



**J.BRACIC & ASSOCIATES**  
TRADE REMEDY ADVISORS

PO Box 3026  
Manuka, ACT 2603  
Mobile: +61 499 056 729  
Email: [john@jbracic.com.au](mailto:john@jbracic.com.au)  
Web: [www.jbracic.com.au](http://www.jbracic.com.au)

---

13 July 2018

Mr Scott Ellis  
Panel Member  
Anti-Dumping Review Panel

By Email: [adrp@industry.gov.au](mailto:adrp@industry.gov.au)

Dear Panel Member,

**Submission of Baoshan Iron & Steel Co., Ltd.**

**Re.: Certain Aluminium Zinc Coated Steel exported from the People's Republic of China - Application for Review by Baoshan Iron & Steel Co., Ltd.**

For the assistance of the Panel, Baoshan Iron & Steel Co., Ltd. ("Baoshan") makes the following submission to be read in conjunction with the Application for Review ("the Application") published on 13 June 2018. References to headings correspond with those contained in the public notice under s.269ZZI dated 13 June 2018.

**1. The Minister erred in retrospectively applying the amendments to the *Customs Act 1901* ("the Act") effected by the *Customs Amendment (Anti-Dumping Measures) Act 2017* ("the Amendment Act")**

It is not uncommon for measures concerning Government revenue to be enacted with retrospective operation. The established practice of the Australian Government ("the Government") is to restrict the application of such measures to events occurring after the public was notified of the proposed changes. There are many examples demonstrating this practice and the Application cites some recent cases concerning taxation and transfer pricing.

It is important to emphasise why the Government established a practice of notifying the public of proposed measures to be enacted with retrospective operation. It is a fundamental principal of the rule of law that the law is capable of being known so that participants may make informed choices regarding their affairs and mitigate any negative impact arising from the retrospective application of measures. It also promotes legitimacy and faith in the applicable system while encouraging participation.

There is no mention of the Amendment Act or s.269TAB(2A) by the Commission in its preliminary findings contained in Statement of Essential Facts Report No. 409 (SEF 409)

published on 28 August 2017. In fact the Commission makes clear and informs interested parties that it intended determining export prices pursuant to s.269TAB(3) of the Act. Therefore, the earliest time it was possible for Baoshan to be aware of the proposed amendments was when they were first introduced into the parliament on 13 September 2017.

Baoshan respectfully submits that the parliament intended to follow the established practice of restricting the application of measures to be enacted with retrospective operation to events occurring after the public was notified of the proposed changes in relation to the Amendment Act. Baoshan is unaware of any evidence or reason why this would not be the case. The alternative is that the parliament intended to depart from the established practice and allow the amendments to be applied to reviews being undertaken where it was not possible for the parties involved to have knowledge of the proposed changes at the time the review was initiated.

The parties involved made their decisions based on the law existing at the time and had they known about the proposed changes, they may have made different decisions. It is difficult to conceive that the Government intended to deny the parties involved an opportunity to know about the law to be applied to their review and whether or not they would proceed under those circumstances. There are good reasons why the established practice was developed and deviating from it has the potential to materially alter the rights and obligations of those attempting to participate in the trade system.

Baoshan respectfully submits that, consistent with the established practice of the Government, the correct and preferable decision is to apply the amendments to reviews initiated after the public was notified of the proposed changes on 13 September 2017, when the Bill was first introduced into the parliament

## **2. The Minister made incorrect assessments and determinations under s 269TAB(2A) with respect to the exports**

The Explanatory Memorandum states that the amendments are designed to *limit Exporters' ability to subvert the anti-dumping framework* and without the amendments an unintended consequence arises from the legislation which *allows Exporters to receive a less effective anti-dumping duty*. It suggests this is done by 'gaming the system' through a strategy of exporting small volumes at a higher price, or not exporting at all for a period of time before applying for the duty to be reviewed.

Baoshan submits that if the amendments are applied to this review, the legislation suggests that the Commission is required to show evidence to demonstrate that Baoshan intended to implement an export strategy aimed at 'gaming the system' in order to use the review process to achieve a favourable outcome.

As explained in its Application, there was no such intent on Baoshan's part. The sole purpose and reason for requesting a review of the measures was a request from a potential Australian customer seeking supply of a unique and specialised product which is currently unable to be manufactured or supplied by the local Australian industry. Baoshan has no interest or intention of supplying standard or general grades of aluminium zinc coated steel. This is demonstrated by its request that the Commission recommend the imposition of a floor price at its highest normal values determined during the review period.

**PUBLIC VERSION**

A floor price at its highest normal value would ensure that Baoshan is only able to export specialised products which would not compete with products offered for sale by the Australian industry. Such an outcome is clearly envisaged by the new provisions with the explanatory memorandum noting that '*... the Bill makes allowance for the fact that some Exporters may have exported low volumes or made no exportations, but applying subsections 269TAB(1) or (3) will not lead to a less effective rate of duty.*'

Yours sincerely

John Bracic