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Australian Government

Anti-Dumping Review Panel

ADRP Report No. 151

Aluminium Zinc Coated Steel of a width equal to or greater than 600 millimetres exported from the Republic of Korea, Taiwan and the Socialist Republic of Vietnam

April 2022

<https://www.adreviewpanel.gov.au>

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Abbreviations

Term	Meaning
Act	<i>Customs Act 1901</i>
ADA	Anti-Dumping Agreement
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
AUD	Australian Dollar
BlueScope	BlueScope Steel Limited (the Australian industry)
BMT	Base metal thickness
CIO Regulation	<i>Customs (International Obligations) Regulation 2015</i>
CRC	Cold rolled coil
CTM	Cost to make
CTMS	Cost to make and sell
Commissioner	Commissioner of the Anti-Dumping Commission
Dongkuk Steel	Dongkuk Steel Mill Co., Ltd, an exporter and interested party
FOB	Free on board
GAAP	Generally accepted accounting principles
Goods	the goods described in the report the subject of the review application: Aluminium Zinc Coated Steel of a width equal to or greater than 600 millimetres – see paragraph 10 of this report.
HSG	Hoa Sen Group Joint Stock Company, an exporter and applicant to this review
IDD	Interim dumping duty

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Investigation period	1 April 2019 to 31 March 2020
Korea	Republic of Korea
Macsteel	Macsteel International Australia, an importer and applicant to this review
Manual	Dumping and Subsidy Manual, December 2021
mm	Millimetres
Mt	Metric tonnes
Minister	Minister for Industry, Energy and Emissions Reduction
MCC	Model control codes
OCOT	Ordinary course of trade
REQ	Response to Exporter Questionnaire
REP 558	The report published by the Commissioner in relation to the alleged dumping of aluminium zinc coated steel of a width equal to or greater than 600 mm exported from the Republic of Korea, Taiwan and the Socialist Republic of Vietnam and alleged subsidisation of aluminium zinc coated steel of a width equal to or greater than 600 mm exported from the Socialist Republic of Vietnam, dated 15 November 2021.
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the Minister made on 24 December 2021 to publish a dumping duty notice pursuant to s.269TG(1) and (2) of the <i>Customs Act 1901</i> in respect of Aluminium Zinc Coated Steel of a width equal to or greater than 600 mm exported from the Republic of Korea and the Socialist Republic of Vietnam
SEF 558	Statement of Essential Facts Report No. 558 published on 22 September 2021
Vietnam	The Socialist Republic of Vietnam
WTO	The World Trade Organization

Summary

1. This is a review of the decision of the Minister for Industry, Energy and Emissions Reduction (the Minister) to publish a dumping duty notice pursuant to s.269TG(1) and (2) of the *Customs Act 1901* (the Act) in respect of Aluminium Zinc Coated Steel of a width equal to or greater than 600 mm (the goods) exported from the Republic of Korea (Korea) and the Socialist Republic of Vietnam (Vietnam) (the Reviewable Decision¹). The applicants for the review were:
 - Hoa Sen Group Joint Stock Company (HSG); and
 - Macsteel International Australia (Macsteel).
2. The Anti-Dumping Review Panel (Review Panel) accepted two grounds.
3. For the reasons set out in this report, I recommend that the Minister affirm the Reviewable Decision.

Introduction

4. The applicants applied under s.269ZZC of the Act for a review of the Reviewable Decision.
5. The Senior Member of the Review Panel directed in writing that the Review Panel be constituted by me in accordance with s.269ZYA of the Act.
6. The applications were accepted and notice of the proposed review, as required by s.269ZZI, was published on 31 January 2022.
7. Pursuant to s.269ZZK of the Act, a report must be provided no later than 60 days following the publication of the notice of review, unless a reinvestigation report is required (under s.269ZZL(1) of the Act).²

¹ On 15 November 2021, the Commissioner terminated the dumping investigation into the goods exported in relation to all exporters from Taiwan and Vietnamese exporter Nam Kim Steel Joint Stock Company and the countervailing investigation in relation to all exports from Vietnam. Termination Report No 558 refers.

² Pursuant to s.269ZZK(3).

Background

8. On 4 June 2020, BlueScope Steel Limited (BlueScope) lodged an application under section 269TB(1) of the Act with the Commissioner of the Anti-Dumping Commission (ADC) for the publication of a dumping duty notice in respect of the goods exported to Australia from Korea, Taiwan and Vietnam, and a countervailing duty notice in respect of the goods exported from Vietnam. The application by BlueScope was not rejected by the ADC, and on 30 June 2020, notice of the initiation of the anti-dumping and subsidisation investigation was published by the ADC.
9. The notice initiating the investigation stated that the investigation period would be 1 April 2019 to 31 March 2020. The injury analysis period was from 1 April 2016.
10. The goods to which this application relates are:

Flat rolled iron and steel products (whether or not containing alloys), of a width equal to or greater than 600 millimetres, plated or coated with aluminium-zinc alloys, not painted, and whether or not including resin coating.

Further information on the goods:

Trade or further generic names often used to describe the subject goods include:

- ZINCALUME® steel;
- GALVALUME® steel;
- Aluzinc, Supalume, Superlume, ZAM, GALFAN;
- Zinc aluminium coated steel;
- Aluminium zinc coated steel;
- Aluminium zinc magnesium coated steel;
- Alu-Zinc Steel sheet in Coils;
- Al/Zn; and
- Hot Dipped 55% Aluminium-Zinc Alloy coated steel sheet in coil.

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The imported goods the subject of this application covers aluminium zinc coated steel whether or not including any combination of surface treatment. For example, whether passivated (often referred to as chromated), resin coated or not resin coated (often referred to as Anti-Finger Print (“AFP”) or not AFP), oiled or not oiled, skin-passed or not skin-passed.

Excluded from the goods description of this application is un-passivated (often referred to as unchromated) aluminium zinc coated steel.

The amount of aluminium zinc coating on the steel is described as its coating mass and is nominated in grams per meter squared (g/m²), with the prefix being AZ (Aluminium Zinc). Common coating masses used are: AZ200, AZ150, AZ100, and AZ70.

There are several relevant International Standards for aluminium zinc coated steel, covering the full range of products via specific grade designations, and including the recommended or guaranteed properties of each of those product grades.

These relevant standards are noted in the table below.

International Standards	Product Grades
<i>General and Commercial Grades</i>	
AS/NZS 1397	G1, G2
ASTM A792	CS, type A, B and C
EN 10346	DX51D, DX52D
JIS 3321	SGLCC
<i>Forming, Pressing & Drawing Grades</i>	
AS/NZS 1397	G3
ASTM A792	FS, DS
EN 10346	DX53D, DX53D
JIS 3321	SGLCD, SGLCDD
<i>Structural Grades</i>	
AS/NZS 1397	G250, G300, G350, G450, G550

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ASTM A792	33 (230), 37(255), 40 (275), 50 (340), 55 (380), 80 (550)
EN 10346	S220GD, S250GD, S280GD, S320GD, S350GD, S550GD
JIS 3321	SGLC400, SGLC440, SGLC490, SGLC570

Table 1: Relevant International Standards for aluminium zinc coated steel

11. On 22 September 2021, the ADC published its Statement of Essential Facts (SEF 558) and also the Preliminary Affirmative Determination 558.³
12. On 15 November 2021, the ADC published Termination Report No 558. This report terminated the dumping investigation in relation to all exporters from Taiwan and Vietnamese exporter Nam Kim Steel Joint Stock Company and the countervailing investigation in relation to all exports from Vietnam.
13. The ADC noted it had conducted several cases into Aluminium Zinc Coated Steel previously and provided a summary of these cases in REP 558.⁴
14. The ADC presented REP 558 to the Minister on the alleged dumping and subsidisation of the goods on 15 November 2021.⁵ The ADC recommended that the Minister determine that a dumping duty notice be published in respect of the goods in respect of all exports from Korea and from Vietnam, except for those goods exported by Nam Kim Steel Joint Stock Company.
15. On 24 December 2021, the Minister accepted the recommendations of the Commissioner of the ADC and made declarations under s.269TG of the Act that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applied to exports of the goods from the Republic of Korea and from Vietnam (except for exports by Nam Kim Steel Joint Stock Company). The decision of the Minister was published in ADN 2021/147 on 24 December 2021.

³ Preliminary Affirmative Determination 558 enabled securities to be imposed on exports of the goods from the Republic of Korea and Vietnam (except for exports by Nam Kim Steel Joint Stock Company) entered for home consumption on or after 23 September 2021.

⁴ REP 558 Section 2.2 Previous cases, page 11.

⁵ ADC Report 558 Alleged dumping of Aluminium Zinc Coated Steel of a width equal to or greater than 600mm exported from Korea, Taiwan and Vietnam and alleged subsidisation of Aluminium Zinc Coated Steel of a width equal to or greater than 600mm exported from Vietnam.

Conduct of the Review

16. In accordance with s.269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the Reviewable Decision or revoke it and substitute a new specified decision. In addition, s.269ZZK(1A) of the Act requires that, if the Review Panel is recommending a new specified decision, it must be materially different from the Reviewable Decision.
17. In undertaking the review s.269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.
18. Subject to certain exceptions,⁶ the Review Panel is not to have regard to any information other than relevant information pursuant to s.269ZZK, i.e. information to which the ADC had regard or ought to have had regard when making its findings and recommendations to the Minister.
19. If a conference is held under s.269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information. A list of the conferences held during this review is summarised in the Table below. A non-confidential summary of the information obtained at the conferences was made publicly available in accordance with s.269ZZX(1) of the Act. Given the information being sought related to confidential information from the ADC and HSG, other parties were not invited to the conferences.

Date of conference	Participants	Purpose of conference
7 February 2022	ADC representatives, HSG representative	To provide corrections in the confidential tables in the HSG review application.
23 February 2022	ADC representatives, HSG representative	To obtain information on domestic pricing and timing adjustments to the domestic selling prices of the goods.

⁶ See s.269ZZK(4).

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7 March 2022	ADC representatives	To obtain information on the timing adjustment (price index) calculation used in the normal value.
16 March 2022	HSG representative	To obtain information on the timing adjustment calculation.

20. In conducting this review, I have had regard to:

- The review applications and documents submitted with the applications;
- Submissions received pursuant to s.269ZZJ of the Act insofar as they contained conclusions based on relevant information. Submissions were received on 2 March 2022, from HSG, Dongkuk Steel Mill Co., Ltd (Dongkuk Steel) and the ADC;
- REP 558, its confidential attachments, information referenced in the report, information created during the investigation, and submissions to investigation 558;
- Information from Termination Report No 558; and
- Relevant information obtained at conferences.

21. I consider it worth repeating the words of the former Senior Panel Member (The Hon. Michael Moore) discussing the role and powers of the Review Panel, as outlined in the Report on Power Transformers:

...Rather the Panel's role includes, by way of illustration, assessing whether there has been inappropriate reliance on particular data to the exclusion of other data, assessing whether relevant data has been ignored, assessing whether there has been miscalculations or the misconstruction or misapplication of the Act or relevant regulations. ...⁷

⁷ Extract from ADRP Report No. 24: Power Transformers – Former Senior Panel Member of the Anti-Dumping Review Panel, The Hon. Michael Moore, page 5.

Grounds of Review

22. The grounds of review relied upon by the applicants, which the Review Panel accepted are:

HSG: The Minister erred by incorrectly calculating the timing adjustment in determining HSG's normal values; and

Macsteel: The Minister erred in finding that exports from Korea caused material injury to the Australian industry producing like goods.

Consideration of Grounds

HSG Ground 1 Normal Value

Claims

23. HSG claims that the normal values have not been correctly calculated as the surrogate model used to quantify the quarterly timing adjustments for certain domestic models is not suitable. This had the effect of overstating the normal value for certain of the export models and increasing the dumping margins.
24. HSG indicates that where there were no domestic sales (or insufficient domestic sales) in the corresponding quarter of export, the ADC applied a timing adjustment to establish a normal value for these quarters. The method of calculating the timing adjustment was based on the quarterly change in the domestic selling prices of a corresponding surrogate model control code (MCC), and then indexed to the relevant domestic selling prices of the exported models to determine a normal value. HSG agrees with the calculation methodology but disagrees with the surrogate MCC chosen to determine the quarterly change for two export models for two quarters.
25. HSG claims that the ADC did not follow its stated policy on model matching in the Dumping and Subsidy Manual (the Manual) relating to its choice of the relevant comparable model for use in the timing adjustment:

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In deciding the appropriate surrogate model and specification adjustments, the Commission will rely on the MCC structure and the hierarchy of categories or sub-categories...

...

Importantly, the MCC structure will establish the model matching hierarchy. The categories in the MCC structure will be listed, in descending order, according to the significance of the category to the goods when model matching. This is to ensure that the most comparable surrogate models are chosen, for model matching purposes, when there are insufficient domestic sales of the identical model. The most comparable model is usually considered to be the surrogate model that has the closest physical characteristics (an indicator of this may be the model that has the smallest difference in cost of production per unit).⁸

26. HSG suggests that 'However, whilst the Commission has followed its policy in identifying the surrogate MCCs, it has ignored this preferred approach in identifying the surrogate MCCs for calculating the timing adjustment.' It claims that without proper explanation, the Commission advised HSG that the case management team overruled the verification team and considered that '... [REDACTED] was closer to the base MCCs'.⁹
27. HSG states this is flawed as it ignored the MCC hierarchy and the significance of the categories within the hierarchy.
28. The proposed models are shown in the table below:

Summary of HSG's export models and relevant domestic surrogates provided in HSG review application.

⁸ Dumping and Subsidy Manual, December 2021, pages 48 to 49.

⁹ HSG application page 8.

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EXPORT MCC	Is model sold in OCOT** in domestic market	Domestic Surrogate MCC	MCC used by ADC for timing adjustment for missing quarters	MCC proposed by HSG timing adjustment for June qtr 2019	MCC proposed by HSG timing adjustment for Sept qtr 2019
P2D33C	Yes		██████*		
P2F22C	No	P2F23C	██████	██████	██████
P2F23C	Yes		██████	██████	██████
P2F43C	Yes	██████			

*HSG agrees with timing adjustment approach for this model (confidential domestic sales information)

** OCOT = ordinary course of trade

Findings

29. The ADC, in REP 558, developed the following MCC categories (and sub-categories) for the goods:

- Prime/Non-Prime;
- Coating mass: split by grams per square metre, split by 3 sub-categories;
- Steel grade: split into 7 different sub-categories;
- Base metal thickness: split by mm into 5 sub-categories;
- Width: split by 2 sub-categories less than or equal to / greater than 600 mm; and
- Form: split into Coil or Sheet.

30. The ADC found that two of the export MCC models had sufficient sales in the OCOT but the other two MCC models did not, and surrogate models were chosen for

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normal value purposes. Additionally, a timing adjustment was required for two of the export models as the surrogate model chosen did not have sales in all quarters.

31. The ADC indicated that HSG had made a submission following SEF 558 advising that it disagreed with the MCC chosen to base the timing adjustment for certain models. The ADC revisited this adjustment and chose a different model, though not one of the ones proposed by HSG. While there was further engagement with HSG on the timing adjustment model, including a further submission by HSG on 2 November 2021, the ADC did not use the MCCs proposed by HSG.
32. The ADC indicated in REP 558 that it had chosen a model that it considered had overall fewer changes in MCC sub-categories compared with the target export models. It states:

The commission acknowledges that its surrogate MCC utilises a sub-category that is higher in the MCC hierarchy. However, the purpose of the surrogate MCC is to obtain a price that most closely resembles the selling price of the target MCC. The greater the number of different characteristics a surrogate MCC differs from the target MCC, the less accurate the target MCC is to the selling price. MCCs proposed by HSG that differ by several MCC sub-categories are further removed from the target MCCs compared to the commission's MCC selection.¹⁰

33. The ADC also indicated that it had examined the HSG quarterly CTM and price trends and did not consider the models suggested by HSG followed the trends of other MCC's nor the aggregate CTM. It also stated that the CTM of the commission's surrogate MCC is closer to the two export MCC's than HSG's proposed surrogates.¹¹ For these reasons it did not agree with the use of the HSG proposed surrogates as it considered these less comparable to the target export MCC's.

¹⁰ ADC, REP 558, page 55.

¹¹ At the conference held with the ADC and HSG on 23 February 2022, the ADC advised that the MCC models referred to in REP 558 relating to timing adjustments were not those proposed by HSG in its 2 November 2021 submission. It updated its analysis to include the models proposed by HSG (2 November 2021) and provided this information in its submission dated 2 March 2022.

Submissions

34. HSG raises two additional aspects regarding its concerns with the ADC's choice of the timing adjustment MCC used to calculate the price index:

- relying on the relative number of categories that are different as a determinant of likeness of the MCC models; and
- introducing the quarterly numbers/volumes of sales as a relevant consideration.

It suggests that both are not consistent with current policy and the latter is also not in accordance with the legislation: there being no test of volume of sales in relation to normal value consideration other than that required by s.269TAC(14) of the Act.¹²

35. The ADC provided its updated analysis to reflect the models proposed by HSG in its submission to the ADC on 2 November 2021 and in its review application. This includes the prices and volumes of the HSG proposed models for all quarters. It questions whether the [REDACTED] sales provides the '... best data available to reflect movements in the broader aluminium zinc coated steel market in Vietnam, particularly as the demonstrated movements in price do not align with movements in the aggregated price, as outlined in paragraph of 17(e) (of its submission)'.¹³

36. The ADC also indicated that there is a lack of sales (of the HSG proposed models) in certain quarters which presents additional risks in calculating the appropriate price index used as the timing adjustment. It proposes that the ADC preferred model is aligned with the aggregate price trends of all models sold domestically by HSG, is sold in sizeable quantities throughout the investigation period and avoids the need to undertake multiple calculations. It suggests the use of one model for the timing adjustment reduces the risk of inconsistencies being introduced into the calculation. It also outlines the calculation process that would be required to make the adjustment based on the proposed HSG models.

¹² HSG submission dated 2 March 2022.

¹³ ADC submission dated 2 March 2022, page 5.

Legislation

37. Section 269TAC(8) of the Act: Normal value of goods

Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:

- (a) relate to sales occurring at different times; or*
- (b) are not in respect of identical goods; or*
- (c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;*

that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price. (my emphasis)

38. Section 15.3 of the Manual states:

Sales at Different Times: When comparing export price and normal value, it is desirable that sales to which the prices relate occur as near as possible in time. ... The Commission will consider an adjustment for price movements where the sales being compared are not closely aligned and where inflation has had an effect on price comparability.

39. Section 14 of the Manual states:

The Commission undertakes model matching using a Model Control Code (MCC) structure to identify key characteristics that will be used to match models of the goods exported to Australia and like goods sold domestically in the country of export. In determining the MCC structure, the Commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price.

... the Commission may use a surrogate model and make appropriate specification adjustments. In deciding the appropriate surrogate model and

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specification adjustment, the Commission will rely on the MCC structure and the hierarchy of categories and sub-categories. (my emphasis)

...

The categories in the MCC structure will be listed, in descending order, according to the significance of the category to the goods when model matching. ... The most comparable model is usually considered to be the surrogate model that has the closest physical characteristics (an indicator of this may be the model that the smallest difference in cost of production per unit).

Analysis

40. The intent of conducting a s.269TAC(8) adjustment to domestic selling prices is to create a notional price for the export model as if it had been sold during the investigation period in the domestic market of the exporter. This adjusted price is referred to as the normal value. This enables a 'fair' comparison to be undertaken between the normal value and the export price to establish whether dumping is occurring.
41. Section 269TAC(8) of the Act does not specify how to calculate adjustments to the domestic selling price. It is generally accepted that the principle underpinning the calculation of the adjustment is to ensure a 'fair' comparison.¹⁴ It requires judgements being made based on the available evidence and taking into account relevant considerations as to the best method to calculate the adjustments to the selling prices to determine the normal value.
42. For certain export models, there were no relevant domestic sales, these models had a domestic surrogate MCC model chosen by the ADC.¹⁵ A specification adjustment was undertaken to address the specification differences between the export model and the domestic surrogate MCC. Neither the choice of this surrogate nor the specification adjustment is in dispute. Given there were quarters without sales for certain models, it was necessary to find an additional surrogate model to

¹⁴ Based on Article 2.4 of the World Trade Organization Anti-Dumping Agreement states that 'A fair comparison shall be made between the export price and the normal value.'

¹⁵ Relevant sales includes sales in arm's length transactions and in the OCOT.

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calculate a timing adjustment for the normal values for these quarters. The ADC calculated a price index from the MCC [REDACTED] to make the timing adjustment (referred to in this report as the ADC timing adjustment model).

43. It is worth briefly commenting on model matching as referred to in paragraph 39 above given it is used to categorise the various models. The MCC structure is a tool to assist in the assessment of 'like' goods. It is not a legislative provision but rather a policy approach adopted by the ADC to assist in its assessment of 'like goods'. It establishes categories and as necessary, sub-categories, that enable models to be grouped with characteristics that impact price. The higher the category in the hierarchy, the greater importance this feature has on the 'likeness' of the goods and the prices. Conversely, the lower categories are considered less important. The example provided in the Manual is particularly helpful in explaining the policy approach.¹⁶
44. The ADC groups the goods into a MCC classification in order to consider pricing (and costs) of 'alike' models when there are a number of different models that fit within the like goods cohort. HSG highlights that this policy provides certainty, transparency and objectivity to importers and exporters in how the ADC will approach 'like goods' assessment.¹⁷
45. The ADC timing adjustment model was used to calculate the price index to be applied to the target exports MCCs¹⁸ to calculate the normal value for the missing quarters.¹⁹ The price index was calculated based on the price change of [REDACTED] for the missing quarters.²⁰ While it is common ground that a timing adjustment is required, the ADC and HSG differ on the appropriate MCC model to base the price index calculation used to give effect to the timing adjustment.
46. The ADC indicated that the ADC timing adjustment model had sales in all quarters of the investigation period. It claimed that this model had characteristics that were

¹⁶ The Manual, section 14, page 49.

¹⁷ Non-confidential conference summary with HSG on 16 March 2022.

¹⁸ Target export models are P2F23C and P2F22C (using the specification adjusted domestic surrogate which was based on P2F23C).

¹⁹ Non-confidential conference summary with the ADC on 7 March 2022.

²⁰ Non-confidential conference summaries dated 23 February and 7 March 2022.

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'like' the export model with only one category being different to the target export models (that relating to the [REDACTED]). The ADC conducted analysis of this model compared with HSG models in REP 558.²¹

47. It became apparent, at conference, that the HSG MCCs analysed in REP 558 were not those referred to by HSG in its review application. The ADC advised that upon review, it had identified that the MCCs referred to in its analysis in REP 558 were not those provided by HSG in its review application or its submission to the ADC on 2 November 2021.²² The ADC updated its analysis following the conference as part of its submission to the Review Panel.²³ The analysis in this report refers to the MCCs proposed by HSG in its review application.
48. HSG challenges the choice of the ADC timing adjustment model as it considers it is not as 'like' the export models as the MCCs it proposed. It claims it does not reflect what the notional prices would have been for the export models in domestic sales in the relevant quarters. It proposes that two other MCC models, a different one for each quarter, were more appropriate.
49. HSG and the ADC differ in what each considers is most relevant in this decision. HSG raises the following points:
 - there is a cost difference between the ADC timing adjustment model and the domestic surrogate of the order of [REDACTED] whereas the cost difference between the HSG preferred timing models is of the order of [REDACTED] it suggests this illustrates the model used by the ADC is not as similar as the HSG proposed models;
 - It considers the categories (and sub-categories) lower in the MCC structure have less importance in price determination and thus are not as critical in the choice of the MCC model for the timing adjustment calculation. It claims that the models it has proposed, notwithstanding both have more category/sub-category differences, are more 'alike' the target export models and should be

²¹ REP 558 page 55.

²² Non-confidential conference summary dated 23 February 2022 with the ADC and HSG.

²³ ADC submission to the Review Panel dated 2 March 2022.

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used for the timing adjustment calculation. It further claims the ADC approach is inconsistent with current policy;

- it challenges the ADC decision-making process regarding the use of the volume of sales of its proposed timing adjustment model and the relative numbers of different categories/sub-categories as an indication of 'likeness';²⁴
- advised that it had supplied its price list to demonstrate the pricing structure of the goods based on the different characteristics. It indicated that one of the key determinants of the price of the goods is the [REDACTED]. It considers it more important to have the timing adjustment model based on a MCC model with the [REDACTED] as the export models than other characteristics. It suggests that its proposed MCCs meets this criterion;²⁵
- that the ADC's approach is inconsistent with the approach adopted for one of its other export models. It suggests that the ADC chose the most 'alike' MCC for one of its other export models that required a timing adjustment without relying on the price trends, quarter availability or trend alignment;²⁶
- questions whether the requirement to have sales in all quarters and consistency of price trends is relevant; and
- questions whether ignoring selling prices that are in OCOT is an appropriate consideration.

50. The ADC indicates that it considers the ADC timing adjustment MCC is preferable to the HSG's MCCs as follows:²⁷

- the timing adjustment model chosen was 'like' the export model as it had only one category difference;

²⁴ HSG submission dated 2 March 2022.

²⁵ Non-confidential conference summary dated 23 February 2022 with ADC and HSG.

²⁶ Non-confidential conference summary dated 16 March 2022 with HSG.

²⁷ Information from the following non-confidential conference summaries dated 23 February 2022 and 7 March 2022 and the ADC's submission of 2 March 2022.

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- it considers it preferable given the overall intent of the timing adjustment is to determine a price index that reflects the trends in prices of like goods in the Vietnamese domestic market to utilise a model that has quarterly prices for the entire period (or at least as a minimum in the June and December quarters) in order to calculate a valid price index. It suggests that this provides confidence that the normal values calculated would reflect what would have happened to prices in the market;
- it had significant sales in all quarters of the investigation period noting the HSG models do not have sales in all quarters;
- that it aligned with the prices of other MCCs and the quarterly aggregate price trend of HSG's sales of like goods: it considered this provided confidence on price trends in the market;
- it enabled a price index to be calculated that applies to both export models and does not involve multiple calculations. It claims this minimises the number of calculations to the normal value and reduces the risk of distortions to the normal value;
- it notes that the 4th quarter price of the target export model is [REDACTED] [REDACTED] to that of the ADC timing adjustment model: it suggests that this provides confidence regarding pricing; and
- it enables a trend in price movements to be identified whereas the models proposed by HSG have limitations in this regard.

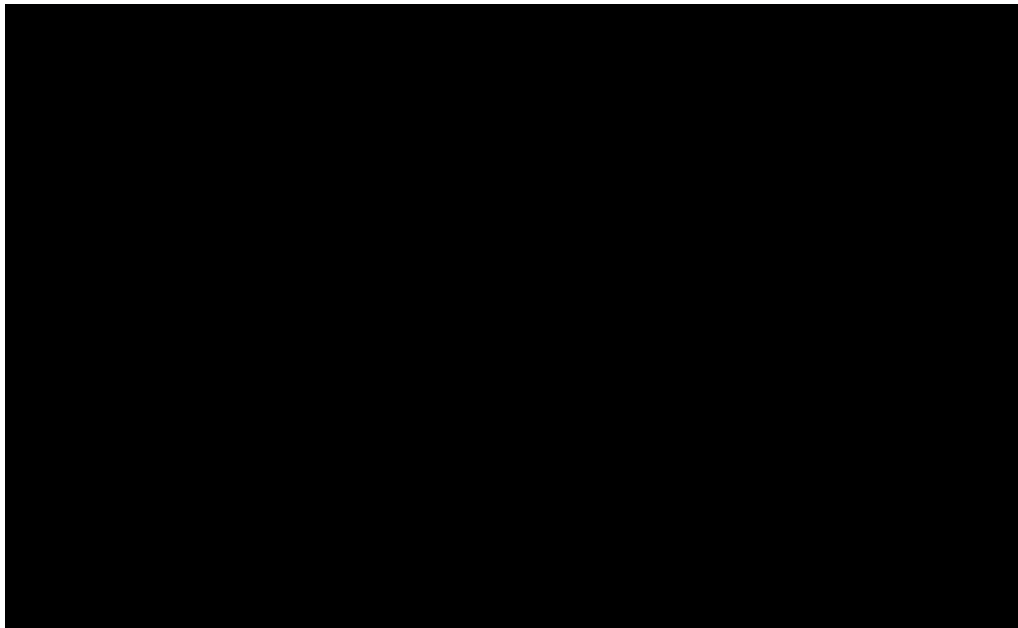
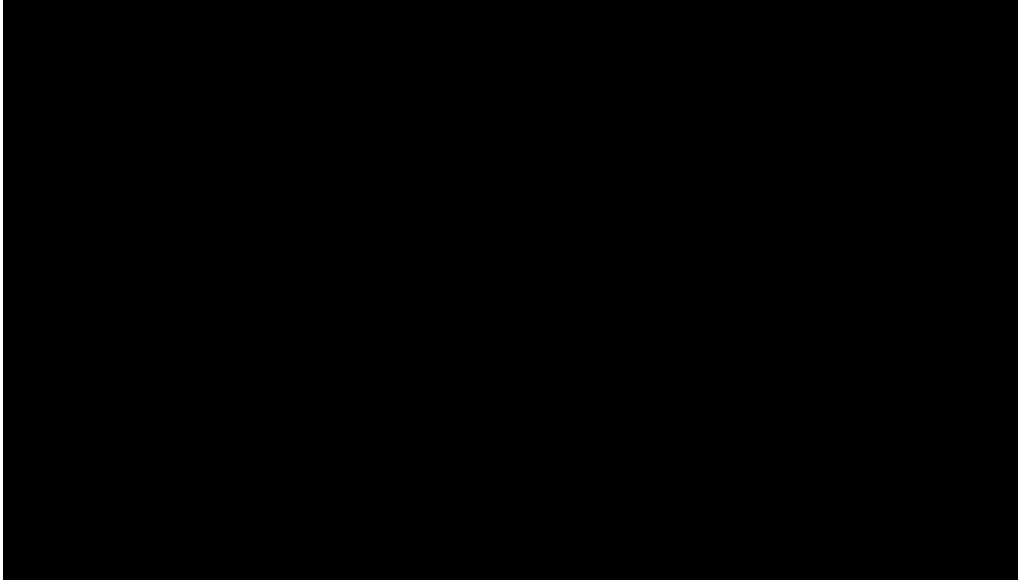
51. The ADC also commented that the MCCs proposed by HSG [REDACTED] [REDACTED] both the June and December quarters.

52. The ADC prepared the following graph comparing its proposed timing adjustment MCC quarterly prices with the MCCs proposed by HSG and the quarterly aggregate prices.²⁸ The prices in the first graph show only quarterly prices to unrelated parties

²⁸ ADC submission dated 2 March 2022, confidential appendix 2.

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and in the OCOT.²⁹ The second graph show all quarterly prices but not including those to related parties. A similar analysis had been undertaken in REP 558 but referring to other HSG models. [REDACTED]



²⁹ At conference (7 March 2022) the ADC advised that it had undertaken its timing adjustment analysis using normal values in order to 'standardise' the prices, that is, to compare selling prices at the same delivery terms and credit terms. It advised that the difference in the indexed values between the amounts shown as domestic prices and the amounts shown as normal values would be immaterial. I accept these comments and note that the analysis of HSG pricing is based on normal values.

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53. The graph above does not show all quarterly prices of MCCs for the like goods. However, I have reviewed the quarterly prices for all MCC's contained in confidential spreadsheets at attachment 7 of REP 558. The quarterly selling prices (in OCOT) of HSG's sales of MCCs in the Vietnamese market [REDACTED] [REDACTED] the investigation period. There were [REDACTED] [REDACTED] in the June and December quarters: the minimum requirement proposed by the ADC for a valid price index calculation. (confidential domestic sales information)
54. It is usually preferable to have the most 'alike' model on which to base adjustments for the purposes of s.269TAC(8) of the Act. However, a timing adjustment based on a price index involves a different calculation. It relies less on the goods themselves than to the relative changes in prices between quarters. Other adjustment calculations are usually dependent on the differences in the goods, for example, when considering specification adjustments. The use of a price index is less reliant on 'likeness' but does require continuity of pricing to calculate the index between periods and show trends. Accordingly, price availability in particular quarters is a requirement when a price index is being used as a timing adjustment. In the circumstances of this case, this [REDACTED] available for consideration for the price index calculation.
55. While HSG disputes the need to have quarterly prices to establish a trend, I agree with the ADC that it is important to consider a model that has prices as a minimum in the June and December quarters. As the ADC points out,

The commission will ensure that the proposed MCC for the timing adjustment is reflective of the expected movement in price in the domestic market. ...noting that the purpose of the timing adjustment is to reflect, as closely as possible, the normal value had the model been sold in the relevant quarter in the domestic market (my emphasis).... This requires analysis of the price trends for the relevant quarters.³⁰

At conference, the ADC also stated:

³⁰ ADC submission dated 2 March 2022 paragraph 10, page 2.

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... that there are clear advantages of having sales in all quarters as it allows validation against the overall aggregate price trends. This provides confidence that the price index used is based on sales throughout the investigation period reflecting overall price movements in the market, rather than ad hoc selling prices.³¹

56. HSG has raised valid issues regarding the importance of the MCC hierarchy in assessing models 'likeness' in determining surrogates, noting the reliance that interested parties place on the policy and practice explained in the Manual.
57. However, there are some cases that require flexibility of approach (obviously within the legislative framework) to account for the circumstances and available evidence. There is discretion available in assessing the most appropriate manner of calculating an adjustment. The intent being to approximate what the normal value would have been.
58. Both the ADC timing adjustment model and the HSG proposed models are 'like' the target models. However, it is my view that there are other considerations pertinent to the calculation of the timing adjustment other than only 'likeness'. From the information obtained regarding HSG's sales patterns of the like goods I agree with the ADC's observation that price availability in, as a minimum the quarters of June and December, but preferably all quarters is important. The index calculation is based on the changes in price levels between quarters and is not as dependent on the price itself. I consider this important when calculating what the notional prices would be in each quarter in the absence of sales of the target export models. Furthermore, it is apparent from the quarterly selling price information that there was a [REDACTED] available for consideration for the price index calculation.
59. I consider the following considerations of the ADC were reasonable in the choice of the timing adjustment surrogate given the circumstances:
 - the model was 'alike' the target models with one category difference in the MCC hierarchy;

³¹ Non-confidential conference summary with ADC dated 7 March 2022, page 3.

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- the model had sales in all quarters of the investigation period, thus allowing a price index to be calculated for the ‘missing quarters’;
- its quarterly prices aligned with the quarterly aggregate prices of sales of the cohort of sales of all like goods (in the OCOT and to unrelated parties). I note that the ADC had commented that the prices of HSG’s proposed models do not align with the quarterly aggregate price of domestic sales³²; and
- in the 4th quarter, its quarterly price [REDACTED] to the target export model’s quarterly price model, providing some confidence of [REDACTED]

60. I further agree with the ADC’s observation regarding the importance of understanding the price trends in the market when assessing and using a price index and the comments regarding the suitability of the MCCs proposed by HSG in this regard.

61. At conference, I questioned the ADC as to whether it may have been preferable to consider the quarterly aggregate price as the basis of the price index calculation. However, the ADC indicated that the nature of HSG’s sales patterns and model mix would have required significant refinement to establish a valid price index based on the quarterly aggregate.³³ It considers the use of actual models is the preferable option. I accept that refining the quarterly aggregate price for the purpose of the price index calculation would not necessarily be a better option than tracking actual prices of models in the market.

62. HSG also expressed concern regarding whether the ADC’s decision was based on whether there were sufficient volumes and number of transactions of the HSG proposed models. I agree with HSG that the volumes and number of transactions are not necessarily of themselves relevant considerations. However, I do not consider that the ADC has based its decision on these factors. Rather it appears to have based its decision on the model with what it considers is most like the target models having the least number of category differences and availability of prices through the investigation period. Its comments on volumes and numbers of

³² ADC submission dated 2 March 2022, Attachment A, paragraph 17, page 4.

³³ Non-confidential conference summary with the ADC on 7 March 2022, page 5.

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transactions appear to be designed to support its decision rather than be the basis of the decision.

63. Accordingly, given the circumstances of the HSG domestic sales patterns of the goods referred to above and the need to calculate a price index for sales in particular quarters, I agree with the ADC that the ADC's timing adjustment model is preferable.
64. On this basis I agree with the ADC's findings and consider [REDACTED] is the preferable MCC model on which to base the price index calculation for the timing adjustment to the domestic selling prices. This is the approach adopted by the ADC in its recommendations on normal value to the Minister in REP 558.

Conclusion

65. I reject this ground of review as the Minister did not err in the determination of the normal value on the export models as claimed by HSG.

Macsteel Ground 1 Material injury from Korean exports

Claims

66. Macsteel claims the Reviewable Decision is not correct or preferable as exports from Korea did not cause material injury to the Australian industry. Macsteel contends that the material injury analysis in REP 558 is not based on 'affirmative or credible evidence'. It refers to the requirement in Article 3.1 of the World Trade Organization (WTO) Anti-Dumping Agreement (ADA) that a determination of injury be based on positive evidence and an objective examination of volume, price, and the consequential impact of such imports on the domestic industry.
67. It claims there are five aspects that demonstrate that material injury was not caused by dumped exports from Korea:
 - (a) The size of the dumping margin: the dumping margin of KG Dongbu Steel Co. Ltd's (KG Dongbu) exports was 2.6 per cent (0.6 percentage points

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higher than the negligible level).³⁴ Macsteel proposes that as KG Dongbu's dumping margins are only slightly higher than the negligible level that KG Dongbu's exports could not be causing material injury. It states that this represents its weighted average export price over the investigation period being only US\$ [REDACTED] lower than the negligible levels. (Confidential export price information);

- (b) Macsteel's selling prices confirm that exports by KG Dongbu were non-injurious. Macsteel advises that during the investigation period it [REDACTED]
[REDACTED]
[REDACTED].
(confidential export sales information) It provides information on export prices [REDACTED]
[REDACTED]. Macsteel indicates that the [REDACTED]
[REDACTED] (confidential export prices information)
It considers this confirms that the KG Dongbu's export prices are not injurious;

- (c) Injury to the Australian industry was negligible and not likely to continue. Macsteel suggests that the ADC makes certain comparisons of BlueScope's economic and financial performance over the injury period (1 April 2016 to 31 March 2019) for some indicators and an examination during the investigation period (1 April 2019 to 31 March 2020) for other factors. It claims that it is evident that during the investigation period there is clear improvement in the Australian industry's performance relative to the injury examination period. It suggests that injury during the investigation period was negligible and cites certain findings that it claims supports this view. Macsteel proposes that there has been an improvement in BlueScope's performance since the investigation period and suggests that injury, if any, was transitory. It references the BlueScope's FY 2021 and FY 2020

³⁴ KG Dongbu refers to s.269TDA of the Act which provides that an investigation must be terminated if dumping margins are negligible that is zero or less than 2 per cent.

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'Australian Steel Products' Results Presentation which demonstrates the strong growth experienced by BlueScope.

Macsteel points to BlueScope's comments in its financial reports that the improvement in its performance was driven by the strength in the building and construction activity. Macsteel suggests that the weaker performance in the investigation period could have been linked to weaker building and construction activity during the investigation period and that such injury was transitory. It proposes that, 'the transitory nature of the injury provides context to the transitory nature of the causal effects, which includes BlueScope's offer of lower pricing for its TRUECORE product into the framing market, against cheaper timber alternatives.' Macsteel refers to the ADC's dismissal of BlueScope's subsequent performance as not being relevant and disagrees with this assessment;

- (d) The effect of injury should not be cumulated. Macsteel proposes that the ADC should not have cumulated the exports from Korea and Vietnam in its assessment of material injury. It claims that cumulation is only permitted in certain circumstances. It proposes that there are '... two distinct market segments for the subject imports and like goods, being the framing segment and roofing/walling segment'.³⁵ It claims that Korean exports are sold into the roofing/walling segment, whereas Vietnamese exports are sold into the framing segment. It notes that the examples of competition provided by BlueScope are examples of Vietnamese imports relevant to the framing segment. It suggests that in such circumstances it is not appropriate to cumulate Korean and Vietnamese exports; and
- (e) The level of price undercutting relative to the level of dumping margins suggests that factors other than dumping were the cause of injury. Macsteel proposes that while the ADC found price undercutting from both Vietnamese exports and Korean exports (0% to 17%), it claims that the small dumping margin by KG Dongbu's exports of 2.6 per cent, which it says is '... a 0.6% above negligible and non-injurious levels' suggests that factors other than dumping are the cause of injury. It further claims that 'Given the undercutting

³⁵ Macsteel Application, page 11.

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margins found by the Commission, BlueScope's selling prices would have continued to be undercut by between 2% to 16%, had KG Dongbu's exports been priced at negligible levels. This refutes the claim presented by BlueScope, and accepted by the Commission, that the margins of dumping from Korea prevented prices increases from occurring'.³⁶

Findings

68. In REP 558, the ADC indicates that dumped exports from Korea and Vietnam caused material injury to the Australian industry. Exports from Korea and Vietnam have been cumulated for the material injury assessment.³⁷ This was done on the basis that the dumping margins and export volumes of the goods from Korea and Vietnam were not negligible and that the Commissioner considered it appropriate to assess the cumulative effect of exports from these countries.
69. The ADC in making this finding, advised that it had considered:
- the nature of the goods;
 - the sourcing by customers from both countries; and
 - the competition in the market.
70. The ADC considered that during the investigation period BlueScope had experienced price depression in order to compete with imported goods that were undercutting its prices. Its analysis was undertaken at the aggregate level as well as at MCC and customer levels and price undercutting were apparent at all levels. It found that the Australian market had 'high price competition' and 'price transparency'. It noted that while there were also un-dumped exports in the market, the highest level of price undercutting was apparent from the dumped exports which accounted for 70 per cent of the volume of imported goods from the subject countries.
71. The ADC also indicated that BlueScope experienced material injury in terms of lost profit and profitability. It noted that while BlueScope had returned to profitability

³⁶ Ibid.

³⁷ Pursuant to s.269TAE(2C) of the Act.

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during the investigation period, this was at a marginal level. It noted that ‘... the extent of the improvement diminished as BlueScope reduced selling prices to compete with dumped imports’.³⁸

72. The ADC outlined its consideration of whether ‘other factors’ were the cause of injury:

- BlueScope’s marketing strategy;
- un-dumped goods;
- slit aluminium zinc coated steel; and
- energy costs.

73. The ADC considered KG Dongbu’s submission regarding whether ‘other factors’ and in particular the marketing strategy of BlueScope’s TRUECORE®, as to whether this had been the cause of material injury to the Australian industry. The ADC indicated it had undertaken the pricing analysis at the aggregate, MCC and customer level excluding TRUECORE® and found high levels of price undercutting remained. It has also considered the ‘other factors’ and remained of the view that dumped imports had caused material injury to BlueScope.

74. The ADC found that:

- the dumping margins ranged from between 2.6 per cent and 10.5 per cent for exports from Korea and 8.1 per cent and 20.9 per cent on exports from Vietnam;
- dumped goods accounted for 70 per cent of the volume of imports into Australia;
- dumped exports had the lowest prices in the market and had undercut the prices of BlueScope during the investigation period. These dumped exports included those from Korea;

³⁸ Rep 558, page 48.

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- during the investigation period, BlueScope provided examples of how customers used import prices to negotiate prices and evidence of the reduction of its own prices to compete with the consistently lower import prices;
- while BlueScope had increased its market share in a contracting market, its sales volumes had decreased; and
- it considered that BlueScope would have been likely to achieve higher prices in the absence of the dumped imports, given the level of price undercutting apparent.³⁹

75. The ADC considered that BlueScope had suffered material injury caused by exports from Vietnam and Korea during the investigation period in the form of price depression and reduced profits and profitability.

Submissions

76. The ADC in its submission refers to its findings in REP 558 in relation to each of the claims made by Macsteel. It notes that KG Dongbu's dumping margin was above the 'negligible level' and '... contributed to the pricing pressure experienced by the Australian industry'.⁴⁰

77. The ADC clarified that the investigation in relation to Taiwanese exports was terminated on the basis of a 'no-dumping' finding. It therefore did not include any of the Taiwanese exports in its assessment of whether dumping caused material injury, only Korean and Vietnamese goods.

78. The ADC also commented that it:

- had examined injury during the injury analysis period and the investigation period and concluded that the Australian industry had experienced material injury and that exports from Korea and Vietnam had caused such injury;

³⁹ Rep 558 pages 92 to 96.

⁴⁰ ADC submission dated 2 March 2022, pages 6 to 8.

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- referred to data contained in confidential attachment 8 to REP 558 which highlights that Korean and Vietnamese exports compete with each other in the Australian market as well as with the goods produced by BlueScope;
- referred to its analysis of price undercutting at an: aggregate, MCC and customer level which it considers confirms that price injury was experienced by the Australian industry and caused by dumped imports.

79. Dongkuk Steel⁴¹ indicates that the Review Panel should find that the Reviewable Decision was not correct or preferable as the Minister should not have been satisfied that dumped exports from Korea caused material injury to the Australian industry. It referred and provided copies of its two submissions lodged with the ADC detailing its views:

- Submission dated 6 September 2021 'Dongkuk Steel comments on material injury and causation' and
- Submission dated 12 October 2021 'Comments of Dongkuk Steel concerning Statement of Essential Facts'.

80. The Dongkuk Steel submission also refers to the evidence it considers demonstrates that its exports did not cause material injury to the Australian industry:

- BlueScope's financial results in recent years;
- BlueScope's TRUECORE strategy;
- BlueScope's economic indicators; and
- the lack of impact of Dongkuk Steel's exports on BlueScope sales of ZINCALUME, and that other factors unrelated to Dongkuk Steel's exports are the cause of injury, if any.

81. Dongkuk Steel indicates that the grounds of review in Macsteel's review application identifies similar concerns as to what it raised in its submissions to the ADC.

⁴¹ Dongkuk Steel is an exporter from Korea and an interested party.

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82. Dongkuk Steel also refers the Review Panel to BlueScope's recent financial disclosure covering the period 1 July to 31 December 2021 and claims this falls within the injury examination period which it states ranges from 1 April 2016 to the date of the Reviewable Decision (24 December 2021). It points to BlueScope's public comments regarding this being the best half-year performance that BlueScope has produced in its 20-year history and suggests that this demonstrates that BlueScope did not suffer from material injury from dumped imports from Korea.
83. Dongkuk Steel suggests that this more recent information should be considered relevant information (pursuant to s.269ZZK of the Act). It suggests that the Commissioner was required to have regard to this information in making a recommendation to the Minister as it relates to Dongkuk Steel's submission that '... in the investigation period BlueScope has experienced "sharp growth and strong recovery". Dongkuk states that BlueScope's performance during the investigation period was the start of a strong growth cycle representing the "continuation of an uninjured economic condition that shows no sign of abating"⁴².

Legislation

84. Extracts of section 269TAE Material injury to industry

(1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:

(aa) if the determination is being made for the purposes of section 269TG—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and

.....

⁴² Dongkuk Steel submission dated 2 March 2022, page 3.

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(a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

(b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and

(c) any change or likely change, during a particular period, in the proportion that:

(i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or

(ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;

bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

(d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and

(e) the difference between:

(i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and

(ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and

(f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and

(g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and

.....

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(2A) *In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:*

- (a) the volume and prices of imported like goods that are not dumped; or*
- (b) the volume and prices of importations of like goods that are not subsidised; or*
- (c) contractions in demand or changes in patterns of consumption; or*
- (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or*
- (e) developments in technology; or*
- (f) the export performance and productivity of the Australian industry;*

and any such injury or hindrance must not be attributed to the exportation of those goods.

(2AA) A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.

....

(2C) In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportations of goods to Australia from different countries of export, the Minister should consider the cumulative effect of those exportations only if the Minister is satisfied that:

- (a) each of those exportations is the subject of an investigation; and*
- (b) either:*
 - (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or*

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(ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and

(c) if the determination is being made for the purposes of section 269TG or 269TH—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and

(d) if the determination is being made for the purposes of section 269TG or 269TH—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and

....

(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. (my emphasis)

Analysis

85. Each of the claims raised by Macsteel in its review application were considered by the ADC in REP 558.
86. There are three themes that emerge in Macsteel's claims regarding material injury:
 - whether it is appropriate to cumulate exports by KG Dongbu with other exports from Korea and with exports from Vietnam;

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- whether the prices of KG Dongbu's exports given its small dumping margin and Macsteel's selling prices could have caused or contributed to the material injury of the Australian industry; and
- whether the Australian industry suffered material injury from dumped exports and whether this was likely to continue. It suggests that other factors could have caused the injury. It also suggests that injury, if any, was transitory given recent improvements of BlueScope's economic performance.

87. I consider cumulation is a threshold issue as the analysis undertaken by the ADC as to whether material injury has been caused is based on the cumulation of the dumped exports from Vietnam and Korea, not the separate consideration proposed by Macsteel.

Cumulation

88. Section 269TAE(2C) of the Act deals with when the Minister should consider the cumulative effect of exports: see paragraph 84 above for relevant provision.⁴³ It provides that the Minister is able to consider the cumulative effect of exports for the purposes of assessing material injury, if each of those exportations are:

- the subject of an investigation; and
- the margin of dumping established for each country is not negligible (at least 2% of the export price); and
- the volume of imports from each country is not negligible (that is, not less than 3% of the total Australian import volume); and
- it is appropriate to consider the cumulative effect of those exportations having regard to the conditions of competition between the imported goods and the conditions of competition between the imported goods and the domestically produced goods.

⁴³ Section 269TAE(2C) of the Act gives effect to Australia's obligations under Article 3.3 of the Anti-Dumping Agreement.

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89. The following World Trade Organization (WTO) Appellate Body Report on Malleable Cast Iron Tube or Pipe Fittings provides a useful outline of the purpose of cumulation as follows:

*a cumulative analysis logically is premised on a recognition that the domestic industry faces the impact of “dumped imports” as a whole and that it may be injured by the total impact of the dumped imports, even though those imports originate from various countries... and by expressly providing for cumulation in Article 3.3 of the Anti-Dumping Agreement, the negotiators appear to have recognized that a domestic industry confronted with dumped imports originating from several countries **may be injured by the cumulated effects of those imports, and that those effects may not be adequately taken into account in a country-specific analysis** of the injurious effects of dumped imports.⁴⁴ (emphasis added)*

90. Macsteel’s claim focuses on whether it is appropriate to cumulate the Korean and Vietnamese goods for injury assessment when there are two distinct market segments in the Australian market, namely, the framing and the roofing/walling segments. It suggests that Korean exports are sold into the roofing/walling market whereas Vietnam sells into the framing segment. It suggests that the conditions of competition between those goods have not been met given exports are destined for different market segments.
91. In terms of s.269TAE(2C) of the Act, the ADC found that the dumping margins and volumes from each of the exporters were not negligible. In relation to the ‘conditions of competition’ the ADC indicates that:
- customers can purchase the goods from a range of sources;
 - importers purchase from more than one country during the injury period;
 - customers in Australia had indicated to BlueScope of the range of available imports from the subject countries; and

⁴⁴ WTO Appellate Body Report EC - Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings From Brazil, WT/DS219/AB/R, page 47.

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- BlueScope's like goods compete against exports from both Vietnam and Korea.⁴⁵

It found that 'the conditions of competition' were met. It concluded that it was appropriate to consider the cumulative effects of the exports from Korea and Vietnam as both the imported goods and the Australian industry's goods are in competition in the Australian market.

92. In support of this finding, I also considered the following analysis of like goods and market structure (in Sections 3.4 and 5 of REP 558):

- are physically alike as they have the same or similar physical characteristics;
- are commercially alike as they are sold to common users and directly compete in the same market;
- are functionally alike as they have a similar range of end uses;
- are manufactured in a similar manner;
- the market structure was divided between the building construction industry (residential and industrial/commercial) and the manufacturing industry; and
- that both the locally produced goods and imports are used interchangeably across the two key market segments.

This confirms that the goods exported to Australia from Korea and Vietnam are in competition with the Australian industry.

93. I examined the confidential spreadsheets dealing with causation (Confidential Attachment 8 Causation Analysis: REP 558) which categorised the goods by MCC, volumes and prices. It is apparent that for the MCC's with the greatest volumes of sales there is competition between the imported goods and with BlueScope's goods. I agree with the findings from this analysis that there is competition between the goods from both countries and with BlueScope's goods.

⁴⁵ REP 558 Section 8.3.

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94. Given the information in REP 558 and the supporting evidence, I agree and adopt the ADC's finding that the Minister should consider the cumulative effect of the exports by KG Dongbu with the other exports from Korea and with the exports from Vietnam. Accordingly, I consider it was appropriate for the Minister to be satisfied that the material injury assessment should be based on the cumulative effect of the exportations from Vietnam and Korea.

Dumping margins of KG Dongbu and Macsteel's selling prices

95. There are two aspects raised by Macsteel:

- The low dumping margin of KG Dongbu's exports; and
- whether injury can be considered to be caused by one exporter's prices when there are other non-dumped imports in the market being [REDACTED], and these are considered non-injurious.

96. The ADC considered the dumping margins of exporters from Vietnam and Korea and found the following margins ranging from 2.6 per cent to 10.5 per cent for exporters from Korea and 8.1 per cent to 20.9 per cent for exporters from Vietnam.

97. While Macsteel suggests that the dumping margin of KG Dongbu is on the lower end of the range, the ADC notes that it is above the negligible level.⁴⁶ As provided for in s.269TAE(2C) of the Act, and discussed in the above paragraphs dealing with cumulation, KG Dongbu's dumped goods were cumulated with the other dumped goods and material injury assessed on the basis of all dumped exports from the subject countries. I consider the ADC has adopted the correct approach in cumulating KG Dongbu's exports in its assessment of material injury caused to the Australian industry.

98. The second aspect relates to Macsteel's claim as to whether its sales of KG Dongbu exports can be considered to be the cause of material injury as [REDACTED] [REDACTED] of non-dumped exports from Taiwan. It refers to the

⁴⁶ Such exports must have dumping margins over 2 per cent as provided for in s.269TAE(2C).

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exports of [REDACTED]
[REDACTED] (Confidential export price information)

99. Section 269TAE(2A) of the Act (see paragraph 84) provides that the Minister must not attribute injury that is caused or threatened by ‘other factors’ such as the volume and price of non-dumped goods in the Reviewable Decision.
100. The ADC, in its submission, commented that the investigation in relation to Taiwanese exports was terminated on the basis of a ‘no-dumping’ finding. It therefore did not include any of the Taiwanese exports in its assessment of material injury caused by the dumped Korean and Vietnamese exports.
101. Macsteel’s claim centres on whether the prices of the dumped goods could cause material injury when they [REDACTED] to the non-dumped goods. The fact that certain goods are not dumped does not equate to them being classed as non-injurious. Rather it precludes such exports being considered as being the cause of material injury from dumping. I disagree with Macsteel’s characterisation of whether non-dumped prices should be considered non-injurious.
102. In relation to the issue of material injury, I have had regard to the interpretation of material injury outlined in the judgement of *ICI Australian Operations Pty Ltd v Fraser and others*, FCA, Black CJ, Neaves and Von Doussa JJ, 106 ALR 257, [1992], (‘ICI’) judgment:

In the context of the legislation “material injury” is injury which is not immaterial, insubstantial or insignificant. ...

In the practical application of that notion material injury will in most though not necessarily in all cases be injury which is greater than that likely to occur in the normal ebb and flow of business uninfluenced by dumping or other anti-competitive practices proscribed by the Customs Act. ...

*Where the Australian industry has suffered detriment from a number of probable causes the section requires a determination whether there was separate material injury, or any material incremental injury (as to which see *CA Ford Ltd trading as Caford Castors v Comptroller-General of Customs and**

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Anti-Dumping Authority at 16-17), caused by the dumping over and above detriment caused by other factors' (my emphasis).⁴⁷

103. The ADC has separately considered the impact of dumped goods in regard to material injury. It analysed the volume of dumped exports, the level of price undercutting of these goods and the source of the lowest-priced goods in the market. It concluded that the dumped exports were impacting the prices of all participants in the market.

104. I have reviewed the above-mentioned pricing and volume evidence considered by the ADC (section 8 of REP 558 and the supporting Confidential Attachments 1 and 8) in assessing whether material injury was caused by dumped exports.

105. The price undercutting analysis is comprehensive as it considered the prices at aggregate, MCC and customer level during the investigation period:

- at the aggregate level, it found levels of undercutting of between 3 to 17 per cent, in all quarters, Vietnamese exporters were the lowest priced in the Australian market;
- at the MCC level the ADC identified the six most commonly sold MCC's in the Australian market.⁴⁸ This information also included the prices of non-dumped exports from Vietnam. This information revealed that there was undercutting apparent throughout the investigation period of up to 17 per cent. The ADC indicated that five different exporters had the lowest priced goods in the market at various times during the investigation period and this included exporters from both Vietnam and Korea. In response to submissions the ADC replicated this analysis by removing the TRUECORE® products, thereby conducting the analysis between the imported goods and the ZINCALUME® products. Significant undercutting remained apparent; and

⁴⁷ ICI Australian Operations Pty Ltd v Fraser and others, FCA, Black CJ, Neaves and Von Doussa JJ, 106 ALR 257, [1992], page 271.

⁴⁸ This accounted for over 90 per cent of BlueScope's sales and over 90 per cent of the volume of imports for the four imports with verified information. See pages 82 to 84 of REP 558.

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- at the customer level by examining sales data of common customers (of BlueScope and importers). It focused its analysis on a particular MCC on the basis of sales volumes. The analysis of these sales is at page 85 of REP 558. The ADC noted that:

... these customers were collectively supplied from 4 different importers sourcing the goods from 6 different exporters from the subject countries; BlueScope was the largest source of the goods in the Australian market in terms of volume of purchases from all sources, in addition to 4 exporters spanning each of the subject countries; three different exporters from 2 countries were responsible for the lowest priced goods in the market at one time or another; and of those 3 exporters, 2 exported dumped goods. The commission considers this analysis at the customer level indicates that all participants in the market have undercut BlueScope.⁴⁹

Given the relative volumes of dumped exports (approximately 70 per cent of imports from the subject countries) there is sufficient evidence available that supports the ADC's conclusions that Korean and Vietnamese dumped exports impacted the prices in the market.

106. It is also apparent from the ADC's pricing analysis that Korean exports and the Vietnamese exports were undercutting the Australian industry's prices. The ADC's findings regarding price injury are supported by its pricing analysis. It has correctly dealt with whether the dumped exports from Korea and Vietnam caused material injury, through pricing, to the Australian industry. I agree with its conclusions that the dumped exports caused material injury through its pricing.
107. I also note that the ADC indicated that non-dumped goods may have contributed to the injury being experienced by BlueScope, but it did not include the prices of exports from Taiwan in its assessment of material injury caused by dumping. It referred to the Ministerial Direction on Material Injury 2012 in this regard and noted that the injury from dumping need not be the sole cause of injury but it must be assessed as material for the purposes of s.269TG.

⁴⁹ REP 558 page 85.

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Material injury from dumped exports and the change in BlueScope's performance following the investigation period

108. Macsteel, in its review application, and supported by Dongkuk Steel in its submission, suggests that the ADC should have had regard to the economic performance of BlueScope subsequent to the investigation period in its recommendations to the Minister. In particular, Dongkuk Steel proposes that the injury examination period extends to the date of the reviewable decision.
109. I find no specific authority in the Act to extend the injury examination period to the date of the Minister's decision. There is reference to a '*reasonable examination period*' as defined in s.269TDA(17) that provides that a period after the end of the investigation period may be considered for certain purposes in termination of investigations decisions. There is also reference to '*reasonable examination period*' in s.269TAE(2C)(d) of the Act. However, this also is limited to considering whether there is a negligible volume of goods.
110. There is judicial reference in the case of *Pilkington (Australia) Ltd v Minister of State for Justice and Customs* [2002] FCAFC 423 (*Pilkington*) as to whether the Minister, in deciding whether to take anti-dumping measures, is required to take into account a period wider than the 'investigation period' and up to the making of the decision in the *Pilkington* judgment.⁵⁰
111. While the circumstances are not identical as that case dealt with whether dumping rather than whether material injury continued, the principle regarding the 'investigation period' is relevant as follows:

The statute has plainly sought to institute a detailed prescriptive regime in which guidance as to what is relevant for the interested parties to deal with is clear ...

We agree with the submission of the respondents that it would be subversive of the intended detailed prescription of the investigation in Part XVB, which was and is plainly intended to conform with the matters found in the Implementation Agreement, for the Minister to be required to go outside the

⁵⁰ *Pilkington (Australia) Ltd v Minister of State for Justice and Customs* [2002] FCAFC 423

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investigation period to ascertain whether dumping has occurred in the past for the purposes of pars 269TG(1)(a) and (2)(a) ...

Thus, we conclude that, in the circumstances of decisions under s.269TG consequent upon an application under s269TB, the satisfaction as to the relationship between export prices and normal values in the past called for in pars 269TG(1)(a) and TG(2)(a) is to be reached by reference to the process laid down by s.269TACB and by reference to the investigation period as called for by subs 269TACB(1).⁵¹

The judgment further states:

'We do not see in the legislation a positive proscription on the Minister informing himself or herself of matters beyond the CEO's Report. Questions of procedural fairness may arise. However, if, for instance, clear evidence came to light, after the Report, falsifying significant parts of its contents, we see nothing in Part XVB to prohibit the Minister from examining such material.'⁵²

112. The ADC in its submission noted that,

The commission analysed all available information relevant to the injury analysis period,⁵³ including submissions from interested parties claiming that the injury experienced by the Australian industry was negligible. The commission's analysis concluded that the Australian industry had experienced material injury, and that exports of the goods from Korea and Vietnam caused this material injury.⁵⁴

I agree that the ADC has assessed the correct period in its assessment of whether dumping caused material injury to the Australian industry.

⁵¹ Ibid, paragraphs [115] to [127].

⁵² Ibid [125].

⁵³ The injury analysis period is generally accepted to be the three years preceding the investigation period, in this case, it commences on the 1 April 2016. This period is referred to in Section 4 of the Manual, pages 14-19

⁵⁴ ADC submission dated 2 March 2022, page 7, paragraph 32.

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113. I am not persuaded that the Minister should have regard to matters that occurred subsequent to the investigation period. There are no 'special' circumstances of the type outlined in *Pilkington* that would suggest that it is warranted in this case. I note that changes may occur between the commencement of an investigation, and its finalisation. There were additional challenges faced during 2020 and 2021 in undertaking inquiries due to the COVID pandemic that contributed to the delays in the investigation process. However, this does not of itself require the Minister to consider matters outside the investigation period. The ADC has considered both the injury analysis period and the investigation period, I find no error in this approach.
114. Macsteel also suggests that the ADC did not properly consider material injury given the injury factors were different between the injury analysis period and the investigation period. The injury analysis period enables trend analysis during the preceding three years and comparisons to be made with the investigation period. It provides context as to what might be the normal ebb and flow of the industry. It also provides important background information for the examination of whether dumping caused material injury in the investigation period. I do not agree with Macsteel's comments in this regard.
115. I have reviewed the analysis undertaken by the ADC of both the injury analysis period and the investigation period and consider it accurately outlined its observations of the relevant injury factors in terms of s.269TAE of the Act. Its findings and recommendations to the Minister on material injury related to price injury were in the context of the investigation period. This is in accordance with s.269TG of the Act. I find no error in this approach.
116. The Reviewable Decision is whether the Minister should publish a dumping duty notice under s.269TG of the Act, that is, whether dumping has been or is being causing or is threatening material injury to the Australian industry. This is based on whether dumped goods caused material injury during the investigation period. For the reasons outlined in the *Pilkington* judgment regarding the operation of s.269TG, I remain of the view that it is appropriate to consider whether dumping caused material injury during the investigation period. I have not had further regard to the claims regarding the economic performance of BlueScope subsequent to the investigation period.

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117. As referred to previously, the ADC found that the level of injury from dumping is material. It based this on the levels of price undercutting in the context of the percentage volumes of dumped exports, and the impact on BlueScope's profitability.
118. In considering the issue of materiality of the injury, I also considered what the additional revenues (and profit levels) may have been on the assumption that the Australian industry's prices had been increased by the level of the lowest dumping margin. While this exercise is not precise and involves a number of assumptions, it provides an estimate of what the additional revenues could have been if its pricing was increased during the investigation period. My observation is that given the volumes sold by the Australian industry, a relatively small price increase would have provided a significant increase in revenues and improved the profits during the investigation period. In such circumstances, I agree with the ADC's finding that the injury experienced by the Australian industry was material.
119. In relation to Macsteel's claim that the injury during the investigation period was transitory or negligible, the ADC's findings has considered both the injury analysis period and the investigation period. The trends do not suggest that it is transitory, given the level of prices and the volumes of dumped exports from these sources.
120. Macsteel also suggests that BlueScope's injury was due to the lower pricing strategy adopted with its TRUECORE product. As outlined in the price undercutting analysis shown at paragraph 105, the ADC removed this product from its analysis. The ADC found that while there were changes in the levels of price undercutting when TRUECORE sales were removed, they remained significant. It also provided its analysis of this issue in some detail at Section 8.10.2. I have considered this analysis and agree with the ADC's conclusions in this regard.
121. I also reviewed the ADC's analysis of 'other factors' as outlined in Sections 8.10 and 8.11 of REP 558 and in Confidential Attachments 1 and 8. I consider the findings are consistent with the evidence and have not been disregarded in the consideration of the causes of material injury. 'Other factors' may have contributed to the injury being experienced by the Australian industry. However, the levels of price undercutting found by the ADC (based on the price analysis undertaken at customer, MCC and aggregate levels), the proportion of dumped goods in relation

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to all imports and the fact that the dumped goods were the lowest priced in the market provides sufficient evidence to conclude that dumped exports caused material injury to the Australian industry.

Conclusion

122. I am satisfied that it was appropriate to cumulate the exports from Korea and Vietnam in assessing whether material injury was caused to the Australian industry. There is also sufficient evidence to be satisfied that the Australian industry experienced material injury through price effects which impacted its profits.

123. I reject this ground of review as Macsteel has not established that the Minister erred in being satisfied that the goods from Korea should not be cumulated with other exports. There was sufficient evidence that material injury was caused to the Australian industry by dumped exports from Korea and Vietnam. I accept and adopt the ADC's findings in relation to dumped exports from Korea and Vietnam have caused material injury to the Australian industry.

Recommendation

124. Pursuant to s.269ZZK(1) of the Act and for the reasons given above, I consider that the Reviewable Decision was the correct or preferable decision.

125. I am, therefore, satisfied that the Reviewable Decision was the correct or preferable decision.

126. I recommend that the Minister affirm the Reviewable Decision.



Jaclyne Fisher
Panel Member
Anti-Dumping Review Panel
1 April 2022