Australian Government
Anti-Dumping Review Panel

APPLICATION FOR REVIEW OF A DECISION BY THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY NOTICE OR A COUNTERVAILING DUTY NOTICE

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City
ACT 2601
P: +61 2 6275 5868
F: + 61 2 6275 6784
E: ADRP_support@customs.gov.au

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Australian Customs and Border Protection Service (ACBPS), or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The ADRP may review decisions made by the Minister, as follows:

Investigations:

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice;
- not to publish a countervailing duty notice;

Review inquiries, including decisions

- to alter or revoke a dumping duty notice following a review inquiry;
- to alter or revoke a countervailing duty notice following a review inquiry;
- not to alter a dumping duty notice following a review inquiry;
- not to alter a countervailing duty notice following a review inquiry;
- that the terms of an undertaking are to remain unaltered;
- that the terms of an undertaking are to be varied;
- that an investigation is to be resumed;
- that a person is to be released from the terms of an undertaking;

Continuation inquiries:

- to secure the continuation of dumping measures following a continuation inquiry;
- to secure the continuation of countervailing measures following a continuation inquiry;

- not to secure the continuation of dumping measures following a continuation inquiry;
- not to secure the continuation of countervailing measures following a continuation inquiry;

Anti-circumvention inquiries:

- to alter a dumping duty notice following an anti-circumvention inquiry;
- to alter a countervailing duty notice following an anti-circumvention inquiry;
- not to alter a dumping duty notice following an anti-circumvention inquiry; and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

Before making a recommendation to the Minister, the ADRP may require the Commissioner to:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
- report the result of the reinvestigation to the ADRP within a specified time period.

The ADRP only has the power to make **recommendations to** the Minister to affirm the reviewable decision or to revoke the reviewable decision and substitute with a new decision. The ADRP has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

WHICH APPLICATION FORM SHOULD BE USED?

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The ADRP does not have any discretion to accept an invalidly made application or an application that was lodged late.

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at www.adreviewpanel.gov.au).

There are separate application forms for each category of reviewable decision made by the Commissioner, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for ADRP review of a decision of the Minister whether to publish a dumping duty notice or countervailing duty notice (or both). It is approved by the Commissioner pursuant to s 269ZY of the Act.

WHO MAY APPLY FOR REVIEW OF A MINISTERIAL DECISION?

Any interested party may lodge an application for review to the ADRP of a review of a ministerial decision. An "interested party" may be:

- if an application was made which led to the reviewable decision, the applicant;
- a person representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision;
- a person directly concerned with the importation or exportation to Australia of the goods;
- a person directly concerned with the production or manufacture of the goods;
- a trade association, the majority of whose members are directly concerned with the production or manufacture, or the import or export of the goods to Australia; or
- the government of the country of origin or of export of the subject goods.

Intending applicants should refer to the definition of "interested party" in s 269ZX of the Act to establish whether they are eligible to apply.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after a public notice of the reviewable decision was first published in a national Australian newspaper (s 269ZZD).

The application is taken as being made on the date upon which it is received by the ADRP after it has been properly made in accordance with the instructions under 'Where and how should the application be made?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the ADRP that the Minister's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision (s 269ZZE).

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP after an application has been made. Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The ADRP does not have any investigative function, and **must** take account only of information which was before the Minister when the Minister made the reviewable decision (s269ZZ). The ADRP will disregard any information in applications and submissions that was not available to the Minister.

HOW LONG WILL THE REVIEW TAKE?

The timeframes for a review by the ADRP will be dependent on whether the ADRP requests the Commissioner to reinvestigate specific findings or findings that formed the basis of the reviewable decision.

If reinvestigation is not required

Unless the ADRP requests the Commissioner to reinvestigate a specific finding or findings, the ADRP must make a report to the Minister:

- at least 30 days after the public notification of the review;
- but no later than 60 days after that notification.

In special circumstances the Minister may allow the Review Panel a longer period for completion of the review (s 269ZZK(3)).

If reinvestigation is required

If the ADRP requests the Commissioner to reinvestigate a specific findings or findings, the Commissioner must report the results of the reinvestigation to the ADRP within a specified period.

Upon receipt of the Commissioner's reinvestigation report, the ADRP must make a report to the Minister within 30 days.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

At the conclusion of a review, the ADRP must make a report to the Minister, recommending that the:

- Minister affirm the reviewable decision (s 269ZZK(1)(a)); or
- Minister revoke the reviewable decision and substitute a specified new decision (s 269ZZK(1)(b)).

After receiving the report from the ADRP the Minister must:

- affirm his/her original decision; or
- revoke his/her original decision and substitute a new decision.

The Minister has 30 days to make a decision after receiving the ADRP's report, unless there are special circumstances which prevent the decision being made within that period. The Minister must publish a notice if a longer period for making a decision is required (s 269ZZM).

WHERE AND HOW SHOULD THE APPLICATION BE MADE?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

  Anti-Dumping Review Panel
  c/o Legal Services Branch
  Australian Customs and Border Protection Service
  5 Constitution Avenue
  Canberra City ACT 2601
  AUSTRALIA

- OR emailed to:

  ADRP_support@customs.gov.au

- OR sent by facsimile to:

  Anti-Dumping Review Panel
  c/o Legal Services Branch
  +61 2 6275 6784

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the ADRP** can be obtained at the ADRP website (www.adreviewpanel.gov.au) or from:

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City ACT 2601
AUSTRALIA

Telephone: +61 2 6275 5868
Facsimile: +61 2 6275 5784

Inquiries and requests for **general information about dumping matters** should be directed to:

Anti-Dumping Commission
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: 1300 884 159
Facsimile: 1300 882 506
Email: clientsupport@adcommission.gov.au

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – this equates to $3400).

PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZE of the *Customs Act 1901*. The information is collected to enable the ADRP to assess your application for the review of a decision to publish a dumping duty notice or countervailing duty notice.

APPLICATION FOR REVIEW OF

DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY NOTICE OR COUNTERVAILING DUTY NOTICE

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

to publish : ☑ a dumping duty notice(s), and/or

☐ a countervailing duty notice(s)

OR

not to publish : ☐ a dumping duty notice(s), and/or

☐ a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

☑ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).

☑ Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.

☑ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.

☑ Full description of the imported goods to which the application relates.

☑ The tariff classification/statistical code of the imported goods.

☑ A copy of the reviewable decision.

☑ Date of notification of the reviewable decision and the method of the notification.

☑ A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

☑ [If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Please refer to Attachment A of this application.

Signature: 

Name: Alistair Bridges

Position: Solicitor, Moulis Legal

Applicant Company/Entity: POSCO

Date: 04 September 2013

ATTACHMENT A

4 September 2013

In the Anti-Dumping Review Panel

Application for review
Zinc coated (galvanised) steel exported from Korea and certain other countries

POSCO

NON-CONFIDENTIAL VERSION

1 Applicant

Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).

The name of the applicant is POSCO.

The address of the applicant is POSCO Centre, 892 Daechi 4-dong, Gangnam-gu, Seoul, 135-777 Korea.

POSCO is a listed company (joint-stock corporation) in the Republic of Korea.

POSCO is directly concerned with the production, manufacture and exportation of the goods subject to the reviewable decision, and is therefore an "interested party" within the definition of that term provided at Section 269ZX of the *Customs Act 1901* ("the Act"). As such, POSCO has standing to apply for a review of that decision under Section 269ZZC of the Act.

2 Applicant's contact details

Name; title/position; telephone and facsimile numbers; and e-mail address of a contact within the organisation.

The contact person at POSCO is Kim, Jin Han, who is the Team Leader of the Trade Affairs Team. His contact details are:

- Telephone number: +82 2 3457 0574
- Fax number: +82 2 3457 1943
- Email address: harrykim@posco.com

3 Applicant's representative

Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.

POSCO is represented in this matter by Daniel Moulis, Principal, and Alistair Bridges, Solicitor, of Moulis Legal.

The contact details of Moulis Legal are:

- Address: 6/2 Brindabella Circuit, Canberra International Airport ACT 2609
- Telephone: +61 2 6163 1000
- Fax: +61 2 6162 0606
- Email: daniel.moulis@moulislegal.com and alistair.bridges@moulislegal.com.

A copy of the authorisation of Moulis Legal is at Attachment B.

Please address all communications relating to this application to Moulis Legal.

4 Description of imported goods

Full description of the imported goods to which the application relates.

This application applies to zinc coated (galvanised) steel exported by POSCO to Australia from the Republic of Korea ("Korea").

In Australian Customs and Border Protection Service ("Customs") Report No. 190 ("Report 190") the imported goods to which the application relates are described as follows:

> *The imported goods the subject of the galvanised steel application are described as:*
>
> > *"flat rolled products of iron and non-alloy steel of a width less than 600mm and, equal to or greater than 600mm, plated or coated with zinc".*
>
> *Galvanised steel of any width is included.*
>
> *The amount of 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 Z (Zinc) or ZF (Zinc converted to a Zinc/Iron alloy coating). Common coating masses used for zinc coating are: Z350, Z275, Z200, Z100, and for zinc/iron alloy coating are: ZF100, ZF80 and ZF30 or equivalents based on international standards and naming conventions.*
>
> ...

Product Treatment

The galvanised steel application covers galvanised steel whether or not including any (combination of) surface treatment, for instance; whether passivated or not passivated, (often referred to as chromated or unchromated), oiled or not oiled, skin passed or not skin passed, phosphated or not phosphated (for zinc iron alloy coated steel only).

Goods excluded from investigation scope

Painted galvanised steel, pre-painted galvanised steel and electro-galvanised plate steel are not covered by the application and subsequent investigation.

These goods will be generically referred to as "galvanised steel" in this application.

Please note that POSCO only exported galvanised steel. It did not import aluminium zinc coated steel which was the subject of a separate investigation (although that investigation was undertaken by Customs concurrently).

5 Tariff classification of the imported goods

The tariff classification/statistical code of the imported goods.

The reviewable decision affects imported goods classified under heading 7210 in Schedule 3 of the *Customs Tariff Act 1995.* Heading 7210 relates to:

FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, OF A WIDTH OF 600 mm OR MORE, CLAD, PLATED OR COATED

The relevant subheading affected by the reviewable decision is 7210.49, which covers "Other" forms of flat rolled products of iron or non alloy steel, of a width of 600mm or more, clad, plated or coated. The relevant statistical codes are:

- 7210.49.55 - of a thickness of less than 0.5 mm;
- 7210.49.56 - of a thickness of 0.5 mm or more but less than1.5 mm;
- 7210.49.57 - of a thickness of 1.5 mm or more but less than 2.5 mm; and

- 7210.49.58 - of a thickness of 2.5 mm or more.

The reviewable decision also affects imported goods classified under heading 7212 of Schedule 3 of the *Customs Tariff Act 1995*. Heading 7212 relates to:

> *FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, OF A WIDTH OF LESS THAN 600 mm, CLAD, PLATED OR COATED:*

The relevant subheading of the goods that is subject to the reviewable decision in relation to this heading is

- 7212.30.61 - otherwise plated or coated with zinc.

6 Reviewable decision

Copy of the reviewable decision, date of notification of the reviewable decision and the method of the notification

The reviewable decision is the decision made by the Attorney-General to impose dumping duties in respect of galvanised steel exported to Australia from China, Korea and Taiwan ("the reviewable decision").

The reviewable decision was notified on 5 August 2013. It was published in *The Australian* newspaper on that day.

Concurrently, Customs caused to be published:

- Australian Customs Dumping Notice No.2013/66 *Zinc coated (Galvanised) steel and Aluminium zinc coated steel Exported from the People's Republic of China, the Republic of Korea and Taiwan – finding in relation to an investigation into dumping and subsidisation investigations*; and
- *International Trade Remedies Branch Report Number 190 – Dumping of Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel Exported from the People's Republic of China, the Republic of Korea, and Taiwan* ("Report 190").

A copy of the reviewable decision is set out in Attachment C.

7 Applicant's reasons

A statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision

BlueScope Steel Limited and BlueScope Steel (AIS) Pty Ltd ("BlueScope") applied for a dumping investigation into imports of galvanised steel from China, Korea and Taiwan.

As a result of this investigation, on 5 August 2013 the Attorney-General made a decision to impose dumping duties on galvanised steel imported from Korea ("the reviewable decision"). The decision was made under Sections 269TG(1) and 269TG(2) of the Act.

POSCO seeks review of this decision by the Anti-Dumping Review Panel ("ADRP") under Sections 269ZZA(1)(a) and 269ZZC of the Act.

POSCO considers the decision to impose anti-dumping measures under Sections 269TG(1) and 269TG(2) of the Act was not the correct and preferable decision. The decision was not the correct and preferable decision because any one or other of the following considerations should have been taken into account by the Attorney-General and, as a result, should have led him to make a different decision:

(a) the considerations that POSCO's cold-rolled galvanised steel exported to Australia was a particular kind of product which, as well as being particular, was not dumped at actionable levels, being considerations that should have led the Attorney-General not to impose dumping duties against POSCO's CGI in the circumstances of this investigation;

(b) the considerations that POSCO's zero-spangle galvanised steel exported to Australia was a particular kind of product which, as well as being particular, was not a "like good" to the goods produced by the Australian industry, being considerations that should have led the Attorney-General not to impose dumping duties against POSCO's zero-spangle galvanised steel in the circumstances of this investigation;

(c) the considerations that POSCO's zero-spangle galvanised steel for automotive industry uses exported to Australia was a particular kind of product which, as well as being particular, was not a "like good" to the goods produced by the Australian industry and did not cause material injury to the Australian industry, being considerations that should have led the Attorney-General not to impose dumping duties against POSCO's zero-spangle galvanised steel for automotive industry uses in the circumstances of this investigation;

(d) the considerations that like or directly competitive goods to POSCO's zero-spangle galvanised steel for any uses, or its zero-spangle steel for automotive industry uses, are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade, being considerations which should have led the Attorney-General to decide to exempt those POSCO goods under Section 8(7) of the *Customs Tariff (Anti-Dumping) Act 1975*;

(e) the consideration that coated steel produced by BlueScope and internally transferred by BlueScope to its paint lines to be sold as painted coated steel was relevantly "like goods" produced by the Australian industry, and that the financial performance of the Australian industry including those like goods must be properly evaluated, being considerations which should have led the Attorney-General to decide that the Australian industry had not suffered material injury or that material injury was not caused by dumped goods;

(f) the consideration that the BlueScope's pricing policy, and the analysis and presentation of that price policy in Report 109, could not be taken to establish that dumped goods caused price depression, suppression or price undercutting to the Australian industry producing like goods, being a consideration which should have led the Attorney-General to the conclusion that these propositions were not established.

A POSCO's CGI exported to Australia was not dumped at actionable levels. In the circumstances of this case, dumping duties should not have been imposed against it.

During the period of investigation POSCO exported both hot rolled galvanised steel ("HGI") and cold rolled galvanised steel ("CGI") to Australia. In contrast, BlueScope produced and sold only CGI. These are different types of galvanised steel.

POSCO explained the major differences between these two types of galvanised steel in its submission dated 8 April 2013 as follows:

> *HGI is a higher-strength metal which is known for its excellent anti-corrosion qualities, and may be produced in a far greater range of thicknesses than CGI. For example, POSCO can produce HGI between 1.2 and 4.5 mm thickness, which, as will be discussed below, is far beyond BlueScope's production capacity. Another major point of differentiation between HGI and CGI is that HGI can support a coating mass far greater than CGI. HGI can support a maximum coating mass of 725 g/m², whereas CGI can only support a maximum coating mass of 300 g/m². The additional coating mass on HGI augments its anti-corrosive properties, which means that it is ideal for certain construction applications, like the production of water tanks. CGI cannot be used for the same purposes. Indeed, in POSCO's experience, purchasers of HGI will not purchase CGI as a substitute. This sentiment has been echoed in a number of submissions made by interested parties throughout the investigations.*
>
> *In addition to these fundamental differences between the products, CGI is more expensive to produce in comparison to HGI. POSCO understands that CGI was approximately* ***[CONFIDENTIAL INFORMATION DELETED – figure]*** *more expensive to produce than HGI during the POI. As a direct consequence, CGI was sold in Australia for a price approximately* ***[CONFIDENTIAL INFORMATION DELETED – figure]*** *higher than HGI...*[1] [footnote omitted]

Many parties, including POSCO, argued that these differences precluded a finding that HGI and CGI were "like goods" to each other.

---

11 Page 4.

POSCO also argued that the differential in the cost to manufacture each of the products necessitated that a separate ascertained export price ("AEP") would have to be calculated for each of the product categories. As POSCO also explained in its submission of 8 April 2013:

> *...there are many technical differences between CGI and HGI. In addition to those fundamental differences between the two forms of GI, HGI is relatively cheaper to produce than CGI. For example, during the period of investigation, POSCO sold its CGI to the Australian automotive industry for a price that was approximately* ***[CONFIDENTIAL INFORMATION DELETED - figure]*** *more expensive than that which it sold HGI to other industries.*
>
> *This pricing differential can be evidenced in the export sales spread sheet POSCO provided as part of its response to the Exporter Questionnaire. CGI is marked as the product code "GB" and HGI is marked with the product code "LA". Based on the information in the export sales spread sheet, it is clear that average export price of CGI was approximately* ***[CONFIDENTIAL INFORMATION DELETED - figure]*** *more expensive than the average export price of HGI over the period of investigation*
>
> *Currently, Customs has calculated a single AEP for determining the amount of prospective duty under securities required to be provided to Customs in accordance with the PAD. The problem with this approach is that is does not take into account the significant price disparity between HGI and CGI. As a result, the AEP is far too high on imports of HGI.*[2]

In the recent decision of the Federal Court of Australia in *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth*[3] Nicholas J explained that:

> *...where in Part XVB of the Act the Minister is conferred with a discretion as to how he or she will go about determining a dumping margin, the relevant provisions usually make this quite clear. There is nothing in s 269TG to suggest that there was any intention to confer upon the Minister a discretion that would enable him or her to determine variable factors different to those utilised for the purpose of determining whether dumping occurred and, if so, at what margin.*[4]

---

2 Page 6.

3 [2013] FCA 870

4 Paragraph 140.

POSCO considers that its request for separate AEPs is not sustainable in light of this judgement. However, Nicholas J also made it clear that the question of whether it was appropriate for particular goods in a class of goods to be included in the universe of sales for determining whether dumping had occurred, and if so at what margin, was a separate and distinct question. As Nicholas J further explained in his judgment:

> *...it is important to keep in mind that there is nothing in Part XVB of the Act (or the Anti-Dumping Agreement) that requires that duty be imposed upon some goods within a relevant class... that are sold at or above normal value. On the contrary, pursuant to s269TL of the Act, the Minister may decide, on the recommendation of the CEO, not to impose dumping duty on "particular goods or goods of a like kind to particular goods".*[5]

Section 269TL(1) of the Act provides as follows:

> *Where the Minister receives a recommendation from the Commissioner concerning the imposition of dumping duty, third country dumping duty, countervailing duty or third country countervailing duty on particular goods or on goods of a like kind to particular goods and the Minister decides, after having regard to that recommendation, not to declare those goods to be goods to which section 8, 9, 10 or 11, as the case requires, of the Dumping Duty Act applies, the Minister must give public notice to that effect.*

Thus, Nicholas J has declared that the Act does not require that duties be imposed upon some goods within a relevant class, and that circumstances that apply to those goods can relevantly exclude them from the class of goods against which dumping measures are ultimately imposed. The circumstance to which he refers is if they were found to have been sold at or above normal value. The circumstances that POSCO submits apply to its CGI that should lead to its exclusion under Section 269TL are that:

(a) CGI is different to the other goods within the relevant class;

(b) the production processes for CGI and HGI dictate that different prices need to be charged for each product;

---

5 Paragraph 145.

(c) POSCO's CGI was not dumped to a degree which would have permitted dumping duties to be imposed against it.

In relation to the last of these circumstances, we believe that it is clearly shown in the information that was before the Anti-Dumping Commission that the dumping margin for CGI during the period of investigation was [CONFIDENTIAL INFORMATION DELETED]%. This is a *de minimis* margin according to Section 269TDA(1) of the Act.

Section 269TDA(1) only allows for the termination of an investigation where the dumping margin calculated under Section 269TACB is less than 2%. According to Nicholas J, this must be a singular dumping margin for all grades or types of the subject product. However, POSCO would submit that a product that is found to be of a different character to other products such that it can be said to be of a particular kind, and that could not have dumping duties imposed against it if it was being considered on its own, should ultimately not have dumping duties imposed upon it. This, in POSCO's view, would be an appropriate example of the power conferred by Section 269TL. We see no relevant difference between Nicholas J's suggestion that a particular product can be excluded from any dumping duties that are ultimately imposed if it has not been dumped, as compared to the situation where the particular product has only been dumped at a level – a *de minimis* level - that would preclude dumping duties from being imposed against it were it to be considered alone.

Accordingly, POSCO submits that the Attorney-General's decision to publish a dumping notice was not the correct and preferable decision, as it resulted in the imposition of dumping duties on a product – POSCO's CGI – that should not have had dumping duties imposed against it because it was a particular kind of product which was not itself dumped at actionable levels (ie because only a *de minimis* dumping margin level could be applied to it). In these circumstances POSCO submits that the correct and preferable decision was to apply Section 269TL so that no dumping duties were imposed on POSCO's CGI.

B POSCO's zero-spangle steel was not a like good to the goods produced by the Australian industry. In the circumstances of this case, dumping duties should not have been imposed against it.

During the investigation, a number of interested parties lodged submissions with the investigating authority regarding the scope of the investigation. These submissions drew attention to the fact that certain goods falling within the general scope of the goods to which BlueScope's application was directed were not produced by BlueScope. POSCO's submissions concerning the non-production of HGI by BlueScope and the different characteristics of HGI as referred to in 7A above is one example of these submissions. We now wish to draw attention to another such example.

POSCO produces "zero-spangle" galvanised steel. The term "spangle" refers to a distinctive and highly-visible pattern left on the surface of the steel as a result of the zinc coating process. As the name suggests, zero-spangle galvanised steel does not have a spangle. Its surface is clearer and smoother than spangle products. As a result, zero-spangle galvanised steel is used in a range of activities in which normal coated steel is not used. For example, only zero-spangle galvanised steel is used in the manufacture of the exterior of automobiles, because a spangle will disturb the application of the paint to the surface of the car and will make the surface less presentable to buyers.

POSCO submitted that, based on its knowledge of the Australian market for coated steel, BlueScope was incapable of producing zero-spangle galvanised steel.[6] This submission was found to be correct, as is reflected in Report 190.[7] However, although BlueScope admitted that it does not produce zero-spangle galvanised steel, it argued that it does produce a product that is "like" zero-spangle galvanised steel. This proposition appears to have been accepted in Report 190.[8] The product in question is a variant of BlueScope's normal spangle galvanised steel – which is termed "reduced spangle" galvanised steel.

In its submission dated 8 April 2013, POSCO questioned the preliminary conclusion in the Statement of Essential Facts ("SEF 190") that the reduced spangle version was like goods to zero-spangled galvanised steel. A great deal of evidence was provided to address that

---

6 Submission of POSCO dated 16 November 2012, page 12.

7 Page 34.

8 Report 190, page 40.

conclusion, however the degree of consideration that was given to that evidence in the course of finalising Report 190 is not apparent from that Report.

POSCO's submission included a review of BlueScope's product catalogue, links to which were included in the submission. To summarise, the relevant points from that submission were as follows:

(a) Reduced spangle product has a visible spangle. Zero-spangle product does not. If customers require galvanised steel with a clear surface then they will not purchase reduced spangle galvanised steel.

(b) Only a portion of BlueScope's galvanised steel products were available in the reduced-spangle variant, being ZINCFORM, GALVABOND and ZINC HI TEN. Furthermore, within these product classes, the reduced-spangle variant was further limited in terms of "dimensional conditions".

(c) The reduced spangle product is only a variant of BlueScope's spangle product. That is to say, the "reduced spangle" effect is only brought about through some further chemical or metallurgical process. In contrast, POSCO only produces zero-spangle galvanised steel. Unlike spangle galvanised steel, the production of zero-spangle galvanised steel does not require that the galvanised steel be coated in lead or other heavy metals. While this may seem like a simple enough distinction, it is actually quite difficult to consistently achieve in practice. Even a small amount of lead or other slight impurity in the zinc pot can lead to a "spangle" in the finished product.

(d) The spangle product is more expensive to make then the zero-spangle product, because of the materials consumed in the production process of the former. In addition to this, BlueScope's reduced spangle product will have an additional cost component – on top of its already more expensive spangle production process – due to the spangle reduction process that it must go through. Therefore POSCO's zero-spangle product will be priced lower than BlueScope's can be.

(e) POSCO went on to examine the particular specifications of the non-automotive zero-spangle good it exporter to Australia, in comparison to the available specifications of ZINCFORM, GALVABOND and ZINC HI TEN. Based on the production limitations BlueScope disclosed during the investigations, it was apparent that the majority of POSCO's zero-spangle galvanised steel was made to specification that BlueScope simply cannot match or reproduce.

From the above explanations, POSCO submits that it should be clear that zero-spangle galvanised steel and reduced spangle galvanised steel are not substitutable goods. We consider that the limitations BlueScope has expressed in producing reduced spangle galvanised steel, the Australian market's general predilection for spangle galvanised steel and the extra cost that would be borne by BlueScope – and presumably passed on to the consumer – in producing reduced spangle galvanised steel dictate that reduced spangle variants of BlueScope's galvanised steel are not sold frequently or in large quantities.

POSCO requested that Customs reconsider BlueScope's sales data from the period of investigation to consider how much reduced spangle GI was sold, and to which industries. POSCO's prediction, based on conversations with participants in the Australian market, was that the outcome of such an analysis would be that:

- reduced spangle galvanised steel is not substitutable for zero-spangle galvanised steel; and
- BlueScope does not sell commercial quantities of reduced spangle galvanised steel.

The content of this submission was not reflected in Report 190. However POSCO considers that it provided sufficient information to rebut BlueScope's unsupported claim that its reduced spangle variant galvanised steel was "like" or "substitutable" to POSCO's zero-spangle steel.

Therefore POSCO submits that the finding that zero-spangle galvanised steel was a "like good" to any product produced by the domestic industry was not supported by evidence. POSCO submits the decision to impose dumping duties on any of its zero-spangle product was not allowed under the terms of the Act, on the basis that the Australian industry does not produce

like goods to POSCO's zero-spangle galvanised steel. Therefore, that decision cannot be considered to be the correct or preferable decision.

C POSCO's zero-spangle steel for automotive industry use could not have caused injury to the Australian industry. In the circumstances of this case, dumping duties should not have been imposed against it.

As discussed in Section 7B of this application, BlueScope has admitted that it cannot produce zero-spangled galvanised steel. While BlueScope maintains – incorrectly in POSCO's view – that it produces a substitutable product, this production capacity is apparently quite limited. In particular, Report 190 explains that:

> *...BlueScope advised that it does not manufacture zerospangle galvanised steel which is solely used for the exterior (i.e. exposed skin panels) of automobiles.*[9]

POSCO produces and exports to Australia a zero-spangle galvanised steel product for automotive industry uses, including the manufacture of exterior panels, which it refers to as [CONFIDENTIAL INFORMATION DELETED – product name]. This Section of the application relates to POSCO's [CONFIDENTIAL INFORMATION DELETED – product name] product, which is an even narrower category of the goods then the wider group of goods referred to in 7B above of which it forms part.

A quick review of pages 32 – 37 or Report 190 will evidence that a number of interested parties expressed concerns that BlueScope did not produce certain coated steel products which were still subject to the investigation. These concerns appear to have been well founded. The approach adopted by Report 190 with respect to these concerns was explained as follows:

> *Customs and Border Protection advises that it is not possible to amend the wording of the goods description after an investigation is initiated although clarification is possible, and some clarification of the goods description is found in ACDN 2012/62.*
>
> *Although the wording of the goods description cannot be altered, certain goods may be exempted from duties by the Minister. Any party who wishes particular goods to be*

---

9 Report 190, page 35.

> *considered for exemption from duties should make that request in writing and provide supporting evidence.*[10]

This approach is problematic in that it supposes that an applicant for anti-dumping measures can irrevocably define the goods that will be subject to an investigation and to the anti-dumping measures that might emerge from that investigation. In POSCO's opinion this would not allow for a proper consideration of the facts of any given case nor of the proper application of law and discretion to those facts. We think this is made clear by the judgement of Nicholas J in the PanAsia case, as has been referred to in 7A of this application.

To recap, Section 269TL(1) of the Act provides as follows:

> *Where the Minister receives a recommendation from the Commissioner concerning the imposition of dumping duty, third country dumping duty, countervailing duty or third country countervailing duty on particular goods or on goods of a like kind to particular goods and the Minister decides, after having regard to that recommendation, not to declare those goods to be goods to which section 8, 9, 10 or 11, as the case requires, of the Dumping Duty Act applies, the Minister must give public notice to that effect.*

POSCO submits that the term "particular goods" in Section 269TL has been specifically used to indicate that the Section may relate to a subset of the like goods that are the subject of the investigation, and that the scope of the measures that can be imposed at the conclusion of an investigation is not absolutely or irrevocably defined by the description of the goods in the application. This interpretation of the Act is supported by the judgement of Nicholas J in the PanAsia case.[11]

The focus of Nicholas J was whether a particular grade of the goods the subject of the application had been dumped. However it is clear that an equally relevant reason to prevent the application of dumping duties to particular goods is that they are not like goods to those produced by the Australian industry – despite the Australian industry's application claiming

---

10 Report 190, page 37.

11 Paragraph 145.

then to be – or that they have not themselves caused material injury to the Australian industry concerned.

Section 269TG(2) of the Act provides as follows:

> *(2) Where the Minister is satisfied, as to goods of any kind, that:*
>
> > *(a) the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and*
> >
> > *(b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;*
>
> *the Minister may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.*

It is important to understand that the term "like goods" is one that changes on the basis of the context in which it used under the Act. The meaning of the term in the closing paragraph of Section 269TG(2) is drawn from the chapeau and subsections (a) and (b) of the same section Firstly, the reference to "goods of any kind" is a reference to a general category of goods - specifically the goods that have been found to be dumped under subsection (a) and that have resultantly been found to have caused material injury to the domestic industry producing like goods. With reference to the domestic industry in subsection (2), the meaning of like goods is again derived from the dumped goods. A similar structure is evidenced in Section 269TG(1).

In POSCO's opinion, an important point to note is that **[CONFIDENTIAL INFORMATION DELETED – product name]** is a particular type of product that is not produced by the domestic industry. POSCO also submits that the domestic industry does not produce anything substitutable. Report 190 appears to have declined to consider these issues on the basis of the view expressed therein: that there was no power for the Attorney-General to consider

particular goods differently from other goods under investigation. We believe that view to be incorrect, as now clarified by Nicholas J in his judgement in the PanAsia case.

POSCO submits that its [CONFIDENTIAL INFORMATION DELETED – product name] product – a zero-spangle galvanised steel that is not produced by BlueScope and which is sold only to the automotive industry – is not a like good, and/or cannot be considered to have caused BlueScope any form of injury. [CONFIDENTIAL INFORMATION DELETED – product name] is not a "like good" to the goods that have been found to have been dumped and to have caused material injury to the industry producing like goods. If it is a "like good" in a general sense to the goods produced by the Australian industry, it is still submitted that it cannot have caused injury to it, because it is sold into an industry and market sector (zero-spangle steel for the exterior of automobile panels) that is not serviced by BlueScope and in which BlueScope does not compete. In either case, we submit that dumping measures may not be imposed in these circumstances under Section 269TG(1) or (2), and that Section 269TL provides a power – so far as it might be necessary to identify such a power - to exclude POSCO's [CONFIDENTIAL INFORMATION DELETED – product name] from the imposition of any dumping duties.

Section 269TG relates to the Minister's discretion to impose dumping duties, however, in accordance with Section 269TE(2) the Commissioner is required to:

> *...determine any matter ordinarily required to be determined by the Minister under this Act or the Dumping Duty Act, the Commissioner must determine the matter:*
>
> *(a) in like manner as if he or she were the Minister; and*
>
> *(b) having regard to the considerations to which the Minister would be required to have regard if the Minister were determining the matter.*

We submit that Report 190 was incorrect insofar as it considered that it could not be recommended that zero-spangle galvanised steel be excluded from any measures.

Therefore, POSCO submits that the reviewable decision was not the correct and preferable decision in relation to POSCO's [CONFIDENTIAL INFORMATION DELETED – product name]

galvanised steel. The correct and preferable decision was that zero-spangle galvanised steel for automotive industry uses be excluded from the imposition of any dumping duties.

D POSCO's zero-spangle steel for automotive industry uses or its zero-spangle steel for any use should have been exempted from dumping duties

In the alternative to the claims set out in 7B and 7C above, POSCO submits that the Attorney-General should have decided to exempt [CONFIDENTIAL INFORMATION DELETED – product name] or zero-spangle galvanised steel generally under Section 8(7) of the *Customs Tariff (Anti- Dumping) Act 1975* ("the Anti-Dumping Act"). Report 190 should have considered this issue and recommended to the Attorney-General that such an exemption be made.

Section 8(7) of the Anti-Dumping Act provides:

> *(7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:*
>
> > *(a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade...*

As discussed in relation to the claim set out in 7C above, BlueScope has admitted that it cannot produce a product that is suitable for use in the production of the exterior of automobiles. Therefore, it does not produce a product that is "like or directly competitive" with POSCO's [CONFIDENTIAL INFORMATION DELETED – product name]. In SEF 190, Customs stated that it considered that this may be reasonable grounds for the Attorney-General to consider an exemption from dumping duties under Section 8(7).

In POSCO's submission dated 8 April 2013, it identified every form of galvanised steel that it had produced for the manufacture of the exterior of cars, and which had been exported to Australia during and after the investigation period. POSCO even went so far as to provide detailed specification data for every grade of that steel, on the basis that it could then be recommended in Report 190 that the Attorney-General issue, at the time of his final decision, an exemption notice under Section 8(7). This was done with regard to certain kinds of the subject goods that are subject to Tariff Concession Orders ("TCO"). In that submission,

POSCO offered to provide further information, should it be required for the purposes of a consideration of the issuance of an exemption notice.

Similarly, in claim set out in 7B above, POSCO has highlighted the information that was available on the public record with regard to any substitutability between its non-automotive zero-spangle product and BlueScope's reduced spangle product. POSCO submits that this information rebuts BlueScope's claim that its reduced spangle product is like or substitutable to POSCO's zero-spangle product. POSCO therefore considers that there was sufficient information available for the Report to recommend, and for the Attorney-General to decide, that the domestic industry does not produce like or directly competitive goods which are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade, as per the conditions set out in Section 8(7).

However, in Report 190, it is explained that:

> *Customs and Border Protection does not recommend that an exemption be granted for all zero spangle products as many zero spangle automotive products are currently covered by existing TCOs and there are issues of substitutability to consider on a case by case basis.*[12]

POSCO submits that this does not take account of the information that POSCO provided. None of POSCO's zero-spangle product, including that which is used for the exterior of automobiles, is covered by a TCO. Moreover, POSCO provided substantial evidence regarding the lack of substitutability of its product with BlueScope's. POSCO submits that there was sufficient information available at the time the decision was made for the Attorney-General to decide that POSCO's zero-spangle galvanised steel for external parts of automobiles ([CONFIDENTIAL INFORMATION DELETED – product name]) or POSCO's zero-spangle galvanised steel generally should be exempted. It was advised in SEF 190 that this consideration would take

---

12 Page 40.

place and POSCO had a legitimate expectation that on proffering all of the information necessary for that purpose such a decision would be made.[13]

Therefore, POSCO submits that the failure to publish an exemption notice under Section 8(7) of the Anti-Dumping Act was not the correct or preferable decision. POSCO wishes to point out that interested parties were advised in SEF 190 that such considerations would take place in order to advise the Attorney-General in the ultimate Report as to whether exemptions should be issued. POSCO provided all necessary and relevant information to enable that to be done, and believes that information was compelling. The failure to issue that requested exemption was made in the circumstances of an offer by the investigating authority that such an exemption would be considered and of information on the public record establishing that such an exemption should be issued.

E The finding that the domestic industry producing like goods had suffered material injury and that it was caused by dumping was not based on a proper analysis of the total performance of the domestic industry producing like goods.

It is a prerequisite to the imposition of dumping duties under Section 269TG of the Act that the impugned imports are found to have caused material injury to a domestic industry producing like goods. Making such a finding obviously requires a detailed analysis of the production, sales and financial condition of the domestic industry.

The term "domestic industry" as used in Section 269TG of the Act is undefined. However, it should be clear that the consideration required by that Section extends to the industry producing like goods to those that are found to have been dumped. For example, while BlueScope produces and sells many steel products it is only the portion of that company group that produces coated steel which is "like" that which is found to be dumped which is the relevant "domestic industry" for Section 269TG of the Act. Indeed, the WTO Anti-Dumping Agreement provides the following definition of the "domestic industry":

---

13 Page 33.

> *For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.*

While this is a fairly uncontentious statement it has logical implications for the "injury analysis" which can often be overlooked by an investigating authority. Most importantly is the fact that the analysis of the relevant domestic industry cannot be limited to a consideration of the like goods that are sold directly to the domestic market, it must include all production of the like goods. This proposition is supported by WTO jurisprudence. For example in *United States – Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan* the Appellate Body considered a provision of the anti-dumping law of the United States that required the investigating authority to focus primarily on the "merchant market" rather than on "captive production" - being internal transfers of the product under examination – when determining the impact of dumped goods on the domestic industry's market share and financial performance as part of the injury analysis. Relevantly, the Appellate Body stated:

> *Article 4.1 of the Anti-Dumping Agreement defines the term "domestic industry" as the "domestic producers as a whole of the like products" or "[domestic producers] whose collective output of the products constitutes a major proportion of the total domestic production". It follows that an injury determination, under the Anti-Dumping Agreement, is a determination that the domestic producers "as a whole", or a "major proportion" of them, are "injured". This is borne out by the provisions of Articles 3.1, 3.4, 3.5, 3.6, and 3.7 of the Agreement, which impose certain requirements with respect to the investigation and examination leading to an injury determination. Investigating authorities are directed to investigate and examine imports in relation to the "domestic industry", the "domestic market for like products" and "domestic producers of [like] products". The investigation and examination must focus on the totality of the "domestic industry" and not simply on one part, sector or segment of the domestic industry.*[14]

---

[14] *Report of the Appellate Body; United States – Anti-dumping Measures on Certain Hot-Rolled Steel Product from Japan* (WT/DS184/AB/R), 24 July 2001, paragraph 190.

POSCO submits that it is clear from this that the injury analysis must be performed in relation to the entire domestic industry producing like goods, and not just a portion of the domestic industry. With regard to captive production, the Appellate Body notes that:

> *...Indeed, we believe that it may be highly pertinent for investigating authorities to evaluate the relevance of the fact that a significant proportion of the domestic production of the like product is shielded from direct competition with imports, and that the part of the domestic industry that is most likely to be affected by the imports is limited to the merchant market.*[15]

In its submission dated 23 November 2012, POSCO raised the issue of BlueScope's internal transfers of the like goods that it produced during the period of investigation. In that submission POSCO explained that it had been advised by industry participants that BlueScope produced and sold - at highly profitable levels - almost 600,000 tonnes of "painted coated steel" to the Australian market. It is clear that this painted coated steel is made from "internal transfers" of both galvanised steel and aluminium zinc coated steel.[16]

In BlueScope's application it requested that painted coated steel be excluded from consideration in the investigation. However, irrespective of BlueScope's desire to exclude its painted product from the investigation, it cannot direct that the like goods – being galvanised and aluminium zinc coated steel – used in the production of the painted product also be excluded from consideration of whether the domestic industry has suffered material injury as a result of the allegedly dumped imports. This product – which BlueScope claims is "internally transferred"- is part of the domestic industry producing like goods.

In its submission, POSCO went on to highlight the relevant sections of Section 269TAE of the Act, which may be materially misapplied if the investigating authority failed to take into account these internal transfers. However, upon review of Report 190 it appears that the investigating authority gave little consideration to this issue. In fact, the only relevance of this issue to the

---

15 Ibid. Paragraph 198.

16 POSCO submission "POSCO's exports to Australia have not caused material injury to the Australian industry", dated 23 November 2013, page 15.

investigation appears to have been the consideration by the investigating authority of whether any injury in the form of lost volume or price depression had been exaggerated by a strategy to divert production and/or profits to BlueScope's painted products.[17] Not only is this consideration just one of a number of considerations, the way it was isolated and treated is misguided. Of the various injury factors, none appear to take into account the internal transfers of the like products produced by the Australian industry.

Therefore POSCO submits that the finding that the Australian industry producing like goods suffered material injury is flawed. The finding is based on the performance of only a fraction of the Australian industry. Resultantly, and given the extensive production and sales of downstream goods by the Australian industry, POSCO submits that the conclusion as to the materiality of any injury suffered by the Australian industry producing like goods, or as to the materiality of the injury caused by dumped goods, cannot be maintained.

POSCO submits that the correct and proper decision would have considered that the production levels of the like goods were much higher than actually considered and that BlueScope's policy of internally transferring coated steel products at market values was inappropriate because it did not reflect the market values of the painted coated steel form in which it was ultimately sold. POSCO submits that Report 190 did not provide sufficient evidence or analysis of the production of the like goods by the Australian industry and of the true financial position in relation to that total production, and that on a proper consideration of that information the correct and preferable decision would have been to decide that material injury had not been caused by dumped imports of coated steel.

F The subject imports could not be found to have caused price injury to the domestic injury

POSCO submits that a second failure relating to the material injury finding relates to the "price effects finding" arrived at in Report 190.

---

17 Report 190, page 125.

To summarise, Report 190 considers that BlueScope suffered price suppression, price depression and price undercutting with regard to galvanised steel as a result of dumped imports. However, it seems more logical that it is not the dumped imports that have caused this injury, but rather that the injury has been caused by BlueScope's own import parity pricing policy ("IPP").

Report 190 explains the IPP as follows:

> *BlueScope submitted that its pricing strategy for both galvanised steel and aluminium zinc coated steel is based on import parity pricing (IPP) and therefore the price of imports is a key determinant of its selling price. IPP takes into consideration the market price of the goods using contemporary price information for equivalent imported products. BlueScope uses prices gathered from the import market (including from the countries the subject of the application) to determine the selling price of its goods, with the view to selling at prices considered competitive with imports. BlueScope explained that it has been using IPP for close to a decade to price its galvanised steel coated products and has more recently introduced IPP for aluminium zinc coated products.*[18]

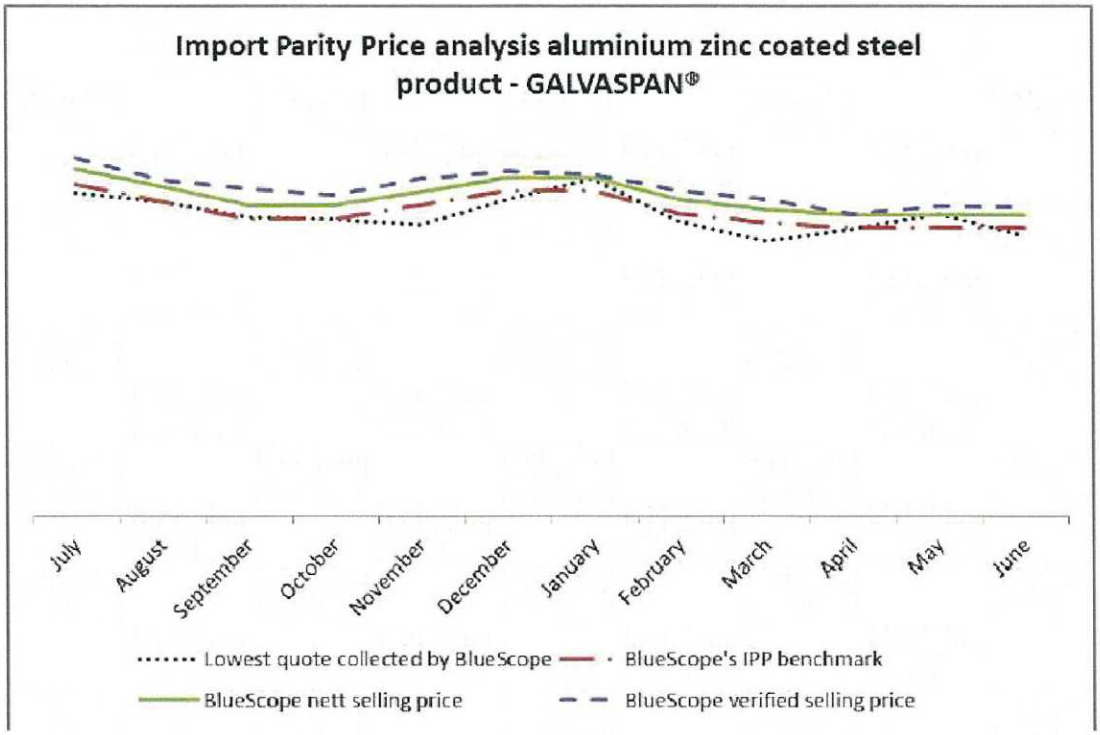
BlueScope claims that the IPP was adopted over ten years ago, and is targeted at maintaining its market share , because a reduction in its production capacity would mean that the fixed costs of production are allocated over a smaller level of output, thus increasing the per unit cost of production.[19] In relation to galvanised steel, Report 190 provided a graphical representation of the relation between the lowest import price, BlueScope's IPP benchmark, BlueScope's selling price, and finally, BlueScope's net selling price (after rebates, commissions and other post-sales deductions) as follows:[20]

---

18 Page 112

19 Ibid.

20 Page 112



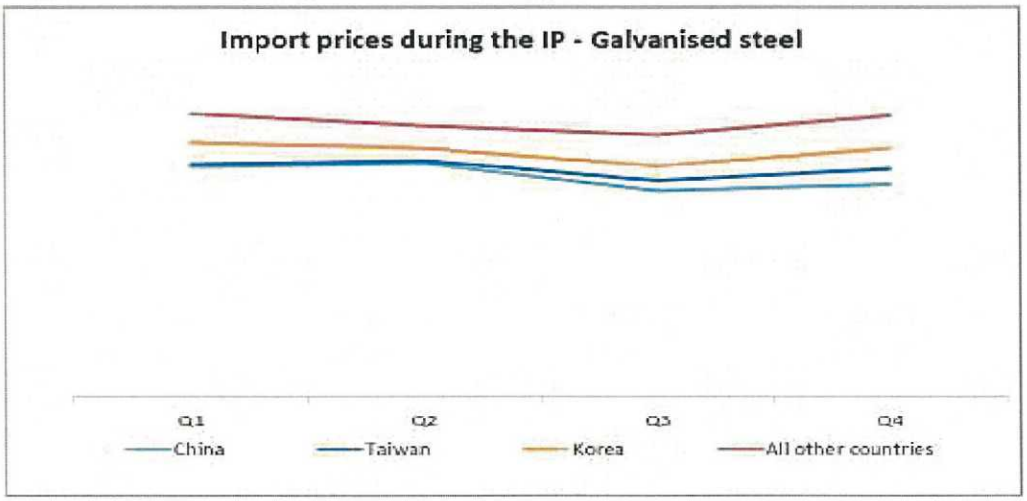
From this graph, there are a few things that can be discerned about the IPP. Firstly, there is a close relationship between the lowest quote and the IPP benchmark price. It would seem that it is generally BlueScope's policy to set its benchmark price at the lowest available quote. Secondly, the margin, or premium, between the verified selling price and the IPP benchmark is consistent throughout the year. POSCO does not consider that this is a rational basis for determining that price depression, suppression or undercutting has been caused by the subject imports.

BlueScope's price is pegged to the lowest available quote for imported goods from all sources. The interesting implication about the use of such a mechanism is that there is no market interaction between BlueScope's product and the imported products. There is no indication that BlueScope's customers actively negotiate with BlueScope on the basis of quotes from other countries. It appears that BlueScope's price is pegged to this benchmark, regardless of the merit of doing so, and without any competitive attempt to achieve a higher price.

Accordingly, POSCO submits that Report 190 misconstrues the impact of the subject imports on BlueScope's price. The conclusion stated in the Report is as follows:

> *The lower import prices of China, Korea and Taiwan relative to all other countries demonstrate that greatest price pressure for BlueScope in setting IPP comes from countries selling at dumped prices. This is demonstrated at a micro level for particular products and specific exporters, and also at a macro level by product group and country. This supports BlueScope's claim that dumped imports are causing injury through price depression.*[21]

This conclusion is said to be supported by the following graph:



This analysis is critically flawed, in that it only compares the average per tonne price of the imported goods over the POI. While this is fine for the goods from the countries subject to the investigation, it is neither illuminating nor appropriate when considering the impact of imports from all other countries, including those from exporters in the countries under investigation which were not found to have engaged in dumping, or were subject to *de minimis* levels of dumping, and in respect of whom the investigation was terminated. Summing up the average price of imports from all other countries entirely ignores the mechanics of the IPP – it is not

---

21 Page 118

prices generally that dictate the price of BlueScope's products, rather it is the lowest price quoted for any period. To put it another way, it is not "pressure" that causes BlueScope's price to rise or fall, it is the fact that one price quote is the lower than the rest. To lump the price from all other sources together is of no analytical benefit and it does not, as the Report suggests, support BlueScope's claim that dumped imports are causing injury through price depression.

Report 190 also explains that:

> *For galvanised steel, it was observed that across all product models for which BlueScope collected market intelligence for IPP, the highest quoted price from at least one of the countries under investigation was equal to or higher than BlueScope's verified selling prices at FIS level in AUD. This was observed between three and seven months of the investigation period for each the four models examined. BlueScope's verified selling price was below quoted prices collected by BlueScope from the countries under investigation for between 25% and 42% of the investigation period for each of the four products with sufficient IPP data (the remaining three products have not been assessed).*

This again indicates the irrelevance of all other prices, except for the lowest price quote available to BlueScope's pricing policy.

Thus POSCO does not consider the conclusion that the dumped imports have caused the price effects allegedly suffered by BlueScope to be justified. There is no evidence that dumped imports have caused any form of price injury, rather any injury that BlueScope has suffered is a result of its own pricing policy. Therefore, the correct and preferable decision is that, on the evidence available, dumped imports have not caused any injury to BlueScope.

Respectfully submitted on behalf of POSCO by its lawyers:

Daniel Moulis
Principal

Alistair Bridges
Solicitor