



Application for review of a Commissioner's decision

Customs Act 1901 s 269ZZQ

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Commissioner of the Anti - Dumping Commission.

Section 269ZZO *Customs Act 1901* sets out who may make an application for review to the ADRP of a review of a decision of the Commissioner.

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

Time

Applications must be made within 30 days after the applicant was notified of the reviewable decision.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel begins to conduct a review (by public notice in the case of termination decisions and by notice to the applicant and the Commissioner in the case of negative prima facie decisions, negative preliminary decisions and rejection decision). Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after the Panel begins to conduct a review. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

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

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZQA(1)). See the ADRP website for more information.

Withdrawal

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

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

PART A: APPLICANT INFORMATION

1. Applicant's details

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

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

Type of entity (trade union, corporation, government etc.): BlueScope is a publicly listed company on the Australian Stock Exchange.

2. Contact person for applicant

Full name: Mr Chad Uphill

Position: Senior Commercial Specialist – International Trade Affairs

Email address: Chad.Uphill@bluescopesteel.com

Telephone number: (02) 4240 1214

3. Set out the basis on which the applicant considers it is entitled to apply for review to the ADRP under section 269ZZO

BlueScope Steel Limited (hereafter referred to as "BlueScope") is the sole Australian manufacturer of zinc coated (galvanised) steel (i.e. the "goods" the subject of the Commissioner's termination decision). BlueScope was the applicant company that requested the imposition of anti-dumping measures in respect of exports of zinc coated (galvanised) steel exported from India, Malaysia and Vietnam, and countervailing measures in respect of exports from India and Vietnam. The Commissioner conducted an Investigation into BlueScope's claims (Investigation No. 370) which included the decision of the Commissioner to terminate inquiries in relation to the dumping of exports from Vietnam by Hoa Sen Group ("Hoa Sen") and Nam Kim Steel Joint Stock Company ("Nam Kim"), and the termination of inquiries in relation to the countervailing of exports from Vietnam.

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

4. Is the applicant represented?

Yes No

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

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

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

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

- Subsection 269TC(1) or (2) – a negative *prima facie* decision
- Subsection 269TDA(1), (2), (3), (7), (13), or (14) – a termination decision
- Subsection 269X(6)(b) or (c) – a negative preliminary decision
- Subsection 269YA(2), (3), or (4) – a rejection decision
- Subsection 269ZDBEA(1) or (2) – an anti-circumvention inquiry termination decision

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

The goods the subject of the reviewable decision are:

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

Additional information:

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

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

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

- *“GALVABOND®” steel;*
- *“ZINCFORM®” steel;*
- *“GALVASPAN®” steel;*
- *“ZINCHITEN®” steel;*
- *“ZINCANNEAL” steel;*
- *“ZINCSEAL” steel;*
- *Galv;*
- *GI;*
- *Hot Dip Zinc coated steel;*
- *Hot Dip Zinc/iron alloy coated steel;*
- *Galvanneal.*

The amount of zinc coating on the steel is described as its coating mass and is nominated in grams per metre squared (g/m²) with the prefix being Z (Zinc) or ZF (Zinc converted to a Zinc/Iron alloy coating). The common coating masses used for zinc coating are: Z350, Z275, Z200/Z180, Z100, and for zinc/iron alloy coatings are ZF100, ZF80 and ZF30 or equivalents based on international standards and naming conventions.

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

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

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

Table 1: Relevant International Standards for zinc coated steel

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

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

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

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

- 8. If applicable, provide the Anti-Dumping Notice (ADN) number of the reviewable decision**
If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

The Anti-Dumping Notice notifying of the Commissioner's termination decision was ADN 2017/98 published on 17 July 2017 (announcing the termination of inquiries into the dumping of exports from Hoa Sen and Nam Kim of Vietnam, and countervailing from Vietnam).

This application for review relates to the dumping finding of ADN No. 2017/98 only.

- 9. Provide the date the applicant received notice of the reviewable decision**

ADN No. 2017/98 was published on 17 July 2017 (refer Non-Confidential Attachment 1).

****Attach a copy of the notice of the reviewable decision to the application****

PART C: GROUNDS FOR YOUR APPLICATION

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

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

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

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

10.1 The decision of the Anti-Dumping Commissioner ("the Commissioner") to determine that "a particular market situation does not exist in the domestic galvanised steel market in Vietnam, such that selling prices in that market are not suitable for normal value purposes" is not the correct or preferable decision.

BlueScope's application for anti-dumping measures on exports of zinc coated galvanised steel ("galvanised steel") alleged that a particular market situation applied in respect of domestic sales in Vietnam and consequently, normal values could not be determined under subsection 269TAC(1).

BlueScope's allegation of a particular market situation was premised upon the influence of Chinese exports of hot rolled coil ("HRC") into Vietnam. This allegation took account of the Commission's findings in Investigation No. 190 where it was confirmed that a market situation was evident for galvanised steel sold domestically in China due to artificially low HRC prices (HRC being the primary raw material input in galvanised steel manufacture). Specifically, the Commission determined that the government of China's ("GOC's") influence distorted the selling prices of the HRC and subsequently the selling prices of galvanised steel.

BlueScope relied upon the Commission's findings in Report 190 that HRC prices in China are substantially distorted by the policies and plans of the GOC. The GOC's influence extends not only to HRC (or equivalent) sold domestically but also for export. Vietnam relies upon imports of Chinese HRC for downstream steel processing, with China accounting for more than 50 per cent of Vietnam's HRC requirements.

BlueScope acknowledges that the Commission examined BlueScope's allegations and reported accordingly in Statement of Essential Facts ("SEF") No. 370. Specifically, the Commission's analysis confirmed²:

- Following a comparison of Chinese HRC sales prices to cooperating Vietnamese exporters with sales prices and volumes from other countries, confirmed that "*the*

² Refer Statement of Essential Facts No. 370, P.101.

Chinese HRC costs which were imported from unrelated suppliers at arm- length transactions were not the lowest”;

- Whilst China was one of the suppliers of HRC in Vietnam, other countries such as Russia, Taiwan, Korea, Brazil, Japan and Australia also supplied HRC to the Vietnamese exporters of galvanised steel;
- There was no evidence that the Government of Vietnam (“GOV”) influenced the prices in the galvanised steel market;
- About 50 per cent of the HRC used in the production of galvanised steel was sourced from China;
- The Commission therefore concluded that *“a significant quantity of HRC was sourced from countries other than China”*;
- There was a *‘significant spread of prices’* for HRC from supplying source countries;
- That *‘Russian HRC prices were lower than those from China, while Japanese and Korean HRC prices were higher than Chinese HRC prices at a comparable level of trade’*; and
- It therefore could not be concluded that *“Chinese HRC prices have influenced HRC prices from other countries, which as a consequence could have distorted selling prices for galvanised steel in Vietnam”*.

The Commission confirmed that it understood BlueScope’s representations that artificially low Chinese HRC exported to Vietnam was *“in essence, akin to the exportation of the GOC’s policies and plans”*. An analysis of the Commission’s assessment of the impact of Chinese HRC export prices (as detailed in SEF 370) on import prices from other sources of supply (including Russia, Taiwan, Korea, Brazil, Japan and Australia) suggests that the Commission did not consider that China – despite accounting for more than 50 per cent of total HRC imports into Vietnam during the investigation period – did not influence the export prices of HRC exporters in the identified “other” source countries for HRC.

This absence of reasoning, in BlueScope’s view, ignores the significant influence that the Chinese steel industry, which operates on the basis of severe over-capacity, has on HRC export prices in the region.

BlueScope’s application demonstrated that Vietnam – during the investigation period – did not produce HRC locally. Vietnam was wholly reliant upon imported HRC. China – with its significant over-capacity problems – was, during the investigation period, the largest supplier of HRC into Vietnam. BlueScope, in its response to SEF 370, stated the following³:

“.....the Commission has ignored the obvious impact of a major source of supply – that is, China’s HRC selling prices into Vietnam accounted for 52 per cent of total imports and the impact of Chinese prices on the pricing ability of all remaining countries supplying into Vietnam. It cannot be conveniently overlooked that HRC suppliers with smaller market shares in Vietnam than China, must match the prices of the most dominant, established supplier (with significant excess capacity).

It cannot be interpreted that the Chinese prices do not influence the pricing of other suppliers (e.g. the HRC export prices from Russia, Korea, Japan, Taiwan and Australia).”

³ BlueScope submission, 20 June 2017 (EPR Document 94).

BlueScope further contended that *“the Commission’s second test on the impact of Chinese HRC prices to Vietnam further confirms and attests that the Chinese landed prices in Vietnam were lower than the benchmark prices – validating BlueScope’s representations that Chinese HRC prices into Vietnam are below benchmark prices (particularly once adjustments for freight differentials have been fully accounted for).”*

The Commission, however, did not address BlueScope’s representations concerning a market situation in Vietnam for galvanised steel in Termination Report No. 370 (other than stating a particular market situation does not exist). BlueScope’s response to SEF 370 on this issue appears to have been ignored.

BlueScope does not consider that the Commission sufficiently and adequately assessed the impact of Chinese HRC export prices on HRC export prices from other countries. BlueScope’s representations highlighted that *“China is the price-setter for HRC prices in Vietnam (and more broadly throughout South-East Asia) at prices that are artificially low – as evidenced in Report 190). The Chinese HRC import prices into Vietnam materially influence the selling prices of downstream converters including galvanised steel producers. A comparison of the Chinese HRC (freight-adjusted) import prices into Vietnam with benchmark domestic prices in Korea and Taiwan confirms that Vietnam galvanised steel producers are similarly benefiting from China’s artificially low HRC input prices.”* The Commission’s analysis conveniently ignores the impact of the Chinese steel industry operating in significant over supply has on prevailing export prices in the Asia region.

The Commission’s analysis of HRC prices in Vietnam appears to have been hampered by its view that Vietnamese galvanised steel producers should be allowed to benefit from cheaper arms-length input prices from non-related suppliers and that non-Chinese producers account for close to fifty per cent of the entire domestic market.

The Commission’s view is incorrect and establishes a precedent for Chinese HRC producers to export artificially-low priced HRC inputs to a third country for conversion prior to exportation of the goods to Australia, totally ignores the findings of Report No. 190, as well as encouraging circumvention of Report No 190 findings by Chinese exporters.

The Commissioner’s decision to determine that a particular market situation in Vietnam for galvanised steel does not exist is, therefore, incorrect and not the preferable decision as it fails to adequately take full account of the influence of Chinese HRC exports on the prices of other HRC exporting countries.

10.2 Without detracting from BlueScope’s viewpoint at 10.1, the Commissioner’s decision to determine normal values for Hoa Sen Group (“Hoa Sen”) on the basis of sales only to Hoa Sen’s ‘Di An’ branch was not the correct or preferable decision.

In response to SEF 370 concerning the selection of domestic sales by Hoa Sen that the Commission contends is representative of the Group’s total domestic sales, BlueScope argued that the Commission’s methodology was not considered to be in accordance with the Commission’s policy and practice.

It is appropriate to re-visit BlueScope’s submission of 20 June 2017:

“BlueScope has previously submitted⁴ that the Commission has erred by not examining all domestic sales by Hoa Sen in its normal value assessment. SEF 370 confirms that the Commission “does not disagree with BlueScope that all sales can be relevant when determining normal value using section 269TAC(1)”. The Commission then seeks to offer reasons why not all domestic sales will be considered under section 269TAC(1) including:

- Where sales by comparable models are appropriate; and*
- In circumstances where the market is segmented (e.g. wholesale, retail and OEM sales).*

The Commission further detailed that Hoa Sen had sales at two different levels:

- (i) subsidiaries (related parties); and*
- (ii) end-users.*

It was claimed that the sales to related parties were for further processing that resulted in the value-added goods not falling within the goods description. The remaining sales to end-users were through branch networks and direct to end-users. The Commission’s verification team obtained from Hoa Sen ‘all domestic sales of galvanised steel made by its 15 largest branches to unrelated customers’. It was determined that sales to the Di An branch ‘was by far the largest branch by volume of sales’. The Di An branch was a warehouse facility and goods sold from this facility met the description of the goods. It was considered by the verification team that domestic sales by the Di An branch ‘were appropriate for calculating normal values’.

The Commission stated in SEF 370 that “The current exporter verification report had followed a similar methodology to an earlier report concerning that exporter Hoa Sen Group in investigation No. 249 (INV 249) concerning the same goods⁵”.

Whether the methodology followed from an earlier investigation was used in Investigation No. 370 is not the issue (indeed, it appears to have been a flawed methodology). BlueScope’s contention remains that not all domestic sales from related branches were selected for normal value purposes. Only the sales from the Di An branch were used for normal value purposes, allowing the exporter to not furnish the required information as part of an exporter verification visit on the basis that *“sales of the galvanised steel to all unrelated customers from all branches were not able to be extracted”*.

Consequently, this ADC approach in only selecting domestic sales from the Di An branch would reflect only the highest volume sales items that attract the highest discounts. The ADC have ignored all other small volume sales of like goods transacted at higher domestic prices; ultimately determining a lower normal value than is reflective of the Hoa Sen Group’s total domestic sales of like goods.

⁴ BlueScope submission dated 28 April 2017, EPR document No. 84.

⁵ SEF 370, P.38.

BlueScope submits that the Commission's acceptance of an exporter providing less than the complete listing of all domestic sales for the period of investigation is inconsistent with the Commission's requirements of a cooperative exporter, with normal values determined upon incomplete information (i.e. only a subset of all domestic sales). It is clear that had the Commission obtained all of Hoa Sen's domestic sales (i.e. from all branches), Hoa Sen's normal values would likely be different (and likely higher) from those determined. For these reasons, the acceptance by the Commission of a proportion of the exporter's domestic sales for normal value purposes is not the correct or preferable decision.

10.3 The Commissioner's decision not to make an adjustment to Hoa Sen's normal value for export credit on the basis that there "was no evidence" such costs were incurred is not the correct or preferable decision.

BlueScope argued that the Commission should make an upward adjustment to Hoa Sen's normal value for export credit. In SEF 370, the Commission states⁶:

"The Commission notes BlueScope's comments regarding adjustments for credit, however the Commission has not made the upward adjustment requested as it has treated the export sales as equivalent to cash terms and there is no evidence that suggests additional costs were incurred. Accordingly, the only substantive adjustment for domestic credit terms (this was a downwards adjustment) was made."

The Commission's approach lacks symmetry and is entirely inconsistent with the treatment of export credit for other exporters⁷ (in this investigation). It is not in the exporter's interests to disclose costs that result in an upward adjustment to normal value. For the Commission to state there "is no evidence" to suggest the exporter incurred any export credit costs misrepresents the true commercial nature of export transactions. Similarly, to treat export sales as "equivalent to cash terms" ignores the cost of transacting export sales.

The Commissioner's decision to not make an adjustment for export credit in relation to Hoa Sen is incorrect and not the preferable decision.

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

The correct and preferable decision arising from Ground 10.1 involves normal values in Vietnam for all exporters (including Hoa Sen and Nam Kim) being determined under subsection 269TAC(2)(c) due to the Commissioner finding positively that a particular market situation exists in Vietnam for galvanised steel domestic sales.

Without detracting from BlueScope's position that a particular market situation for galvanised steel exists for all domestic sales in Vietnam, the correct and preferable decision for Ground 10.2 involves the Commissioner examining all domestic sales of like goods from all of Hoa Sen's branches and not those from only the Di An branch.

⁶ Termination Report, P.15.

⁷ For example, export credit adjustments made for JSW Group and CSVC.

In respect of Ground 10.3, the correct and preferable decision involves an upward adjustment to Hoa Sen's normal value for export credit terms.

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

Only answer question 12 if this application is in relation to a reviewable decision made under subsection 269X(6)(b) or (c) of the Customs Act.

The proposed decision at Question 11 is materially different from that detailed in Termination Report No. 370 in respect of a particular market situation finding for galvanised steel exported from Vietnam as normal values for all Vietnam exporters would be determined on a constructed cost basis under subsection 269TAC(2)(c).

On this basis, dumping margins for each Vietnamese exporter would have been assessed at above negligible levels.

Without detracting from the proposed positive particular market situation finding (and normal values being determined under subsection 269TAC(2)(c)), Hoa Sen's normal values should be based upon all domestic sales of like goods by all of Hoa Sen's branches (and not just the Di An branch).

It is not anticipated that the inclusion of an upward adjustment to Hoa Sen's normal value for export credit terms would result in a material change in dumping margin, however, the adjustment is nevertheless warranted.

PART D: DECLARATION

The applicant declares that:

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

Signature:

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

Name: Chad Uphill

Position: Senior Commercial Specialist – International Trade Affairs

Organisation: BlueScope Steel Limited

Date: 15 / 08 / 2017

PART E: AUTHORISED REPRESENTATIVE

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

Provide details of the applicant's authorised representative

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

Representative's authority to act

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

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

Signature:



(Applicant's authorised officer)

Name: Chad Uphill
Position: Senior Commercial Specialist – International Trade Affairs
Organisation: BlueScope Steel Limited
Date: 15 / 08 / 2017