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25 September 2018

Mr Scott Ellis
Member
Anti-Dumping Review Panel
C/o Anti-Dumping Review Panel Secretariat
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Public File

Dear Sir/Madam,

Zinc coated (Galvanised) steel exported from the People's Republic of China, the Republic of Korea, and Taiwan – Application for review of a decision by CITIC Australia Steel Products Pty Ltd

I. Introduction

I refer to the application for review of a decision by CITIC Australia Steel Products Pty Ltd ("CITIC") concerning the decision of the Assistant Minister for Science, Jobs and Innovation (Assistant Minister) under subsection 269ZHG(1) to continue the anti-dumping measures applicable to exports to Australia of zinc coated (galvanised) steel ("the goods") from the People's Republic of China ("China"), Korea and Taiwan.

CITIC is an Australian importer of the goods the subject of the measures from the Taiwanese exporter Yieh Phui Enterprise Co., Ltd ("Yieh Phui").

The decision of the Assistant Minister was published on 17 July 2018 (ADN No. 2018/96) and had the effect of continuing the dumping duties on exports from all exporters from China and certain exporters from Taiwan and Korea, based on different variable factors to those that had previously applied.

CITIC has a number of grounds of review that it has identified in respect of the decision of the Assistant Minister. The grounds for review include:

- The Commissioner and the Assistant Minister failed to follow a mandatory procedure in that the Commissioner published a Statement of Essential Facts ("SEF") without considering all submissions (in particular CITIC's submissions of December 2017) as required under section 269ZHE(2) and failed to address that error in an appropriate manner;
- The Commission failed to call for BlueScope Steel Limited ("BlueScope") to provide non-confidential summaries of material it had submitted;
- Reports No. 449 and 450 ("Report") and the reviewable decision failed to provide any reason for rejecting all aspects of CITIC's submission dated 20 May 2018;
- The Report fails to address each element required under section 269ZHF;

- The Report fails to include adequate reasoning for each of the conclusions sought to be drawn and those conclusions were wrong; and
- The Report fails to address injury factors other than dumping.

BlueScope is the only Australian manufacturer of the goods and therefore represents the Australian industry for the purposes of the continuation of measures inquiry.

BlueScope considers the decision of the Assistant Minister is the correct and preferred decision.

II. CITIC's submission of 18 December 2017

CITIC asserts that the Commission “overlooked” CITIC’s submission dated 18 December 2017 in the preparation of SEF No. 449 and 450 published on 30 April 2018. The Commission acknowledged the oversight in SEF 449 and 450 and stated in the Report that the matters raised by CITIC that related to the commencement of an investigation into the continuation of the measures “*contained no evidence which supported its critique*”. That is, the Commission was not satisfied that CITIC had sufficiently evidenced that the decision to conduct an investigation was either flawed or incorrect.

The Commission had considered CITIC’s representations contained in the 18 December 2017 submission but was not satisfied that the assertions therein were sufficiently persuasive to alter its preliminary findings in SEF 449 and 450 when refining recommendations for inclusion in the Report.

The level of information required to be included in an application for the continuation of measures is at a significantly reduced threshold to that required by the Commission to be satisfied in its recommendations to the Assistant Minister that the expiration of measures would likely lead to a recurrence of material injury that the measures are intended to prevent. CITIC’s assertions in its submission that the Commission should not have commenced an investigation into the continuation of measures therefore would be required to demonstrate persuasive information of an absence of continued (or threat) of material injury. The CITIC submission did not sufficiently demonstrate that the Australian industry would not experience a recurrence of material injury if the measures were allowed to expire.

III. Non-Confidential summaries

CITIC’s second ground of appeal relates to the alleged failure by the Commission to require BlueScope to provide adequate non-confidential summaries of redacted information in submissions.

As CITIC has not specifically identified which submission by BlueScope to which it is referring, it is difficult to accurately address this concern.

BlueScope’s approach to the redaction of commercially-sensitive information is consistent with the requirements of ADN 2012/42. BlueScope will only redact commercially sensitive information from its submissions.

IV. CITIC's submission of 20 May 2018

BlueScope notes the Commission’s comments at Section 6.6.3.1 concerning CITIC’s submission of 20 May 2018 which repeated the matters raised in its 18 December 2017 submission, as well as opposing the findings and recommendations contained in SEF 449 and 450.

CITIC contends that the Commission has not provided adequate reasoning as to why the matters raised by CITIC have been dismissed. The Commission considered the matters raised by CITIC following the

publication of SEF 449 and 450. The matters raised therein were not supported with any new information not already before the Commission that would enable the Commission to alter (or challenge) views based upon evidence gained during the conduct of the investigation. The Commission therefore correctly concluded that CITIC's representations were not sufficiently "persuasive" for it to alter its conclusions and recommendations for the Assistant Minister.

V. Section 269ZHF

The CITIC application for review disputes whether the Commission adequately considered the requirements of section 269ZHF. In particular, CITIC contends that the Commission has erred in relying on "tentative" revised Review (i.e. Review Investigations 456 and 457) concerning dumping that has occurred during the investigation period "*without further analysis to hypothesize future dumping*".

The anti-dumping investigation process involves a retrospective examination of an exporter's behaviour in a recently completed period (i.e. the investigation period). The past actions of the exporter are, in the context of an anti-dumping inquiry, indicative of future behaviour including the likely prospect of dumping by the exporter. The Commission also examined a range of further factors concerning the supply of the goods in Taiwan, measures applicable in other jurisdictions and the relative pricing behaviour for Taiwanese exporters supplying the Australian market.

The Commission's investigations (as reflected in the Report) as to the likelihood of dumping and material injury in the future are soundly based and rely upon information that demonstrated the likelihood of dumping by Taiwanese exporters in the future. CITIC's claims, therefore, that the Commission failed to adequately consider the requirements of section 269ZHF are incorrect and not supported with evidence demonstrating an alternative view.

VI. Adequacy of explanation for decision

Ground 5 of CITIC's application contends that the Commission did not include "*adequate reasoning*" for each of its findings in the Report.

CITIC states that the Commission has not consider the export prices of exporters the subject of the measures versus exporters not subject to measures. There are two exporters not the subject of measures in Taiwan – Sheng Yu Co., Ltd and Ta Fong Co., Ltd. The Report does not indicate whether the export volumes from Taiwanese exporters is significant; in fact, the absence of any comments suggests that the non-subject exporters are not significant exporters of the goods to Australia. The claims by CITIC that the Commission has not considered the impact of dumped imports viz-a-viz other imports is incorrect. The Commission states that it consulted the ABF database and found that exporters from Taiwan held a "*substantial proportion of the import market in Australia*". The Commission further observed that the export prices from Taiwan were in three of the four quarters during the investigation period priced below import prices for goods exported from China and Korea.

The CITIC application for review explores alternate interpretations of conclusions of the Commission based upon conjecture and theoretical assumptions. These claims as to distribution channels, sales volumes, market shares, import parity pricing, etc are not based upon factual information but rather unsubstantiated possibilities which are put forward to question the Commission's analysis. BlueScope does not consider CITIC's grounds for asserting a differing viewpoint can be considered more than a grievance of the Assistant Minister's decision.

The Commission had evidence before it that enabled it to be satisfied that export prices from Taiwan were generally below the export prices from China and Korea and that it was sufficient to form a view that in the

absence of measures, the Australian industry would again experience material injury that the measures were intended to prevent.

VII. Other injurious factors

CITIC's ground of appeal as to the Commission's consideration of other factors is limited. CITIC has not identified any "other" relevant factors that may have caused injury to the Australian industry during the investigation period that could detract from the Commission's findings.

CITIC mentions BlueScope's joint venture partnership with Nippon Steel and Sumitomo Metal Corporation but does not provide any evidence supportive of the relevance of raising the partnership.

CITIC's claim that the Commission failed to consider the impact of other factors that may have contributed to, or caused, material injury to the Australian industry is therefore lacking.

VIII. Recommendation

The CITIC application for review of the Commission's recommendation and, acceptance by the Assistant Minister, to continue anti-dumping measures on exports of zinc coated galvanised steel from China, Korea and Taiwan fails to sufficiently and adequately demonstrate it is either flawed or incorrect.

BlueScope therefore submits that the decision of the Assistant Minister is the correct and preferable decision.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4240 1214, or BlueScope's representative Mr John O'Connor on (07) 3342 1921.

Yours faithfully,



Chad Uphill
Senior Commercial Specialist – International Trade Affairs