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20 September 2018

Mr Paul O'Connor
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 Synn Industrial Co., Ltd

I. Introduction

I refer to the application for review of a decision made by the Assistant Minister for Science, Jobs and Innovation (Assistant Minister) under subsection 269ZDB(1)(a)(iii) to vary the variable factors applicable to exports of zinc coated (galvanised) steel ("the goods") to Australia by Synn Industrial Co., Ltd ("Synn Industrial").

Synn Industrial is a manufacturer and exporter of the goods in Taiwan the subject of the anti-dumping measures.

The decision of the Assistant Minister was published on 17 July 2018 (ADN No. 2018/94).

The application made by Synn Industrial identifies two grounds of appeal, namely:

- (i) The Assistant Minister erred in comparing normal values and export prices using quarterly, rather than monthly, time periods, which distorted the dumping margin due to a significant fluctuation and volatility of costs and prices across the review period; and
- (ii) The Assistant Minister erred in constructing normal values under subsection 269TAC(2)(c) of the *Customs Act 1901* for certain export models when suitable domestic sales of like goods existed during the review period which allowed normal values to be determined pursuant to subsection 269TAC(1).

BlueScope Steel Limited ("BlueScope") is the only Australian manufacturer of the goods and therefore represents the Australian industry for the purposes of the review of measures investigation.

BlueScope considers the decision of the Assistant Minister is the correct and preferred decision. The applicant has not demonstrated that the fluctuating costs during the investigation period require comparisons of normal values and export prices to be undertaken on a monthly basis so as to yield more accurate dumping margin calculations.

In respect of the applicant's second ground of appeal concerning the determination of normal values under subsection 269TAC(2)(c) for four export models, the Commission was not satisfied that sufficient domestic sales of the goods made in the ordinary course of trade (OCOT) under subsection 269TAC(1) to enable it to determine subsection 269TAC(1) normal values (with a specification adjustment) for the four models. In the absence of a sufficient level of domestic sales made in the OCOT under subsection 269TAC(1), the Commission had no option but to determine normal values for the four export models under subsection 269TAC(2)(c).

II. Ground 1 - Comparison of normal values and export prices

Synn Industrial's review application contends that the Commission, instead of relying upon Synn Industrial's monthly costs for the goods during the investigation period, calculated comparisons of normal value and export price on a quarterly basis. Synn Industrial states that it was *"incorrect for the Commission to disregard the submitted monthly data and undertake its calculations and comparisons on a quarterly basis, which clearly distorted the calculated profitability and price comparisons"*.

The Dumping and Subsidy Manual ("the Manual") details the Commission's approach when calculating dumping margins on a weighted-average basis. The Manual reflects the provisions of Section 269TACB which outlines the following methods:

- Compare the weighted average of export prices over the investigation period with the weighted average of corresponding normal values over that period;
- Apply the weighted average method to parts of the investigation period;
- Compare the export prices determined in respect of individual transactions over the investigation period with corresponding normal values in the same period;
- Combine the weighted average with the transaction to transaction method, or (in rare circumstances);
- Compare the weighted average normal value with the individual transaction export prices.

The Manual further states:

*"Whilst weighted average unit normal values are typically calculated on a quarterly basis, the Commission may use monthly data where it determines there are sufficient changes in costs and/or prices over short periods within the investigation period and the use of monthly unit normal values yields a **more accurate dumping margin calculation**."* (emphasis added).

Synn Industrial has argued that *"the substantial fluctuations in the costs of the key raw material inputs such as HRC and CRC, and corresponding prices of galvanised steel across the whole of the investigation period and within each of the quarters"* warrant the comparison of normal values and export prices on a monthly basis.

Synn Industrial further stated that *"it is clear from the evidence submitted that monthly costs experienced significant and erratic fluctuations across the whole of the review period and within the respective quarters"*.

In Report No. 456 and 457 the Commission acknowledged the guidance contained in the Manual and stated¹:

“The Commission has analysed the raw material costs and found that these have not varied significantly. The Commission has also analysed Synn Industrial’s CTMS data and has found that there were no “erratic” movements in costs and/or prices over short periods. For these reasons, the calculations for Synn Industrial have been undertaken on a quarterly basis.”

Synn Industrial’s comments in its application for review concerning the erratic or volatile movement in its costs is contrary to the findings of the Commission. This is likely to be as a result of Synn Industrial arguing that the costs were erratic across the investigation period (and quarter on quarter) whereas the Commission’s guidance requires it to examine movements in costs across a short period (i.e. not the investigation period, but within parts thereof).

The Commission was not satisfied that Synn Industrial’s costs had fluctuated erratically across a short period of time within the investigation period and therefore as per the guidance in the Manual did not alter from its preferred approach to determine dumping margins on a weighted-average quarterly basis.

BlueScope considers that the alignment of export prices with the costs of producing the goods that reflect those export prices is an important consideration. In most instances, the weighted-average approach to determining dumping margins would fully account for fluctuating costs used in the manufacture of the exported goods.

BlueScope also notes that the Synn Industrial application for review has focused on attempting to demonstrate the fluctuations or changes in raw material input costs used by Synn Industrial in manufacturing the goods across the investigation period. The application for review has failed to demonstrate that had the dumping margins been calculated on a monthly basis, how the monthly dumping margin calculations reflect a more accurate assessment of actual margins of dumping than those determined on a weighted average quarterly basis. In BlueScope’s view, the onus is on the applicant to demonstrate that the proposed monthly dumping margin calculations yield a more accurate dumping margin calculation.

III. Ground 2 – Failure to determine normal values under subsection 269TAC(1)

Synn Industrial contends that the Commission has erred in its determination of normal values under subsection 269TAC(2)(c) for four export models when sufficient sales for like goods under subsection 269TAC(1) were available and specification adjustments could have been made to these suitable sales. However, the Commission was not satisfied that there existed a sufficient level of domestic sales of the goods made in the ordinary course of trade (OCOT) under subsection 269TAC(1) to enable it to determine subsection 269TAC(1) normal values (with a specification adjustment) for the four models.

In the absence of a sufficient level of domestic sales made in the OCOT under subsection 269TAC(1), the Commission had no option but to determine normal values for the four export models under subsection 269TAC(2)(c).

Synn Industrial states that its understanding of the Commission reverting to normal values under subsection 269TAC(2)(c) only occurs in “*circumstances where domestic sales are not a practical option*”. This is not the case. For normal values to be determined under subsection 269TAC(1), there must be a sufficient level of domestic sales made in the ordinary course of trade for like goods for the Minister to be satisfied that it can use the domestic sales – adjusted for specification differences – as quasi normal values for different models of like goods for which no domestic sale equivalent is available.

¹ Report 456 and 457, P. 38.

Therefore, Synn Industrial's ground for review that normal values for the four export models be determined in accordance with subsection 269TAC(1) is based upon an incorrect interpretation of the legislative requirements for determining subsection 269TAC(1) normal values. The correct and preferred decision is that of the Assistant Minister to determine normal values for the four export sales under subsection 269TAC(2)(c).

IV. Correct or preferable decision

BlueScope submits that the decision of the Assistant Minister as published in ADN No. 2018/95 is the correct and preferred decision. Synn Industrial has not demonstrated that the Commission erred in its methodology to calculate weighted-average dumping margins on a quarterly basis. Whilst Synn Industrial has argued that its costs demonstrated some volatility when examined on a monthly basis across the investigation period, it has not demonstrated that the proposed monthly dumping margin methodology yields a more accurate dumping margin calculation.

In respect of Synn Industrial's assertion that normal values for the four export models be determined under subsection 269TAC(1) rather than subsection 269TAC(2)(c), this cannot occur in the absence of a suitable level of domestic sales of like goods by Synn Industrial in Taiwan.

BlueScope contends that Synn Industrial's application for review must fail as the Assistant Minister's decision is the correct and preferred 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