



***Productivity Commission Research Paper
Developments in Anti-dumping and Countervailing
Arrangements***

***Submission by
BlueScope Steel***

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Executive Summary

As a large domestic import-competing manufacturer, the operation of Australia's anti-dumping system is an important public policy issue for BlueScope Steel. BlueScope Steel welcomes the opportunity to make this submission to the Productivity Commission ("the PC") research paper.

BlueScope supports an anti-dumping and countervailing system that is effective in providing adequate remedies to address dumping and subsidisation. As a stakeholder in Australia's anti-dumping system, BlueScope Steel notes that:

- WTO trade rules do not consider anti-dumping action to be an exception to the rules, nor a form of protectionism;
- Anti-dumping action in no way interferes with competitive foreign products reaching Australian consumers nor does it isolate Australian firms from foreign competition in the Australian market; and
- Australian industries have a right to expect that the conditions of competition will be those that result from the natural competitive comparative advantages enjoyed by overseas firms and that they will not be exposed – unilaterally – to injurious dumping and subsidisation.

BlueScope's experience of the anti-dumping system since 2012 suggests the following further reforms are needed in order to achieve fair and equitable outcomes for domestic manufacturers:

- the Anti-Dumping Commission ("the ADC") be required to conduct verification visits with selected cooperative exporters in new investigations
 - non-verification of cooperative exporter data in new investigations to cease;
- full disclosure of goods (including technical specifications) for model matching of domestic and export sales (for fair comparison purposes); and
- in constructed normal values under s.269TAC(2)(c) the profit to be applied represents a sufficient level for re-investment purposes.

1 Introduction

BlueScope Steel welcomes the opportunity to make a submission to the Productivity Commission Research Paper on *Developments in Australia's Anti-dumping and Countervailing Arrangements* ('the anti-dumping system').

As a large domestic import-competing manufacturer, the effective operation of Australia's anti-dumping system is an important public policy issue for BlueScope Steel.

We have structured our submission in accordance with the research paper's main considerations.

We would be happy to provide further information in support of our submission if required. Any questions regarding this submission should be directed to Alan Gibbs, Manager International Trade Affairs, or David Jenkins, Manager Government Relations

2 BlueScope Steel overview

BlueScope Steel Limited (“BlueScope Steel”) is an ASX100 company. It is Australia’s largest steel manufacturer and its only flat steel producer. The company’s well-known brands include COLORBOND® steel, ZINCALUME® steel and the LYSAGHT® range of steel building products.

BlueScope Steel employs approximately 7,500 people in Australia. The company has operations in every mainland State, and is responsible for the employment of thousands more contractors and suppliers. The company has an annual steel production capacity in Australia of 2.6 million tonnes and exports approximately 800,000 tonnes per annum to a range of markets including the United States, Brazil, Thailand, New Zealand and Germany.

BlueScope has extensive global operations with manufacturing plants in 17 countries, including ASEAN, China, India, New Zealand and the United States. BlueScope’s businesses include a global building solutions business, which designs, manufactures and erects custom-engineered metal buildings for major multi-national clients, as well as a joint venture steel coating and painting business in ASEAN and North America with Nippon Steel and Sumitomo Metal Corporation.

In recent years, the global steel industry and international trade landscape has changed considerably, particularly with the emergence of China as a global steel powerhouse. Excess global steel production capacity, especially in China, has led to a glut of steel, which has placed downward pressure on steel prices and margins and caused an increase in dumping. Since 2012, 104 anti-dumping and countervailing cases have been launched by G20 countries, including four successful cases by BlueScope. There has also been a rise in safeguard actions initiated in Asia and the sub-continent whilst in South Africa tariffs have been moved back from 0 per cent to the WTO Bound rate of 10 per cent. In response, the Australian steel industry has undertaken significant structural transformation.

Since 2011, BlueScope’s production in Australia has halved and the company nominally exited the export market for commodity steel (although exports continue due to weaknesses in key domestic markets).

The focus is now on production of value-added steel for the domestic market. BlueScope competes with steel manufacturers from around 20 countries that regularly export flat steel products to Australia, and these imports supply between 20 and 35 per cent of the domestic market.

Despite intense international competition, in 2014, BlueScope Steel resumed investing in new markets and developing new products, including an update to COLORBOND® by adding a photo-voltaic laminate, resulting in a roof panel that produces solar power. The company also introduced a new magnesium coating technology to its COLORBOND® steel range, developed in partnership with Nippon Steel and Sumitomo Metal Corporation. This new coating technology provides significant product performance benefits, as well as greater value-in-use for our customers.

BlueScope is Australia's fourth largest non-government intellectual property developer. So, while BlueScope has formally ceased exporting steel from Australia, it continues to transfer Australian-developed intellectual property throughout its international network. This provides important foreign revenue flows to Australia, employs skilled professionals, many in regional Australia, and makes a significant contribution to the diversification of the Australian economy.

A competitive Australian steel industry is an important foundation for a competitive Australian manufacturing sector. Australian-made steel is a key input for a large range of domestic manufacturers.

3 The trade context for the Australian steel industry

In recent years, the global steel industry and international trade landscape has changed considerably, particularly with the emergence of China as a global steel powerhouse. China produces more than 700 million tonnes of steel per annum and is the world's largest steel exporter. There is now a well-documented oversupply of steel globally, with many major producers around the world (including in China) unwilling to close or remove this excess capacity.

Excess dumped and subsidised steel will continue to flow to those markets that have the least effective trade measures.

The Australian steel market has very low tariff and non-tariff barriers and is characterised by substantial and growing levels of imports. A number of the key steel trading countries exporting to Australia also have trade agreements in place or under final negotiation with Australia. Imported steel products are sourced from countries including China, Japan, Thailand, South Korea, Malaysia, Taiwan, Singapore, Vietnam, New Zealand and Indonesia.

Many factors influence global steel prices including: structural overcapacity in the global steel industry; a relatively fragmented industry structure; high exit barriers; high fixed operating costs; and the influence of government and regulatory policies including trade barriers and subsidies.

Australian domestic steel prices – particularly for lower value-add 'commodity' steel products - parallel and follow similar trends to international prices due to the open nature of the market and competition from imports.

BlueScope understands that some officials believe the peak of anti-dumping actions has been reached and that the lower Australian dollar exchange rate has provided significant relief from dumping for Australian manufacturers, such that the number of anti-dumping cases will begin to tail off.

While the lower dollar would have provided some relief for the steel industry in normal market circumstances, in fact the surging global over-supply of steel has largely offset any benefit from the lower dollar.

Since the 2010-2013 period, China's finished steel exports have doubled to a run-rate this year of over 100 million tonnes per annum – an increase equivalent to the output of 20 Port Kembla steelworks.

With steel demand having peaked in China, but steel production and exports continuing to grow, steel prices and spreads have fallen dramatically (spread is the difference between the selling price of steel and the cost of the raw materials to make that steel, and it is out of the spread that conversion costs and overheads have to be paid).

In fact, indicative Asian hot rolled coil spreads are currently down one third from the five year average to June 2014. In other words, steel spreads are now materially lower than they were during the depths of the global financial crisis.

Unfortunately, there is little sign that the glut of steel will disappear soon.

In fact, rather than close excess or unprofitable capacity, the Chinese authorities have indicated they intend to increase their steel exports. In May and June this year, China's Commerce Ministry commented that: *"... it's quite normal for Chinese steel exports to these countries to be rising, and it's quite justifiable."*

And in July, China's Ministry of Industry and Information Technology (MIIT) said: *"... the win-win solution is to push out our superior production capacity to the world."*

Despite more than two decades of economic liberalisation in China, its steel industry remains majority state-owned.

China's steel industry is also extensively subsidised, as was proven in a recent anti-dumping and countervailing investigation by Australia's Anti-Dumping Commission. This investigation

found some 42 separate subsidy programs to certain manufacturers of hot rolled plate steel in China.¹

With continuing subsidisation aiding exporters, China's steel industry has the ability to increase its steel exports, even though many of the plants manufacturing these exports are chronically unprofitable. According to analysis by Reuters, in the first six months of 2014 subsidies accounted for 80 per cent of the profits of Chinese steel mills, and even then the average profit margin in the sector was just 0.3 per cent.²

In the face of this trading environment, Australia must ensure it has a robust and effective, well-resourced anti-dumping system that provides relief to Australian industry in a timely manner.

¹ *Anti-Dumping Commission, Report No. 198, 16 September 2013*

² *'Steel industry on subsidy life support as China economy slows', Reuters online, 18 September 2014*

4 BlueScope historic and current Australian trade actions

Prior to 2012, BlueScope had only lodged two anti-dumping applications; one in 2000 for Tinplate steel products, and one in 2003 for Plate steel products; with both applications resulting in anti-dumping measures.

Since 2012, BlueScope has lodged six applications for dumping and/or countervailing duties. A further application was made in respect of the circumvention of measures via minor modification (under the Part 5A provisions of the *Customs Act*). In the four cases that have been finalised to date anti-dumping and/or countervailing measures apply. Currently one case is with the Anti-Dumping Review Panel (“ADRP”), while a further two are at the pre-Statement of Essential Facts (“SEF”) stage (including the anti-circumvention inquiry).

BlueScope therefore has considerable recent involvement with the anti-dumping system, including pre and post recently introduced legislative changes.

2000 Tin Plated Steel Dumping Application

In March 2000, BlueScope lodged an application for dumping duties in relation to the dumping of tinplate exported to Australia from Taiwan and the United Kingdom.

In July 2000, BlueScope formally withdrew that part of its application relating to exports of tinplate from the United Kingdom.

Customs recommended that dumping duty notices be published in respect of the goods exported from Taiwan. Subsequent to the Report, the Minister accepted a price undertaking by Ton Yi Industrial Corporation from Taiwan, which became effective on 10 January 2001.

The price undertaking on exports of tinplate by Ton Yi Industrial Corporation expired on 10 January 2006.

2003 Plate Steel Dumping Application

BlueScope lodged an application for dumping duties in 2003 in relation to the dumping of plate steel exported to Australia from China, Indonesia, Japan and Korea.

Customs recommended that dumping duty notices be published in respect of the goods exported from China, Indonesia, Japan and Korea, with exceptions in respect of Dongkuk Steel Mill Co., Ltd of Korea and PT Gunung Rajapaksi and PT Gunawan Dianjaya Steel of Indonesia. Anti-dumping measures relating to this application expired on 2 April 2009.

2012 Hot Rolled Coil (HRC) Application

BlueScope lodged an application for dumping duties in May 2012 in relation to the dumping of HRC steel exported to Australia from Japan, Korea, Taiwan and Malaysia.

Customs recommended that dumping duty notices be published in respect of the goods exported from all exporters in all countries with the exception of pickled and oiled HRC ex Japan.

2012 Galvanised steel Application

BlueScope lodged an application for dumping duties in August 2012 in relation to the dumping of galvanised steel exported to Australia from Korea and Taiwan and, in October 2012, for dumping and countervailing duties in relation to exports from China.

The then Australian Customs and Border Protection Service (“the ACBPS”) recommended dumping duty notices be published in respect of the goods exported from Korea and Taiwan and dumping and countervailing duties for goods exported from China.

2012 Aluminium zinc coated steel Application

BlueScope lodged an application for dumping duties in August 2012 in relation to the dumping of aluminium zinc coated steel exported to Australia from Korea and Taiwan and, in October 2012, for dumping and countervailing duties in relation to exports from China.

The ACBPS recommended that dumping duty notices be published in respect of the goods from Korea and dumping and countervailing duties for goods from China. No measures were applied for exports from Taiwan.

2012 Plate steel Application

BlueScope lodged an application for dumping duties in December 2012 in relation to the dumping of plate steel exported to Australia from Japan, Indonesia, Korea, and Taiwan and for dumping and countervailing duties in relation to exports from China.

Customs recommended that dumping duty notices be published in respect of the goods from Japan, Indonesia, Korea (with the exception of Hyundai Steel and Posco) and dumping and countervailing duties for goods from China.

2014 Galvanised steel Application

BlueScope lodged an application for dumping duties in May 2014 in relation to the dumping of galvanised steel exported to Australia from India and Vietnam. The Anti-Dumping Commission ("the Commission") recommended in June 2015 that dumping duty notices not be published in respect of the goods from India and Vietnam. BlueScope has successfully lodged an appeal to the ADRP with a decision pending.

2014 Plate steel Application

BlueScope lodged an application for dumping duties in February 2015 in relation to the dumping of plate steel exported to Australia from Korea and Taiwan. This investigation is still underway with an SEF due on 12 October 2015.

2015 Anti Circumvention Application

BlueScope lodged an application for dumping duties in April 2015 in relation to the circumvention (via minor modification) of measures imposed on galvanised steel exported to Australia from China, Korea and Taiwan. This investigation is still underway with an SEF due on 5 November 2015.

5 BlueScope's contribution to the Productivity Commission's Research Paper

BlueScope is a stakeholder in an effective Anti-Dumping System. BlueScope Steel draws on its recent involvement in the above-identified anti-dumping inquiries to comment on the key topics identified by the Productivity Commission for its research paper.

Trends in anti-dumping activity, and drivers of this activity

BlueScope Steel is the sole Australian manufacturer of flat-steel products to the Australian market. BlueScope Steel produces steel slab and steel plate at its Port Kembla, NSW operations from raw material iron ore and coking coal sourced in Australia. The steel plate is manufactured into hot rolled coil and cold rolled coil, key inputs into flat coated steel products manufactured also by BlueScope Steel at sites in NSW and Western Port, Victoria.

The recent oversupply of steel products in the South East Asian region contributed to the closure of BlueScope's blast furnace at Port Kembla in 2011. The contraction in domestic demand in key steel-making countries in the region including China, Korea, Japan, Taiwan, Malaysia and Indonesia contributed to an escalation in export volumes often at prices below domestic selling prices, including to destinations such as Australia.

Australia has not been immune to the economic slowdown. The contraction in demand in Australia increased the appetite for importers to seek-out the cheap supply of raw material steel products (including hot rolled plate steel, hot rolled coil, galvanised zinc coated steel, aluminium zinc coated steel). BlueScope encountered increased import competition from dumped and/or subsidised goods, contributing to the deterioration in BlueScope's profitability.

The increased import competition at dumped and subsidised prices triggered BlueScope's initial application for anti-dumping measures on hot rolled coil in 2012. The imposition of anti-dumping measures against all exporters in the five countries in 2013 has successfully halted the injurious imports. Domestic demand – in Australia and in the home markets of the exporting countries – has not improved and there remains an ongoing requirement for effective measures to remove the injurious impact of the dumping. The circumstances applicable to hot

rolled coil apply equally to BlueScope Steel's remaining three products also the subject of measures.

BlueScope has also experienced the emergence of new exporters that fill the supply position following the imposition of measures. Instances of 'country hopping' whereby importers seek out new sources of supply have contributed to sustained periods of injury. In galvanised zinc coated steel, imports from Indian and Vietnam emerged immediately following the imposition of measures on exports from China, Korea and Taiwan. Relief from the country hopping activities of importers and exporters is subject to the same procedural arrangements as a new investigation.

In the galvanised zinc coated steel inquiry (No. 249), the ADC's inquiry was completed more than a year after it was commenced – falling well short of BlueScope's expectations that country hopping activities would be addressed in a timely manner in order to minimise ongoing material injury to the Australian industry. Current anti-dumping procedures are ineffective in quickly addressing the emergence of dumping by new exporters in order to ensure the continuing effectiveness of the original measures.

With the slowdown in the Chinese economy it is anticipated that the Australian market will continue to be an attractive destination for exporters in the region. This is despite devaluation in the Australian currency. Low economic growth in the region, combined with regional oversupply, has contributed to increased exporter activity in markets where the barriers to entry are low (such as Australia).

The expected relief from a low dollar has not delivered a slow-down in exporter activity. Nor is it expected. Confronted with import offers for marginally-costed goods, Australian manufacturers rely upon an effective anti-dumping system that can address the injurious prices swiftly. Delays in accessing measures create ongoing uncertainty for the Australian industry and its customers, as the periods of injury from the dumping extend to the medium-term (i.e. greater than 12-18 months).

BlueScope does not anticipate a decline in new anti-dumping cases in the short to medium term. Following the imposition of initial measures, BlueScope anticipates importers will seek

out new sources of supply that will contribute to a recurrence of material injury already experienced.

The particular role that recent changes to the anti-dumping system may have played in this context

Establishment of ADC

BlueScope Steel welcomed the Federal Government's establishment of the Anti-Dumping Commission and its bolstering of the resources of the newly-formed agency. Following the decision to establish the ADC a number of other changes to the operation of the anti-dumping system were introduced. BlueScope provides the following comments on the identified reforms.

Streamlining Policy Amendments to Customs Act – Tranche 1

(i) Minister to make decision within 30 days

BlueScope recognises this legislative change as an improvement to streamline the approval process. The changes removed the uncertainty associated with long delays in securing Ministerial approval to recommendations from the administering agency.

(ii) Expanding material injury considerations

In most investigations, injury is examined in the context of volume and price injury. The amendments provide clarification that "other injury indicators" including employment levels, the level of wages, capital investment in the industry, return on investment and the ability to raise capital are also import considerations in an injury context. These clarifications are supported by BlueScope.

(iii) Full range of actionable subsidies

Australia's anti-dumping laws did not reflect the changes in the Agreement on Subsidies and Countervailing Measures ("ASCM") and the agriculture subsidies becoming actionable in 1999 and 2004 respectively. Specifically, the changes include as actionable subsidies research activities by firms and research enterprises, assistance for disadvantaged regions for regional development, assistance to firms to adapt to new environmental requirements, and certain assistance for a range of agricultural activities. It is appropriate that these programs are included as actionable within Australia's anti-dumping laws.

(iv) Expanding the 'interested parties' definition

The definition of 'interested parties' has been extended to include industry associations, trade unions, and downstream industry members. Whilst it is unlikely that these changes will enable the identified organisations to make an application for goods that they do not manufacture, the parties may be considered to have an association and ongoing interest with the investigation into the subject exports. BlueScope Steel welcomes the extension of the definition of interested parties to include the identified parties.

Streamlining Policy Amendments to Customs Act – Tranche 2

The Tranche 2 amendments to the anti-dumping system included the establishment of a new appeals process, establishment of the International Trade Remedies Forum and introduced flexibility associated with timeframe extensions.

(i) New Appeals process

The Anti-Dumping Review Panel ("ADRP") replaced the former Trade Measures Review Officer. The ADRP comprises a senior member and two panel members. BlueScope's experience with the ADRP has been limited. It is noted that there is a secretariat within the Department of Industry, Innovation and Science that assists the ADRP members.

The review process followed by the ADRP is similar to that under the TMRO. The ADRP is limited to reviewing the information before the ADC (and the Minister), with no new information to be considered. In its appeal in the galvanised steel case, BlueScope had reservations concerning the level of understanding of the panel member regarding certain aspects of the investigation, including technical assessments of like goods and appropriate cost allocations in normal value inquiries. BlueScope notes that further changes to the review process are pending including the introduction of 'conferencing' provisions for the Review Panel and interested parties. BlueScope Steel welcomes these initiatives.

(ii) International Trade Remedies Forum

BlueScope is a member of the International Trade Remedies Forum ("ITRF"). Following a hiatus, the ITRF has recently reconvened. It is unclear at this stage whether the ITRF can continue to operate in a single forum to review policy and operations matters associated with

the anti-dumping system or, whether it is more appropriate for working groups to be formed to examine specific issues.

BlueScope considers that an issue for further policy development by the ITRF or its successor(s) involves the market situation guidelines.

(iii) Extensions of time

Following the introduction of the Tranche 2 legislative changes, extensions of time in investigations has become the operative 'norm' rather than the exception. In some cases, extensions have been granted on three separate occasions during the conduct of an investigation.

In the recent galvanised zinc coated steel investigation involving exports from India and Vietnam (Investigation No. 249), timeframe extensions were granted on 29 October 2014 (ADN No. 2014/ 117), on 18 March 2015 (ADN 2015/37), and on 11 May 2015 (ADN No. 2015/60). The investigation ran for 385 days (from 11 July 2014 to 31 July 2015) and was eventually terminated by the Commission.

BlueScope Steel is aware that in Investigation No. 254, involving hollow structural sections exported from Thailand, three timeframe extensions were also granted. The investigation commenced on 21 July 2014 with the report forwarded to the Parliamentary Secretary on 13 July 2015.

Other cases involving at least three timeframe extensions include Hot Rolled Structural Sections (No. 223), Quenched and Tempered Steel Plate (No. 234), Silicon Metal (No. 237), and Rod In Coils (No. 240).

Timeframe extensions occur due to (but not limited to) one or more of the following:

- the number of countries included in an inquiry;
- the number of exporters willing to cooperate;
- extensions granted to exporters to complete exporter questionnaire responses ("EQRs");

- delays in timing for exporter verification visits; and
- the completion of verification reports (including achieving agreement on appropriate public file forms of reports).

It is BlueScope's view that the time limits for completed questionnaires and submissions should be strictly adhered to. This is the expectation for Australian industry in making an application for measures. Only in exceptional circumstances should deadline extensions to statutory deadlines be approved. In respect of the ADC seeking a timeframe extension to publish an SEF or complete a report to the Minister, a single timeframe extension of a maximum 30 days should be permitted if agreed to by the applicant. Only in exceptional circumstances should more than a single timeframe extension exceeding 30 days be approved.

The regularity at which timeframe extensions have been approved since the introduction of the Tranche 2 changes (with effect from 10 June 2013) is disappointing and extends the period of uncertainty associated with an investigation outcome. BlueScope urges reform via the tightening of the approval process for investigation timeframe extensions.

Streamline Policy Amendments to Customs Act and Customs Tariff (Anti-Dumping) Act – Tranche 3

The Tranche 3 amendments contained four principal areas of reform.

(i) Changes that amend the subsidies provisions

This subsidy provision aligned the Customs Act with the "all facts available" provisions when determining normal values. BlueScope has not been involved with a subsidy inquiry following the change to the subsidy provisions so cannot comment on its effect. It would appear that the change is warranted.

(ii) Amendment of the level of measures in continuation investigations

Historically, the ACBPS has been required to commence a review investigation in parallel with a continuation investigation to permit contemporaneous variable factors to apply should the measures be extended. This change in the Minister's ability to vary the variable factors at the time of the continuation inquiry overcomes the need for a separate review of measures inquiry.

BlueScope is supportive of initiatives that minimize the red tape associated with unnecessary administrative imposts.

(iii) Repeal of s.269TAC(13) of the Customs Act

BlueScope supports the removal of the s. 269TAC(13) provision that allowed for normal values to be determined under s.269TAC(2)(c) without the inclusion of a level of profit. The exclusion of a level of profit is contrary to commercial reality and afforded exporters a competitive advantage via a reduced normal value outcome.

BlueScope considers further reform is required in applying an appropriate level of profit in normal value determinations under s.269TAC(2)(c) so that the level applied is commensurate with ongoing re-investment in the industry.

Ultra low profit margins cannot continue on an ongoing basis as they are unsustainable and do not permit for re-investment in the current assets or in replacement manufacturing assets.

(iv) Different forms of measures

The Tranche 3 amendments included changes to the Regulations which allow the Minister to impose different forms of measures, including:

- combination of fixed and variable duty method;
- floor price duty method;
- fixed duty method; or
- *ad valorem* duty method.

BlueScope Steel has observed that following the introduction of the broader options for the form of measures to be imposed by the Minister, the ADC has detailed a preference for recommending measures based upon the *ad valorem* methodology. The ADC has indicated that this form of measure is the “easiest” form of measure to administer and is a common form of measure in other jurisdictions.

A recommendation concerning a particular form of measure to apply should not be based upon how easy it is to administer or justified on grounds that it is used predominantly by other administrations. It is submitted that the form of measure to apply should be tailored to ensuring material injury does not reoccur. It would seem that ad valorem measures can be readily evaded by the exporter further reducing export prices to also reduce the level of measure to be paid. When there is a short-payment of IDD or ICD at the time of importation (by the exporter reducing the export price when there is no equivalent reduction in normal value), there is no redress for the ADC to call up the short paid duties. However, if the combination form of measure is applied – the preferred form as recommended by the recent House of Representatives Agriculture and Industry Committee on Anti-Circumvention Activities – there is an opportunity for the importer to seek a refund of any duties overpaid via the duty assessment process.

Anti-dumping measures based upon the *ad valorem* methodology are prone to circumvention (via reductions in export prices, including in a rising market so that the exporter may secure a market advantage) and do not adequately address the injury to the Australian industry that the measures were intended to address. In respect of the use of ad valorem measures by other administrations, BlueScope highlights that the level of dumping and subsidisation determined by other administrations is typically of a far greater magnitude than the margins determined in Australia. Where large margins are established, the *ad valorem* measure is difficult to evade as the percentage cannot be reduced. However, with smaller margins (i.e. particularly, low single digit margins) there is an incentive to reduce the duty liability further to avoid the IDD amount payable.

BlueScope endorses the recommendation of the House of Representatives Agriculture and Industry Committee that the combination form of measure become the default method in all investigations.

Streamlining Policy Amendments to Customs Act – Tranche 4

The Tranche 4 amendments include four further broad categories of changes.

- (i) *Amendments to the subsidy provisions including the definition of a subsidy*

The amendments include amending the definition that includes whether a financial contribution or income or price support confers a benefit. The changes also permit the Commissioner to include in an investigation a countervailable subsidy that was not included in the application.

As indicated, BlueScope has not been involved in a subsidy inquiry following the introduction of the recent changes to the subsidy provisions and is therefore unable to comment on the adequacy of the changes.

(ii) Anti-circumvention inquiries

New anti-circumvention provisions were introduced within Part 5A of the Customs Act. BlueScope welcomes the new provisions. Following representations to the ADC (including from BlueScope) further provisions were introduced into the Regulations to address “slightly modified” goods the subject of measures. BlueScope welcomes the new Regulation which applied for applications received after 1 April 2015.

(iii) Provisions for non-cooperative exporters

The provisions afford clarity to the different categories of exporter – cooperative, uncooperative and residual exporters. Additionally, there is an amendment to permit the minister to apply different export prices and normal values for the different categories of exporters.

It is also noted that the changes include amendments to the sampling provisions used in relation to dumping and countervailing notices, and for investigations, reviews and continuation inquiries.

The changes to the different categories of exporter, along with the changes to sampling techniques, have not impacted BlueScope’s recent investigations. BlueScope is unable to comment on these changes as they relate to the different categories of exporters and sampling techniques.

(iv) Other amendments

Changes here include refining the definition of interested parties, and other minor amendments. BlueScope has not been impacted by these further minor changes.

Streamlining Policy Amendments to Customs Act – Tranche 5

As indicated above, BlueScope welcomed the establishment of the Anti-Dumping Commission on 1 July 2013. The enhanced resources of the ADC will permit investigations to be undertaken and completed in a timely, professional manner. BlueScope understands that during the initial period of formation of the ADC, a significant commitment to training officials is required. It is our view that this has affected the ability of the ADC to complete investigations within the legislative timeframes; however, improvements are anticipated over the medium term.

Streamlining Policy Amendments to Customs Act – Tranche 6

These changes included three key policy initiatives aimed at improving the effectiveness of anti-dumping measures.

(i) Removal of mandatory consideration of the lesser duty rule

This reform is aimed at ensuring that the Minister can exercise discretion in applying the lesser duty rule including circumstances involving:

- small to medium enterprises that have been exposed to injurious dumping where measures may be imposed at the full margin; and
- findings where a particular market situation applies and it is appropriate to apply measures at the full margin of dumping.

BlueScope welcomed the initiative to apply the lesser duty rule on a discretionary basis.

BlueScope submits that when the ADC is considering the application of the lesser duty rule, there exists considerable debate as to an appropriate unsuppressed selling price for the applicant industry. Further reform in this area is required.

(ii) Clarification of the application of retrospective measures

It is noted that retrospective measures have not been applied in Australia's anti-dumping system in more than 20 years. Retrospective measures are available to address injurious dumping on a retrospective basis where it can be established that certain requirements of

s.269TN are met. The provision assists in ensuring the anti-dumping system is robust and effective in addressing injurious dumping.

It is BlueScope's view that this provision is rarely contemplated as the onus of proof concerning an importer's knowledge that injurious dumping has occurred is, in the ADC's view, difficult to establish. Retrospective measures should be accessible to Australian industry, in circumstances where anti-dumping measures are circumvented, as soon as the circumvention is identified.

(iii) Anti-circumvention inquiry to examine 'sales at a loss'

This is a welcomed development that provides a mechanism for Australian industry to seek an anti-circumvention inquiry where the export price is not increased in accordance with the IDD or ICD applied.

BlueScope will monitor 'sales at a loss' investigation outcomes in addressing failures by importers to increase export prices following the imposition of the measures.

How anti-dumping measures have affected individual sectors and Australia's broader economy

The increased uncertainty following the global financial crisis has led to the contraction of many overseas domestic markets. As a consequence, manufacturers have turned to export markets to off-load excess production. The steel industry in particular is the subject of significant oversupply with China the largest supplier on the export market.

With large steel producing nations (e.g. China, Korea, Japan, Taiwan) seeking to supply excess production on export markets, the Australian market with its low or zero tariffs and minimal barriers to entry, is a targeted export destination. Exporters also typically face a low risk that effective anti-dumping measures will be imposed in a timely manner.

By contrast, Australian manufacturers require access to an effective anti-dumping system where measures can be accessed in a timely manner.

The industry sectors that have been most affected include those where Chinese manufacturers hold the number one ranking as the largest global producer. These industries include steel, aluminium, glass, paper, and downstream products manufactured from these raw materials. Australian industries in these sectors are the "exposed" industries to increasing import volumes and are more likely to be active in anti-dumping investigations.

It is noted that despite anti-dumping and countervailing measures having been imposed on a range of flat steel products since 2012, the overall competition from exporting countries has remained relatively consistent as measured by the number of exporters and volume of exports.

When comparing the number of countries exporting to Australia before and after measures were imposed, there were thirty-two exporting countries post measures compared to thirty countries before the imposition of measures. (Exporting countries include those with > 500 tonnes per annum)

Where anti-dumping only measures were imposed, the exporter market share before and post the imposition of measures has also remained within a few per cent. For those products that

had both subsidy and anti-dumping measures imposed on exporters, the market share position post measures is five to eight per cent lower than before measures were levied.

This decrease in market share was due to the fact that the subsidised exports immediately exited the Australian market. Importers did not take long to find new sources of supply from which to secure import volumes to the Australian market.

Any opportunities to improve outcomes from Australia's anti-dumping system?

BlueScope's experience with the anti-dumping system since 2012 has provided it with some insight into areas for further improvement of Australia's anti-dumping system.

(i) Non-verification of exporter data

A recent emerging trend in investigations involves the non-verification of exporter data by the ADC. Following the receipt of exporter questionnaire responses ("EQR's") the ADC assesses the completeness of the EQR to establish if the exporter may be considered a 'cooperative exporter'. Once satisfied that the EQR is complete, the ADC will then risk assess the volume of exports from the cooperative exporters and decide whether to conduct verification visits with cooperative exporters.

In investigation No. 249, the ADC elected to conduct verification visits with the largest exporter of galvanised zinc coated steel from each of India and Vietnam. In respect of India, a further three cooperative exporters were not visited. For Vietnam, another cooperative exporter was not visited.

BlueScope understands that in Investigation No. 264 (Rebar exported from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey) the Commission elected not to visit cooperative exporters in Malaysia and Turkey based upon a risk assessment of export volumes during the investigation period. It is further understood that the export volumes from Malaysia were more than double the volume of the investigation period, with Malaysia as one of the major exporters to Australia in the earlier period.

The practice of non-verifying exporter data has become more prevalent in review inquiries, with the ADC electing not to visit exporters in recent review investigations on galvanised zinc coated steel exported from Korea, hollow structural sections ("HSS") exported from China by the exporter Tainjin Youfa, HSS exported from China by Dalian Steelforce, and aluminium road wheels ("ARWs") exported from China.

The non-verification of exporter data will cause exporters to submit inaccurate EQRs that reduce duty liabilities in a review inquiry. Where the ADC elects to conduct a verification visit,

the exporter is currently able to re-submit a revised EQR at the commencement of a verification visit. Inevitably, exporters will adopt a risk-based approach to the completion of EQRs.

BlueScope does not support the ADC's approach to the non-verification of exporter data in investigations. The integrity of data used in the determination of the variable factors is central to the effective operation of the anti-dumping system. The 'desk audit' approach followed in respect of exporter data is inconsistent with the detailed audit methodology applied to Australian industry participants and results in a non-symmetrical approach to data verification of all interested parties.

BlueScope has further observed that where exporters the subject of a non-verification visit are involved, the "Dumping Margin Calculation" Report invariably determines negative dumping margins. In Investigation No. 249, the three Indian exporters not the subject of visits were determined not to have exported at dumped prices (an inconsistent finding with exports from the largest exporter that was found to be dumping at margins of approximately 7 per cent). This non-verification of exporter data for the three Indian exporters was a factor in the termination decision in Investigation No. 249.

(ii) Model matching for fair comparison purposes

A further concern that has emerged in investigations involves the redaction from public file exporter visit reports of an exporter's domestic model numbers (often referred to as Product Control Numbers ("PCNs") in the steel industry) that identify the exporter's domestic sale grade of like goods used for fair comparison purposes with models exported to Australia during the investigation process.

In most instances, all domestic model information is identifiable on the exporter's website. However, during the conduct of the verification visit, the exporter requests the information concerning the domestic grade equivalent to remain confidential on the grounds of commercial sensitivity.

BlueScope Steel is currently involved in an investigation in the United States (US) where full disclosure of model numbers for model matching purposes is mandatory. The US Department of Commerce ("USDOC") requires exporters to provide full disclosure on domestic sales model

numbers (or PCNs) during the initial stages of an investigation. The USDOC requires the US domestic industry to examine for like goods purposes the grades that will be asserted by the exporter as being alike for the purposes of the investigation.

Thus the US domestic industry is afforded the opportunity to affirm or reject the nominated models used for fair comparison purposes in an anti-dumping investigation. Under the US system, the exporter's domestic grades of like goods are detailed in full to the US applicant industry prior to the conduct of a formal verification visit with the exporter.

The current approach to model matching followed by the ADC denies the applicant Australian industry natural justice in ensuring that the models (i.e. PCNs) technical specifications align with those of the goods exported to Australia and may be considered alike in all respects.

BlueScope views the current approach to model matching by the Commission as deficient and flawed in that the Australian industry is not afforded any opportunity to rigorously examine whether the claimed domestic sales of like goods by the exporter are in fact comparable (and alike) with the goods exported to Australia by the exporter during the investigation period.

BlueScope submits that reform of the current model matching process and methodology is required for future investigations. It is BlueScope's view that the current practice of allowing exporters to rely upon claims of confidentiality that allow for the redaction of the identification of domestic grades in investigations is contributing to findings of negative dumping margins for exporters. BlueScope is seeking change to the model matching process so that domestic grades (i.e. PCNs) are fully disclosed on a non-confidential basis prior to the conduct of a verification visit.

(iii) Profit in s.269TAC(2)(c) constructed normal values

The level of profit applied in s.269TAC(2)(c) investigations is a continuing issue for applicant industries in anti-dumping investigations. Present practice requires the normal value for an exporter to be determined under s.269TAC(2)(c) where there are insufficient domestic sales in the ordinary course of trade by the exporter under s.269TAC(1).

Where this is the case (and normal values are determined in accordance with s.269TAC(2)(c)

the Commission will examine what remaining domestic sales (i.e. those that fall under the 5 per cent threshold) have been made by the exporter and at what level of profit the sales have been made. This level of profit is then applied to the constructed normal value determined in accordance with s.269TAC(2)(c).

It is BlueScope's assessment that the level of profit applied in these circumstances is often minimal – i.e. at barely recoverable rates of slightly above zero, or one or two per cent). The application of ultra-low levels of profit in constructed normal value findings results in outcomes where measures applied on this basis continue to cause injury to the Australian industry. Ultra low profit margins cannot continue on an ongoing basis as they are unsustainable and do not permit for re-investment in the current assets or in replacement manufacturing assets.

BlueScope is seeking reform to the ADC's current approach to determining a level of profit in constructed normal value investigations. The level of profit to be included should reflect a minimum percentage that allows for re-investment in the industry and will therefore vary from industry to industry and be assessed on a case-by-case basis.

BlueScope's comments regarding a public interest test

BlueScope understands that the Productivity Commission is again assessing grounds for a public interest test. It is noted that the Federal Government elected not to adopt the Productivity Commission's Recommendation No. 6.1, proposing the introduction of a "bounded" public interest test.

BlueScope does not consider that the Federal Government's position on this issue has altered since the consideration of the Productivity Commission's Inquiry Report No.48 in early 2010.

It is BlueScope's view that the interests of downstream users and customers are adequately addressed in the current assessment and application of the lesser duty rule that ensures measures are only applied at a level sufficient to remove the injury from dumping (and/or subsidisation).

Unlike investigation outcomes in other jurisdictions, Australia considers the application of the lesser duty rule in all investigations. It is only recently that limited circumstances may be contemplated where the lesser duty rule is not considered (and has not been used in an investigation to date).

Currently, the lesser duty rule operates as an effective public interest provision that limits measures to levels sufficient to remove the injury from dumping and/or subsidisation. It is a non-discriminatory and transparent method of balancing the affected domestic industry against broader economic impacts and has the added benefit of being an existing process within the anti-dumping framework that does not impose any further costs with process transparency.

- Ends -