



# Application for review of a Ministerial decision

## *Customs Act 1901 s 269ZZE*

This is the approved<sup>1</sup> form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party<sup>2</sup> may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

### **Time**

Applications must be made within 30 days after public notice of the reviewable decision is first published.

### **Conferences**

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

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<sup>1</sup> By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

<sup>2</sup> As defined in section 269ZX *Customs Act 1901*.

**Further application information**

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

**Withdrawal**

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email [adrp@industry.gov.au](mailto:adrp@industry.gov.au).

## PART A: APPLICANT INFORMATION

### 1. Applicant's details

Applicant's name: BlueScope Steel Limited ("BlueScope").

Address: Five Islands Road, Port Kembla, NSW 2500.

Type of entity (trade union, corporation, government etc.):

BlueScope is a publicly listed company on the Australian Stock Exchange.

### 2. Contact person for applicant

Full name: Mr Chad Uphill

Position: Senior Commercial Specialist – International Trade Affairs

Email address: Chad.Uphill@bluescopesteel.com

Telephone number: (02) 4240 1214

### 3. Set out the basis on which the applicant considers it is an interested party

BlueScope Steel Limited (hereafter referred to as "BlueScope") is the sole Australian manufacturer of zinc coated (galvanised) steel (i.e. the "goods" the subject of the Minister's decision). BlueScope was the applicant company that requested the imposition of anti-dumping measures in respect of exports of zinc coated (galvanised) steel exported from India, Malaysia and Vietnam, and countervailing measures in respect of exports from India and Vietnam. The Minister imposed anti-dumping measures on exports of galvanised steel exported from India, Malaysia and Vietnam on the 16<sup>th</sup> of August 2017. Countervailing measures were also imposed on exports from India.

BlueScope is the sole Australian manufacturer of the goods and was considered to be representative of the 'Australian industry' for the purposes of the inquiry. BlueScope is, therefore, the applicant company that is entitled to a review of the Minister's decision under section 269ZZD.

### 4. Is the applicant represented?

Yes ☒ No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

***\*It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.\****

## PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

### 5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☒ Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐ Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

### 6. Provide a full description of the goods which were the subject of the reviewable decision

The goods the subject of the reviewable decision are:

*“flat rolled iron or steel (whether or not containing alloys) that are plated or coated with zinc exported to Australia from India, Malaysia and Vietnam.”*

#### Additional information:

BlueScope’s application included additional information to support its description of the goods, as follows:

*The goods include the same categories of goods as identified in Trade Measures Report No. 190 and 193, however, this application also includes goods that are alloyed (i.e. with minor additions, e.g. boron, chromium, etc). The goods the subject of this application include all zinc coated product options, including all grades/models of zinc coated steel, all coating mass classes and all surface treatments.*

*Trade of further generic names often used to describe the goods the subject of the application include:*

- *“GALVABOND®” steel;*
- *“ZINCFORM®” steel;*
- *“GALVASPAN®” steel;*
- *“ZINCHITEN®” steel;*
- *“ZINCANNEAL” steel;*

- "ZINCSEAL" steel;
- Galv;
- GI;
- Hot Dip Zinc coated steel;
- Hot Dip Zinc/iron alloy coated steel;
- Galvanneal.

The amount of zinc coating on the steel is described as its coating mass and is nominated in grams per metre squared (g/m<sup>2</sup>) with the prefix being Z (Zinc) or ZF (Zinc converted to a Zinc/Iron alloy coating). The common coating masses used for zinc coating are: Z350, Z275, Z200/Z180, Z100, and for zinc/iron alloy coatings are ZF100, ZF80 and ZF30 or equivalents based on international standards and naming conventions.

Surface treatments can include but not be limited to: passivated or not passivated (often referred to as chromated or non-chromated), oiled or not oiled, skin passed or not skin passed, phosphate or not phosphate (for zinc iron alloy coated steel only).

There are a number of relevant International Standards for zinc coated products that cover their own range of products via specific grade designations, including the recommended or guaranteed properties of each of these product grades.

These relevant standards are noted in Table 1: "Relevant international Standards for zinc coated steel".

**Table 1: Relevant International Standards for zinc coated steel**

International Standards	Product Grade Names
<b>General and Commercial Grades</b>	
AS/NZS 1397	G1, G2
ASTM A 653/A 653M	CS type A, B and C
EN10346	DX51D, DX52D
JIS 3302	SGCC, SGHC
<b>Forming, Pressing &amp; Drawing Grades</b>	
AS/NZS 1397	G3
ASTM A 653/A 653M	FS, DS type A and B
EN10346	DX53D, DX54D
JIS 3302	SGCD, SGCD, SGDD
<b>Structural Grades</b>	
AS/NZS 1397	G250, G300, G350, G450, G500, G550
ASTM A 653/A 653M	33 (230), 37 (255), 40 (275), 50 (340), 55 (380), 80 (550)
EN10346	S220GD, S250GD, S280GD, S320GD, S350GD, S550GD
JIS 3302	SGC340, SGC400, SGC440, SGC490, SGC570 SGH340, SGH400, SGH440, SGH490, SGH570

## 7. Provide the tariff classifications/statistical codes of the imported goods

BlueScope nominated the following tariff classifications applicable to the goods as per subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- 7210.49.00 (statistical codes 55, 56, 57 and 58);
- 7212.30.00 (statistical codes 61);
- 7225.92.00 (statistical code 38);
- 7226.99.00 (statistical code 71).

**8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision**

*If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.*

The Anti-Dumping Notice (No. 2017/99) notifying of the Minister's decision was published on 16 August 2017. Please refer to Non-Confidential Attachment 1.

**9. Provide the date the notice of the reviewable decision was published**

The notice pursuant to subsections 8 (5) and 8 (5BA) of the *Customs Tariff (Anti-Dumping) Act 1975* was published on 16 August 2017. Please refer to Non-Confidential Attachment 2.

***\*Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application\****

## PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☐

### **10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.**

***Ground 1: The Anti-Dumping Commission erred in its treatment of the exporter Essar Steel India Limited ("Essar") in the dumping investigation by affording Essar a separate dumping margin to that of the "uncooperative and all other exporters" of the goods from India.***

BlueScope seeks a review of the Assistant Minister's decision to afford Essar a favourable dumping margin when contrasted with the dumping margin determined for uncooperative and all other exporters of galvanised steel exported from India.

At Section 6.1, page 28 of Report No. 370 – Galvanised steel exported from India, Malaysia and Vietnam (hereafter referred to as "Report 370"), the dumping margins for all exporters the subject of the investigation are identified. For Essar Steel, the footnote confirms that *"Essar Steel only participated in the subsidy investigation, the Commission used Essar Steel's export price from that part of the investigation to calculate its dumping margin"*.

It is not disputed that Essar did not cooperate in the dumping investigation. Section 6.12.2 of Report 370 confirmed *"Essar Steel cooperated with the subsidy investigation but not with the dumping investigation"*. It is the Commission's practice for uncooperative exporters that in determining normal values the highest weighted average normal value for the entire investigation period for the cooperative exporters is used, excluding favourable adjustments. For export price, the Commission will normally use the lowest weighted average price for cooperative exporters from the nominated country.

In Report No. 370, for the purposes of determining a normal value for the uncooperative Essar, the Commission confirmed<sup>3</sup>:

*"....after having regard to all relevant information, the normal values for Essar Steel was established in accordance with subsection 269TAC(6) of the Act, using the highest weighted average normal value for the entire investigation period from the cooperating exporter from India, excluding any favourable downward adjustments made to that figure."*

BlueScope is not disputing the Commission's assessment of Essar's normal value.

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<sup>3</sup> Final Report No. 370 – Galvanised steel exported from India, Malaysia and Vietnam, P. 39.

In respect of Essar's export price, the Commission noted Essar's non-cooperation with the dumping investigation. The Commission stated:

*"Essar Steel cooperated with the subsidy investigation but not with the dumping investigation. As such, a question arises concerning the determination of export price for the investigation. As part of the subsidy investigation an exporter is required to provide a detailed listing of all export sales in the investigation period and this data is subject to verification. In a subsidy case, the provision of export sales data is necessary because any subsidy determined must be expressed as a proportion of the export price."*

Essar's decision to only cooperate with the subsidy investigation presented the Commission with the issue of how to treat Essar's export price information (relevant also to the subsidy investigation). Report 370 discusses the Commission's considerations:

*"The Commission has considered how to treat this export price data for the purposes of the dumping and subsidy parts of the investigation. One view is that as dumping considerations are separate to the subsidy investigation, their export price should be assessed under subsection 269TAB(3) – having regard to all relevant information. Such an approach generally results in ascribing to the exporter the lowest price weight averaged export price for the investigation period for exports from India.*

*An alternate view is that because Essar Steel had cooperated with the subsidy investigation, and as export sales data had been verified to the Commission's satisfaction in a desk top examination, that data remains relevant to the dumping investigation."*

Having regard to Essar's stated non-cooperation with the anti-dumping investigation, the Commission correctly stated:

*"On balance, the Commission considers that as Essar Steel did not cooperate in the dumping investigation the relevant export price should be determined in accordance with subsection 269TAB(3), which requires having regard to all other relevant information."*

The Commission appeared to have formulated its view, consistent with its practice concerning uncooperative exporters. However, in a sudden about-face, the Commission followed:

*"Having regard to 'all relevant information' available the Commission finds that the most relevant information to establish export sales for Essar Steel are the export sales data provided by Essar Steel as part of the subsidy examination. Therefore, the Commission has established export price using Essar Steel's export data in accordance with subsection 269TAB(3), using the export sales data submitted in response to the subsidy questionnaire."*

It is BlueScope's view that the Commission has erred in its assessment of the export price for Essar. Subsection 269TACAB details the treatment of the different categories of exporters in a dumping investigation, including the determination of export price and normal value. Included in the different categories is the that of "uncooperative exporters". The determination of export price for uncooperative exporters in an investigation involving a dumping duty notice (subsection 269TACAB(1)(d)) is required to be determined in accordance with subsection 269TAB(3).

Subsection 269TAB(3) of the Act states:

*“Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be the amount determined by the Minister having regard to all relevant information.”*

The Commission accepted Essar was uncooperative in the dumping investigation. From that point forward in the dumping investigation, Essar was an ‘uncooperative exporter’. As such, data provided by Essar in respect of the subsidy investigation should not ‘cross-over’ into the dumping investigation, and afford Essar a favourable outcome when determining dumping margins. Essar should have been assigned the same export price as all other uncooperative exporters from India.

The Commission has stated that the information used to determine Essar’s export prices (sourced from the subsidy questionnaire response) can be considered ‘relevant information’. The information supplied by Essar in the subsidy investigation may have been considered ‘adequate’ for the Commission’s determination of subsidy margins; however, in respect of a dumping investigation, the export price declared by the exporter is subject to a more intensive investigation as to whether it represents a selling price that recovers all costs (not so required in a subsidy investigation).

Essar’s export price information from the subsidy investigation, therefore, cannot be considered relevant information for the purposes of the dumping investigation. The Commission’s treatment of Essar establishes an unsafe precedent that will likely encourage exporters the subject of dumping and subsidy investigations to cooperate only in the countervailing investigation, and secure a favourable outcome (when compared with uncooperative exporters) in the assessment of export prices and dumping margins.

The Commission’s consideration of Essar as an uncooperative exporter – as confirmed in the dumping investigation – was the correct decision. The decision to then ignore and set aside the Commission’s usual practice to base an uncooperative exporter’s export price on the lowest weighted average export prices of the cooperative exporters, and afford Essar a favourable export price outcome based upon information obtained in the subsidy investigation, is not the correct or preferable decision.

**11. Identify what, in the applicant’s opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.**

The correct or preferable decision of the Minister was to assign Essar the same weighted-average export price as all uncooperative exporters of galvanised steel from India, as required by subsection 269TACAB.

**12. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**

*Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.*

The correct and preferable decision for the determination of Essar's export price would confirm that Essar's dumping margin would increase from 7.6 per cent to the same percentage as all uncooperative exporters from India at 12.0 per cent.

#### **PART D: DECLARATION**

The applicant declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* beginning to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:

A handwritten signature in black ink, appearing to read 'C Uphill', written in a cursive style.

Name: Chad Uphill

Position: Senior Commercial Specialist – International Trade Affairs

Organisation: BlueScope Steel Limited

Date: 15 / 09 / 2017

## **PART E: AUTHORISED REPRESENTATIVE**

*This section must only be completed if you answered yes to question 4.*

### **Provide details of the applicant's authorised representative**

Full name of representative: John O'Connor  
Organisation: John O'Connor and Associates Pty Ltd  
Address: P.O. Box 329, Coorparoo Queensland 4151.  
Email address: jmoconnor@optusnet.com.au  
Telephone number: (07) 3342 1921

### **Representative's authority to act**

***\*A separate letter of authority may be attached in lieu of the applicant signing this section\****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:



(Applicant's authorised officer)

Name: Chad Uphill  
Position: Senior Commercial Specialist – International Trade Affairs  
Organisation: BlueScope Steel Limited  
Date: 15 / 09 / 2017