The verification team has used published steel pricing data from Platts, specifically the weighted average price of HRC for Southeast Asia for the investigation period in Investigation no. 370 compared to the average price of the same index for the current review period.*

<sup>4</sup> SEF 592, p. 53.

<sup>5</sup> Ibid, p. 54.

<sup>6</sup> Section 269TAB(3). All legislative references in this submission are references to the *Customs Act 1901*.

<sup>7</sup> Final Report 521, p. 72.

<sup>8</sup> REV 521 Final Report, p. 72.

<sup>9</sup> Confidential Attachment 1 – MEPS India Galvanised Steel Price Analysis

<sup>10</sup> REV 521, CSVC Exporter Verification Report, p. 9, EPR Folio No. 41.

BlueScope later contested the use of Platts, on the basis only that it was an inaccurate benchmark (being an Asian regional hot rolled coil price) for the calculation of an Australian galvanised steel export price.<sup>11</sup> The Commission subsequently revised its methodology and used Australian export price movements for the subject goods. Applied to the current inquiry however, the MEPS index price movement is clearly appropriate for the timing adjustment, and hence in establishing a new Indian normal value.

For the Indian export price, the lack of imports of the goods since May 2019 has already required the Commission to have regard to Australian export prices of galvanised steel from all other countries (discussed above), and to have regard to the movement of such prices since INV 370. In determining a new export price and therefore revising the notice in the current inquiry, the Commission could therefore apply an all-countries export price timing adjustment to the ascertained Indian price from REV 521.

## ii. Malaysia

In INV 370, the Commission found that the exported Malaysia goods had been dumped, with margins ranging from 14.5 per cent (for the then cooperating exporters *CSC Steel Sdn Bhd (CSC)* and *FIW Steel Sdn Bhd*) to 16.5 per cent (for uncooperative and all others). Malaysia's variable factors were then varied in REV 521 where, in the absence of any exporter cooperation, the Commission determined a dumping margin of 16.5 per cent for all exporters,<sup>12</sup> applying the following methodologies:<sup>13</sup>

Variable Factor	Comments & Methodology
Export Price	<i>Considering there were no imports of the goods from Malaysia during the review period, the Commission considers that the most reliable and relevant information it possesses in relation to exports of the goods from Malaysia over the review period is the verified information from cooperating exporters across all subject countries during the current review period. The Commission has used the lowest verified export price of all cooperating exporters of the goods over the review period...and then converted the export price to Malaysian Ringgit....</i>
Normal Value	<i>The Commission considers that the most reliable and relevant information it possesses in relation to the normal value of the goods in Malaysia over the review period is the verified normal value information from the original investigation (Investigation No. 370). Therefore, the Commission has calculated the normal value based on the normal value of all other exporters from Malaysia from REP 370 and has made an adjustment for the movement in export prices between the original investigation period and the current review period.</i>

**Non-Confidential Table 1 – REV 521 Malaysian Variable Factor Assessment**

CSC's cooperation in CON 592 has permitted the Commission to calculate weighted average domestic selling prices sold in the ordinary course of trade (**OCOT**) for home consumption in Malaysia, for comparison to the export price. SEF 592 establishes the Malaysian export price as the Malaysian price determined in INV 370, adjusted to reflect a price for the continuation period with reference to the change in galvanised steel export prices from all countries.<sup>14</sup> This represents a long-term comparison between the 12 months ending June 2016, to the 12 months ending September 2021.

BlueScope does not refute the Malaysian normal value estimate in SEF 592, but requests that the Commission clarify what normal value adjustments have been made, as the SEF is silent on this point. INV 370 made the following normal value adjustments for CSV:<sup>15</sup>

- freight;

<sup>11</sup> REV 521, EPR Folio No. 42.

<sup>12</sup> SEF 592, p. 56.

<sup>13</sup> REV 521, Final Report, p. 73-74.

<sup>14</sup> SEF 592, p. 57.

<sup>15</sup> INV 370, Final Report, p. 33.

- handling and packaging expenses;
- credit terms; and
- raw material costs.

BlueScope submits that the Commission should then apply section 269TAC(1) and amend Malaysia's normal value.

To ensure CSV's export price variable factor is contemporary for CON 592, BlueScope submits that the Commission should determine a price pursuant to section 269TAB(3), having regard to all relevant information. The Commission should apply an all-countries export price timing adjustment to the ascertained Malaysian export price from REV 521.

### iii. Vietnam

CSVC's response to the exporter questionnaire for CON 592 has enabled the Commission to analyse the relative changes/variations in the exporter's export price and normal value since last ascertained in REV 521. Based on a comparison between CSVC's selling prices of like goods sold in the OCOT, and an export price established via a timing adjustment from REV 521 (in the absence of volumes exported to Australia), SEF 592 concludes that:

*...the commission observes that in the inquiry period, the normal value or weighted average domestic price of like goods sold by CSVC increased at a greater rate than its adjusted export price. The rate at which the weighted average domestic selling price increased **effectively eliminates the negative margin found in Review 521 for CSVC**. A direct comparison of CSVC's relative prices in the inquiry period is indicative of dumping.<sup>16</sup> (emphasis added).*

The variable factor price calculation methodologies applied above for CON 592 in reaching the above dumping conclusions are similar to those applied in REV 521, against which the notice for Vietnam was amended from INV 370. These REV 521 methodologies were:<sup>17</sup>

Variable Factor	Comments & Methodology
Export Price	<p><i>...for CSVC, there is insufficient information to ascertain an export price under section 269TAB(1) due to no volumes of exports to Australia.</i></p> <p><i>The Commission therefore considers it appropriate to ascertain an export price under section 269TAB(2B).</i></p> <p><i>...the Commission finds that ascertaining CSVC's export price under 269TAB(2B)(a) having regard to its previous export price established in accordance with section 269TAB(1) is the most appropriate.</i></p> <p>The Commission therefore had regard to CSVC's export prices established in INV 370 and considered that the movement in exempt Vietnamese exporter prices from the ABF database was a reasonable reflection of galvanised steel export prices to Australia for the purposes of the timing adjustment.</p>
Normal Value	<p>Ascertained under section 269TAC(1) on the basis of sufficient sales of like goods sold for home consumption in Vietnam that were arm's length and at prices that were in the OCOT.</p>

**Non-Confidential Table 2 – REV 521 CSVC Variable Factor Assessment**

Based on CSVC's questionnaire response to CON 598, it appears that the Commission has been able to ascertain revised normal values under section 269TAC(1), which would then permit a revision to the notice.

<sup>16</sup> SEF 592, p. 60.

<sup>17</sup> REV 521 Final Report, p. 63-71.

In relation to normal value adjustments, BlueScope requests that the Commission clarify what adjustments were made, as SEF 592 is silent on this point. In REV 521, the following normal value adjustments were applied to CSVC:<sup>18</sup>

- credit insurance fees;
- packaging;
- transport;
- handling charges; and
- export costs.

In relation to CSVC's export price, the Commission's approach in estimating the value for the inquiry period by adjusting the price ascertained in REV 521 for the movement in Vietnamese galvanised steel export prices from FY2018-19, is an appropriate basis to establish the export price under section 269TAB(3) and justify a variation to the notice. The outcome of the Commission's application of section 269TAB(2B)(a) in REV 521 was the indexation forward of the section 269TAB(1) export price established for CSVC in INV 370. For the current inquiry, BlueScope submits that the Commission can have regard to all relevant information and establish CSVC's export price in the same manner as REV 521.

#### iv. WTO Jurisprudence

Annex II, paragraph 7,<sup>19</sup> to the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*<sup>20</sup> states the following:

*If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.*

BlueScope submits that the Commission's application of special circumspection in the current inquiry will permit the revision of variable factors, and a change to the notice. As detailed above, the Commission can have regard to the relevant legislative provisions, to the relevant home-market price indices, to the relevant information received from cooperating exporters, and to the approach taken previously by the Commission in REV 521, in establishing new normal values and export prices.

#### v. Form of Measures

The SEF 592 recommendation that the dumping duty notice remain unaltered has the effect of maintaining the floor price duty method for Vietnam, and the combination form of measure for India and Malaysia. BlueScope supports the May 2015 *House of Representatives Inquiry into Australia's Anti-Circumvention Framework in relation to Anti-Dumping Measures* that the Minister should use a combination of duties in preference to a single duty, and that this should be the default position in each case.<sup>21</sup>

In support of the combination method, trade-exposed Australian producers submitted during the inquiry that:

---

<sup>18</sup> REV 521 Final Report, p. 69.

<sup>19</sup> Non-Confidential Attachment 2: WTO Analytical Index; Anti-Dumping Agreement – Annex II (Jurisprudence); Best Information Available in terms of Paragraph 8 of Article 6.

<sup>20</sup> Accessible at [https://www.wto.org/english/docs\\_e/legal\\_e/19-adp\\_01\\_e.htm#articleVI](https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm#articleVI)

<sup>21</sup> Non-Confidential Attachment 7: *Circumvention: closing the loopholes. Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures.* House of Representatives. Standing Committee on Agriculture and Industry. May 2015. P. 50.

*... measures based upon the ad valorem method may be readily circumvented by exporters and importers. This is particularly the case where measures are relatively small – for example five per cent or less. All that is required is for the exporter to reduce the export price by the amount of the interim duty margin for the duty to become ineffective. Ad valorem measures do not allow for a penalty to be applied where the exporter reduces export prices further – whereas measures based upon the combination method (where a fixed and variable component addresses subsequent reductions in export prices) remain effective and limit further injury to the Australian industry.<sup>22</sup>*

BlueScope has contended above that the Commission does have a means with which to reassess subject country variable factors and amend the notice. This correct and preferable outcome would then require the imposition of the combination form of measures to subject country exporters.

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

Kind regards,

[REDACTED] [REDACTED]

Manager – Trade Measures

---

<sup>22</sup> Ibid, p. 38-39.