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POSCO Maharashtra Pvt Ltd

Antidumping investigation into galvanised zinc coated steel exported from India and Vietnam

Alleged material injury to the Australian galvanised steel industry, and its causation

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A Introduction

On 11 July 2014, the Anti-Dumping Commission ("ADC") published Anti-Dumping Notice No 2014/55 ("ADN 2014/55"), which officially initiated a dumping investigation into zinc coated (galvanised) steel exported from India and Vietnam.

ADN 2014/55 explained that the Australian industry, BlueScope Steel Limited ("the Applicant"), had alleged in its application ("the Application") that zinc coated (galvanised) steel had been imported at dumped prices and that this had caused the Australian industry material injury through:

- price suppression;
- reduced profit and profitability;
- reduced return on investment;
- reduced employment numbers; and
- reduced ability to raise capital for re-investment.

POSCO Maharashtra Steel Pvt Ltd ("P-Maharashtra") maintains that exports of galvanised steel from India and Vietnam cannot have caused material injury to the Australian industry. P-Maharashtra supports the cogent and compelling submissions made by other interested parties (for instance, the Australian Steel Association and Essar Steel). BlueScope has presented insufficient evidence to establish a case for material injury, which is understandable in that the evidence to establish that proposition just does not exist.

The case that BlueScope has presented to the ADC (indeed, the case that any applicant presents to the ADC) is up to BlueScope to define. If, in its definition, it fails to meet the standards required to justify the imposition of dumping duties, then it must fail in that objective. Imposing dumping measures is not an exercise of broad discretion based on notions of protection and domestic industry favouritism. An anti-dumping investigation is a clearly defined exercise based on rules. If the rules are not observed, then there may as well not be an anti-dumping system. It is not the job of the ADC to either redefine the Australian industry's claim – whether in time or substance – or to recast its ideas of what constitutes material injury so that the limits that a normal competitive market places on prices and profits are ignored.

In setting a point for injury analysis, BlueScope has purposely chosen to measure data from 1 July 2008. That was six years ago. At that time, as acknowledged by BlueScope – the price of steel was at an all-time high. However, following the global financial crisis that occurred in the next year, the steel market has dropped considerably.

Dumping duties were imposed on galvanised steel from a great many exporters on 5 August 2013. The security regime that preceded this commenced on 6 February 2013. These measures - *and the fact that major exporters were excluded from those duties* - have had substantial implications for the market. Imports have remained in the market, at levels recently demonstrated not to be dumped. Their volume has decreased dramatically, and price levels have evidently improved. BlueScope's market share has continued to increase, even surpassing 2008 levels.

It appears that imports from India and Vietnam during the investigation period only partially replaced the dwindling supply of exports from other countries. Imports from India and Vietnam have been in small proportions, and within price levels established by competition between imports (recently proven *not to be dumped*) and BlueScope. BlueScope would have you believe that competitively priced imports from India and Vietnam should not be permitted, in that they represent some planned strategy to cause injury. This is irrational. The fact that certain market players have sought out new supply options in light of the restrictions placed on the countries subject to the existing measures is normal, explicable and acceptable market behaviour.

Additionally, BlueScope continues to rely on its so-called Import Parity Pricing Policy ("IPP") to price its goods, ie it claims to set its prices based on price information for equivalent imported products. We explain in more detail below the implications of this, however for now we wish to point out that:

- pricing according to an IPP is a commercial choice of BlueScope's, and is not an imperative of all markets all the time;
- in so far as imports from India and Vietnam are being imported in the price bands established by the great majority of other imports, they are indistinguishable in their effect from those other imports, being imports that must be considered to be non-dumped.

In this submission we also point out that BlueScope's Colorbond brand products are highly profitable. The ADC should be alive to the probability that this provides an internal cross subsidy for it to force market prices down in other closely related product areas in which it wants to win market share. The

ADC should also pay heed to the need to take a wider view of the relevant domestic industry in making its injury assessment.

Without detracting from the primary position of P-Maharashtra - *which is that it has not exported galvanised steel to Australia at dumped prices* – it is strongly submitted that the exportation of galvanised steel by P-Maharashtra has not caused material injury to the Australian industry.

B Requirements of a material injury determination

Dumping is a form of price differentiation between two markets. It is not prohibited under international agreements. There is nothing illegal about selling low priced goods into the markets of a WTO member. In an economic sense, the supply of low priced inputs is usually of great benefit to the economy of the importing country. It is only when dumped goods are found to have caused material injury to the domestic industry of an importing country that a WTO Member may impose dumping duties on their future importation.

The requirement that dumping needs to have caused material injury before measures may be applied is reflected in Article VI of the *General Agreement on Tariffs and Trade 1994* ("GATT"), as implemented by Australia in Section 269TG of the *Customs Act* 1901 ("the Act"). That Section requires that before a dumping notice can be imposed it must be established that exports of the goods under consideration have been dumped and, because of that:

> *material injury to an Australian industry producing like goods has been caused, or is being caused or threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered*

Material injury is a fundamental condition precedent to the imposition of dumping measures on any given product. Article 3.1 of the Anti-Dumping Agreement requires that the determination of injury be based on positive evidence and involve an objective examination of the volume and price effects that constitute injury. Article 3.4 of the ADA provides a non-exhaustive list of factors that must as a minimum be taken into account. These are included at section 269TAE:

> *(a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and*
>
> *(b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and*
>
> *(c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:*

(i) for which there are sales or forward orders; or

(ii) which are held as stocks; and

(d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and

(e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and

(f) the level of return on investment in the industry; and

(g) cash flow in the industry; and

(h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and

(ha) the terms and conditions of employment (including the number of hours worked) of persons employed in the industry in relation to the production or manufacture of goods of that kind, or like goods; and

(j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and

(k) the ability of persons engaged in the industry, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and

(m) investment in the industry.

Further, under Section 269TAE(2A), in considering whether injury to an industry is being caused or threated by a factor other than the exportation of goods, the Minister must consider factors such as:

(a) the volume and prices of imported like goods that are not dumped; or

(b) the volume and prices of importations of like goods that are not subsidised; or

(c) contractions in demand or changes in patterns of consumption; or

(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or

(e) developments in technology; or

(f) the export performance and productivity of the Australian industry;

Importantly, any injury or hindrance arising from non-dumping factors must not be attributed to the exportation of the dumped goods.

Any claim for material injury cannot be asserted simply because there is competition in a market place. Competition is and should be present in any market place. A finding of dumping does not automatically equate to an inference of material injury. The ADC is tasked to answer the question of whether dumping duty can be imposed. Considerations of cause and degree of injury are integral parts of the inquiry, and cannot be assumed. The assessment of injury must be made in a realistic and robust way, which accepts the reality of competition as a normal aspect of commercial activity, and which is unaffected by considerations of industry assistance and protection.

C Failure to evidence material injury

In Trade Measures Report No 190, the ADC found that dumping had occurred in respect of galvanised steel imports from certain exporters in China, Korea and Taiwan. Excluded from the dumping measures were galvanised steel and aluminium zinc coated steel from Union Steel of Korea, galvanised steel and aluminium zinc coated steel from Shengyu Co Ltd of Taiwan and galvanised steel from Ta Fong Steel Co Ltd of Taiwan. Countervailing duties were also imposed against certain Chinese companies. Now - 12 months since those dumping and countervailing duties were imposed - BlueScope is back again, requesting dumping duties against galvanised steel from India and Vietnam.

There are major shortcomings in BlueScope's current claim that it has suffered material injury, whether from allegedly dumped imports or otherwise. The evidence produced by BlueScope to purportedly demonstrate injury simply does not achieve that objective.

We note that even the ADC has decided that BlueScope's injury claim has not withstood initial scrutiny. Initially, BlueScope claimed the following injury factors:

- price suppression
- reduced profit and profitability;
- reduced return on investment.
- reduced ability to raise capital for re-investment; and
- reduced employment numbers.

However, following the ADC's verification visit to BlueScope, the list of potential injury factors that the ADC said it would continue to investigate has been reduced to the following:

> *Based on an analysis of the information contained in the application and obtained and verified during the verification visit, the Commission considers that the Australian industry has experienced injury in the form of:*
>
> - *price suppression;*
> - *reduced profit and profitability; and*
> - *reduced return on investment.*
>
> *At this time, the Commission is unable to find any evidence to suggest that the Australian industry has experienced injury in the form of reduced employment numbers and reduced ability to raise capital for re-investment.*

Section 269TAE contains a long list of injury factors to be considered by the ADC in determining whether material injury is present in any given case. Given that only three claims now remain, the credibility of the original claim and the substance of the overall claim must both be seriously questioned.

In order to adequately assess the materiality of injury, an overarching review of injury factors must be undertaken.

D No increase in imports overall

BlueScope has claimed there has been an increase in imports of galvanised steel from India and Vietnam which has contributed to injury to the Australian industry.

1 Market share

BlueScope claims that at the time of the first investigation, exports from India and Vietnam were at negligible levels, with the former at 890 tonnes and the latter at 175 tonnes out of the total exports to Australia of 254,274 tonnes.[1] It is further claimed that following the commencement of the original investigation, exports from India increased to approximately 17%, and Vietnam to approximately 7%, of the total imports of galvanised steel into Australia.[2]

An analysis of BlueScope's market share indicates that these imports are not causing any volume injury to the Australian Industry. Rather, it appears they are simply replacing a small proportion of the other

1 Application, page 22.

2 *Ibid.* page 33.

imports, which themselves are much less than they were before. Looking at Figure 6 of the Consideration Report (set out below), it can be seen that BlueScope's market share has increased in the FY2014 period, to levels which even exceed BlueScope's opportunistic injury period "start-point" of FY2009.

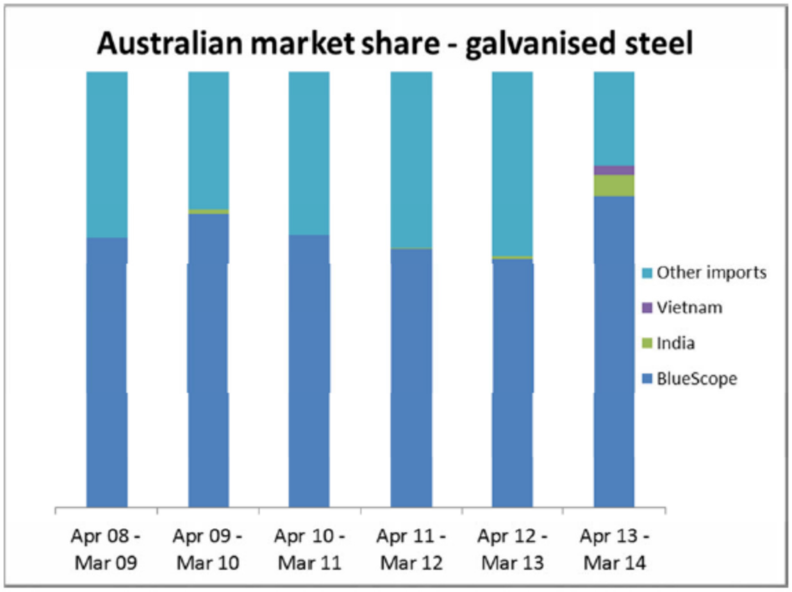

Figure 6: Australian market share based on ISSB, ABS and BlueScope sales data

It is clear that exports from Vietnam and India have only replaced part of the shrinking percentage of exports from other countries.

In its submission of 22 September 2014, BlueScope claims that:

> *…coinciding with the imposition of the measures by the Minister, exports of the GUC emerged from India and Vietnam… [and] the sales volume that was recovered by the Australian industry did not materialise in improved aggregate profits.*

The failure of improved aggregate profits to materialise does not evidence material injury. It just evidences that BlueScope wants more profit.

In the Australian industry verification report, the ADC has estimated the size of the Australian market for galvanised steel at above 750,000 tonnes in FY2014. Referring to Figure 5 (set out below), the ADC noted that the Australian market size for galvanised steel has increased by around 10% since FY 2012.[3]

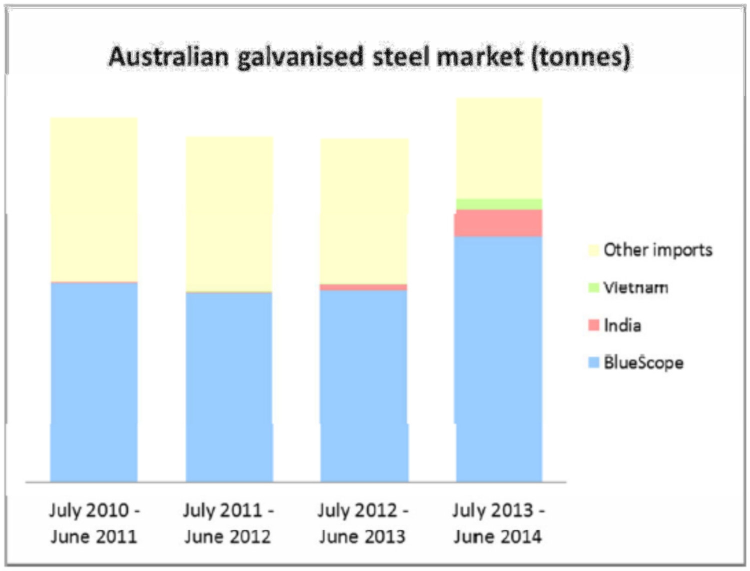

Figure 5 – Australian market for galvanised steel based on ACBPS and BlueScope sales data

It is clear that BlueScope has substantially increased its market share during the period of investigation. Further, the graph illustrates that India and Vietnam only hold a very small proportion of the galvanised steel market.

BlueScope has claimed that imports from Vietnam and India have increased when imports from other countries have decreased:

> *…galvanised steel exports from other countries (mainly Japan and New Zealand) have also declined in 2013/14. Exports of galvanised steel from India and Vietnam, therefore, have increased at a time when exports from other countries and, the market overall, have decreased.*[4]

Unless it is maintained that there should be no imports in the Australian market at all (which is possibly BlueScope's position) we fail to see the relevance, in injury terms, of an increasing market share of

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3 Australian industry verification report, p 25

4 Application, p 22.

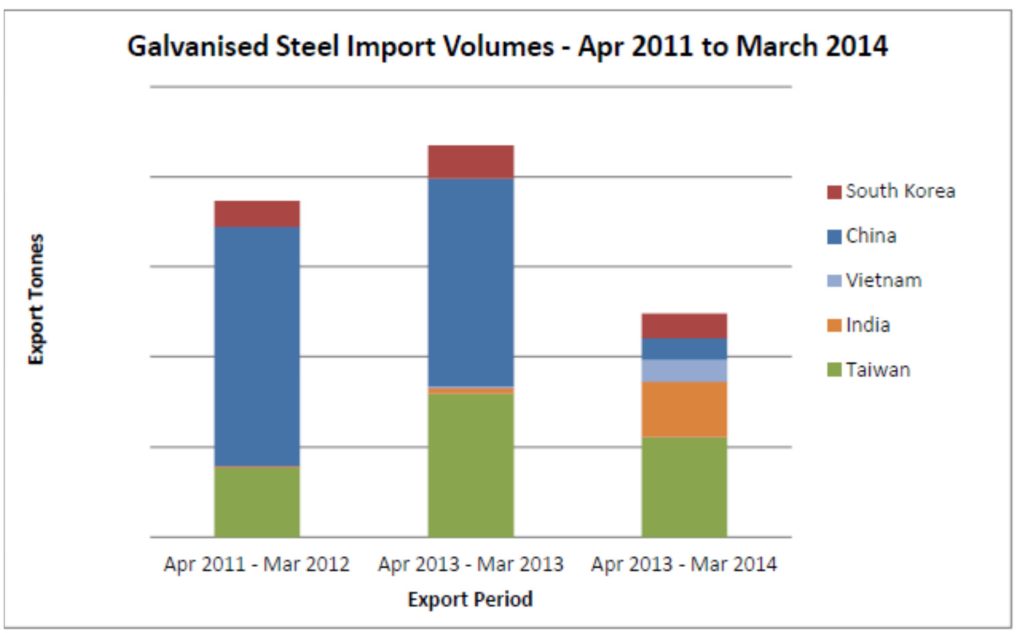
imports from India and Vietnam in the face of a dwindling market share of imports overall. Moreover, BlueScope's claim that the market overall has decreased is wrong.

In the previous investigation, three exporters (one from Korea and two from Taiwan) were excluded from the imposition of dumping duties. Further, outside Korea, Taiwan and China, there are no other countries subject to dumping duties. Accordingly, other imports are still in the market at no doubt competitive prices to those of BlueScope.

2 Imposition of PAD and dumping duties in previous investigation

As explained above, in the previous investigation the ADC found that dumping had occurred in respect of certain galvanised steel imports from China, Korea and Taiwan. The PAD came into effect from 6 February 2013 and the final report imposing final duties was released on 30 April 2013. The imposition of these duties has impacted on the pattern of exports of galvanised steel products into Australia.

BlueScope's Application also shows a dramatic decrease in galvanised steel import volumes in the period from April 2013 to March 2014, a period which includes three of the four quarters of the period under investigation.[5]



5 Period of investigation is 1 July 2013 to 30 June 2014.

This decrease in imports directly correlates with the imposition of securities at the time of the PAD in the first investigation. Again, exports from India and Vietnam are only replacing part of an even smaller pool of exports to the Australian market.

3 Volume trends

It is clear from the Australian industry verification report that BlueScope's total sales volume for galvanised steel in the Australian market has increased dramatically, and now exceeds FY2012 levels.

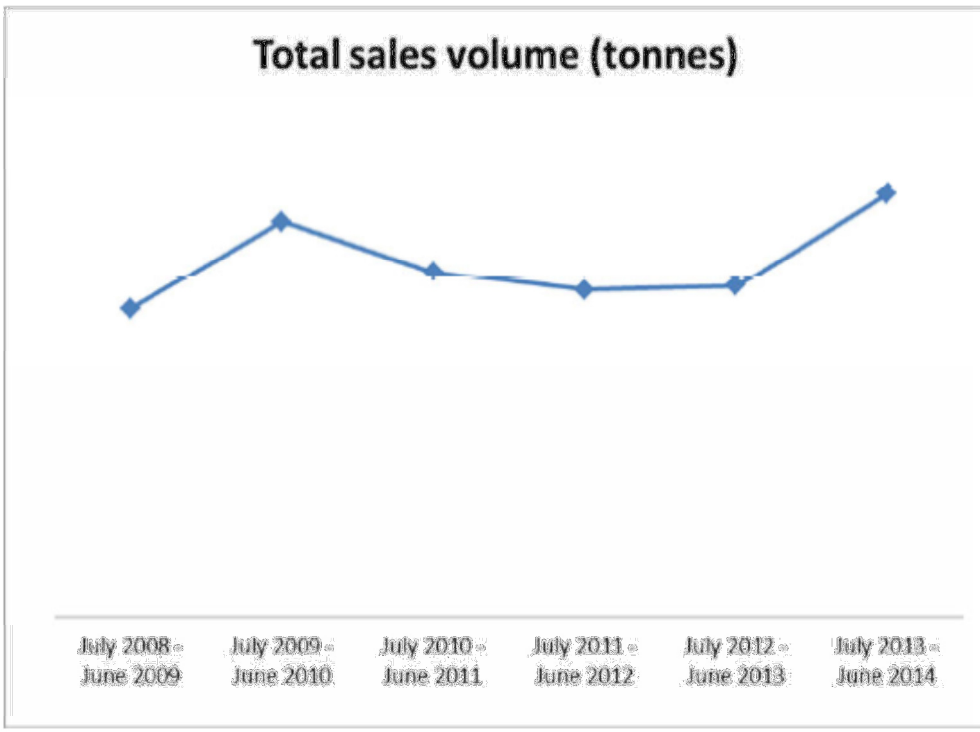


Figure 6 – domestic sales volume of galvanised steel

Even when sales volumes are split between galvanised steel equal to or greater than 600mm and galvanised steel less than 600mm, a clear picture emerges - from the time dumping duties were imposed in FY2012, BlueScope's volumes have dramatically increased.

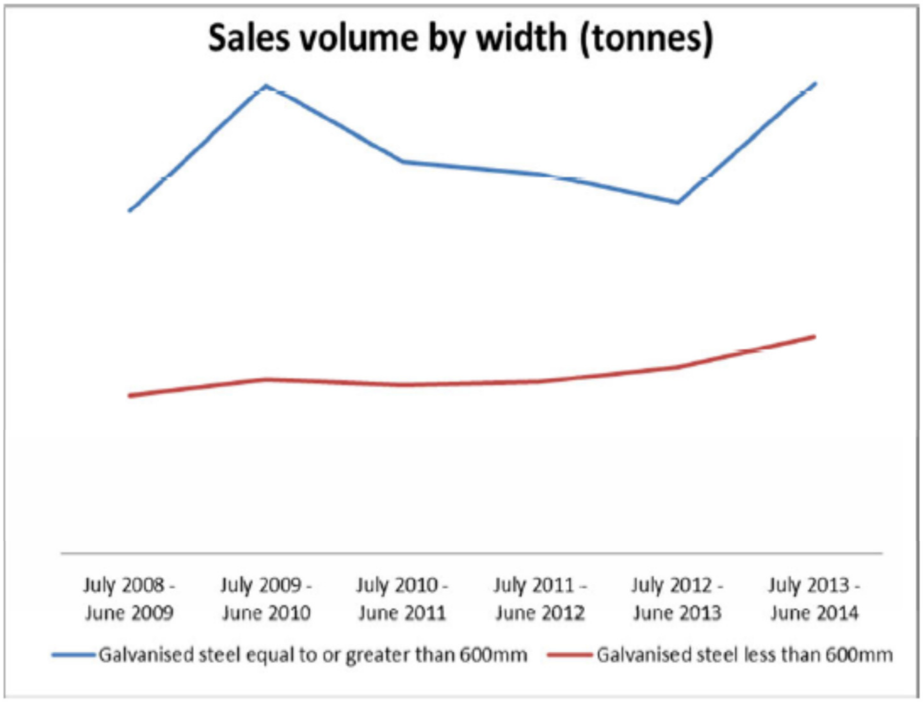


Figure 7 – domestic sales volume by width group

It is for these reasons that the ADC has quite rightly come to the conclusion that there is no evidence of injury to the Australian industry in the form of loss of sales volume or market share.

4 Changes in the Australian market

As has been raised by the Australian Steel Association in its submission dated 5 September 2014, four of the BlueScope products – ZINCANNEAL, ZINCSEAL, Hot Dip Zinc/Iron Alloy Coated Steels and Galvanneal - are used almost exclusively for the auto sector. During the POI, three of Australia's remaining automotive manufacturers - Ford, General Motors Holden and Toyota – indicated that they would be closing their operations in Australia. This announcement has and will continue to have serious repercussions for industries and upstream manufacturers.

BlueScope cannot attribute the injury it must undoubtedly have suffered as a result of the announced closure of the Australian car-making industry to allegedly dumped imports from India and Vietnam. As such, under Section 269TAE(2A), the Minister must consider this change in the pattern of consumption for what it is and not attribute the injury it has caused to imports from India and Vietnam.

5 BlueScope's choice of timeframe

BlueScope has selectively chosen 1 July 2008 as the point for injury analysis. In July 2008, the steel market was booming with steel prices at a historical high. The BlueScope 2008 Annual Report stated

> *World steel demand was strong and prices remained high during the year, which offset rising raw material costs. Our underlying profit after tax (NPAT) of $816 million represents a 27 per cent increase over 2006/07, while our strategy and domestic and international acquisitions see us well positioned for future growth.*[6]

The global financial crisis frustrated all expectations of future growth, not only those of BlueScope. The international steel industry as a whole has not recovered to the peak prices of the pre-GFC era. There continues to be uncertainty in the industry, as explained in BlueScope's most recent Annual Report:

> *The global financial crises in FY 2009 caused a reduction in worldwide demand for steel, and the subsequent recovery has been slow and uncertain.*[7]

Given BlueScope's own admissions regarding the market at that time, and its past distance, it is a questionable year from which to make any comparisons.

In order to provide a more appropriate point of comparison to assess market trends we have readjusted BlueScope's data for the purposes of considering what has happened in the period of investigation using, as the base years:

- FY2011 - the start of the three year injury assessment period as recommended by WTO authority;[8] and
- FY2013 – being the first year prior to the increase in quantities from India and Vietnam that forms the subject of BlueScope's complaint.

(a) Sales quantities (MT):

- BlueScope comparison:

[6] BlueScope 2008 Annual Report, p4.

[7] BlueScope 2013 Annual Report, p 8.

[8] *Guatemala – Definitive Anti-Dumping Measure on Grey Portland Cement from Mexico (Guatemala - Cement II)* at para 8.266.

Quantity	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Australian market	100	88.67	95.52	84.39	83.58	104.3

- WTO-recommended comparison:

Quantity	2010/11	2011/12	2012/13	2013/14
Australian market	100	88.35	87.5	109.19

- Entry point of India and Vietnam exports comparison:

Quantity	2012/13	2013/14
Australian market	100	124.79

BlueScope's sales quantities in the Australian market have increased no matter which year is chosen to base the analysis, and have increased by a larger margin when more realistic comparison periods are adopted.

(b) Production variations (MT):

- BlueScope comparison:

Year	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Index	100	93.89	113.39	94.17	81.21	96.89

- WTO-recommended comparison:

Year	2010/11	2011/12	2012/13	2013/14
Index	100.00	83.05	71.62	85.45

- Entry point of India and Vietnam exports comparison:

Year	2012/13	2013/14
Index	100.00	119.31

BlueScope's production has increased using the period from the entry point of India and Vietnam exports.

In providing a more appropriate year of comparison, it is clear that BlueScope has enjoyed increased sales quantities and production. An analysis from six years ago is neither helpful nor informative for the purposes of this investigation.

E No reduced profit and profitability

In its application, BlueScope accepts that the measures that took effect during and after the first anti-dumping investigation assisted the Australian industry to recover lost sales volumes and market share. However, it claims that the recovered sales have been at prices that have been at reduced margins to the margins achieved in FY2012 (the year in which Customs determined the Australian industry had suffered material injury in the first investigation).

Using data for the period up to March 2014, BlueScope has claimed that:

> *…the Australian industry has experience a deterioration of profit in 2012/13 and 2013/14 from the injurious levels confirmed in 2011/12.*[9]

However, updated data for the full financial year shows that there was in fact an increase in profits and profitability during the investigation period:

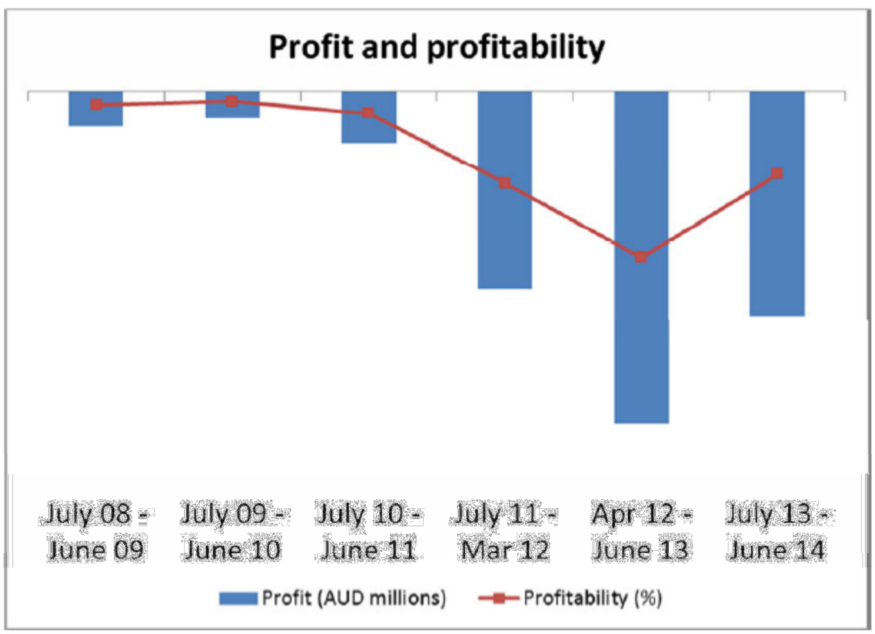


Figure 10 – BlueScope's total profit and profitability for galvanised steel

Despite the fact that there is an increase in profitability, the Australian industry visit report states:

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9 Application, page 34.

The graph above shows a continuing (and considerable) decrease in BlueScope's profit and profitability since FY2010, particularly in FY2013. Although profit and profitability noticeably improved in FY2014 (relative to FY2013), BlueScope has still made a considerable loss in that year.

In this regard, BlueScope fails to acknowledge that it has been operating at a loss in this "business unit" since FY2008, and that the PAD and subsequent imposition of dumping duties in the first investigation has seen a huge shift in its profitability. Since the imposition of dumping duties, BlueScope has been able to make a significant recovery. BlueScope portrays this as *"still [making] a considerable loss"*. The proper portrayal of this is that BlueScope has significantly improved its financial position over the past 20 months. Limits on escalating its prices even further, or more quickly, and thereby moving to a position at which it could enjoy absolute profits, are provided by market competition, and not by allegedly dumped imports.

F No price suppression

BlueScope points to the divergence between the unit price and CTMS to evidence its claim of price suppression by reason of allegedly dumped imports from India and Vietnam.

Figure 9 in the Australian industry verification report (as set out below) shows that BlueScope's unit CTMS remained relatively stable from FY2010, but then decreased in FY2012.

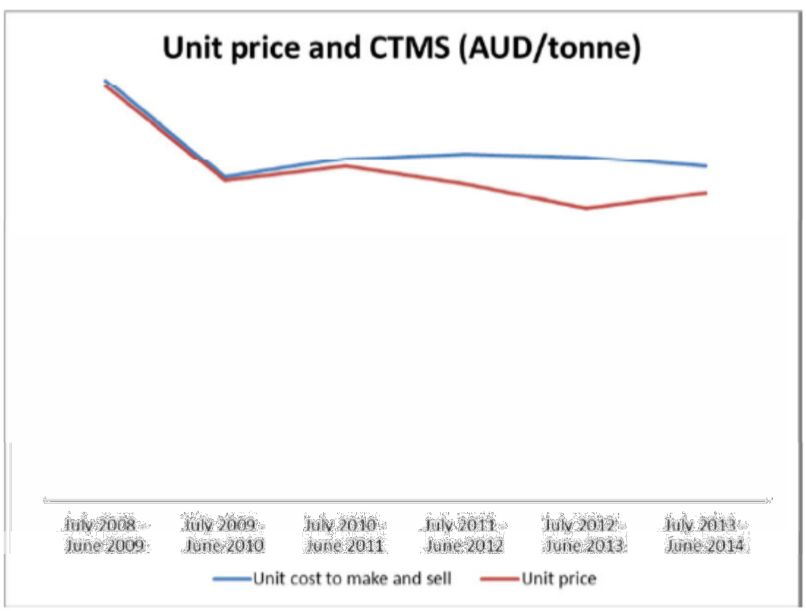

Figure 9 – BlueScope's galvanised steel unit price and cost

We can also see that from the time of the imposition of duties in the previous investigation (in FY2012) price has actually increased while the CTMS has decreased. To illustrate that appropriate contemporary comparisons provide a completely different picture than the six year retrospective that BlueScope provides in its Application, we have again readjusted BlueScope's data using the three year period as recommended by the WTO authority as well as by using FY2013 as the start points for comparison with the date for the period of investigation:

(b) Index of cost variations (based on A$ per metric tonne):

- BlueScope comparison:

Year	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Index	100	82.78	83.67	86.05	86.04	82.47

- WTO-recommended comparison:

Year	2010/11	2011/12	2012/13	2013/14
Index	100.00	102.84	102.83	98.57

- Entry point of India and Vietnam exports comparison:

Year	2012/13	2013/14
Index	100.00	95.85

(b) Index of price variations (based on A$ per metric tonne)

- BlueScope comparison:

Year	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Index	100	81.72	82.74	82.49	73.52	76.29

- WTO-recommended comparison:

Year	2010/11	2011/12	2012/13	2013/14
Index	100.00	99.70	88.86	92.20

- Entry point of India and Vietnam exports comparison:

Year	2012/13	2013/14
Index	100.00	103.77

BlueScope claims that its CTMS has declined by approximately 3.5% since 2011/12 whereas the average selling price has retreated by more than 6 percentage points. However, if the data is measured from the 2012-13 baseline, there has actually been a 4.15% decrease in CTMS and 3.77% increase in selling price. In essence, since the entry point of Indian and Vietnamese exports, BlueScope's costs have reduced and its prices have increased. This does not indicate price suppression – it *contradicts* price suppression.

In addition, when considering BlueScope's CTMS, P-Maharashtra refers to BlueScope's 2013 Annual Report which stated that it had enjoyed an increase in its EBIT largely due to

> *improved spread driven by lower coal and iron ore purchase prices combined with favourable iron ore feed mix, but partly offset by lower global steel prices and flow-on impact to domestic prices combined with increased competition from imports*[10]

Further BlueScope's 2013 Annual Report stated that there were

> *higher per unit costs due to fixed conversion costs spread over lower production volumes as a result of the move to single blast furnace operations in October 2011*[11]

The claim that Indian and Vietnamese exports have affected BlueScope by causing price suppression is simply not made out.

G No reduced return on investment

In the Application, BlueScope did not provide any evidence of reduced return on investment. This assertion has only been minimally addressed in the Verification where the ADC reported that:

> *return on investment – return on investment in relation to galvanised steel decreased between FY2010 and FY2013. Although there has been an improvement in return on investment in FY2014, it remains a negative return*;[12] [underlining in original]

Furthermore, the verification report suggests that the Applicant also failed to evidence "*reduced ability to raise capital for re-investment*", as there has been an increase of capital investment. The ADC noted:

> *At this time, the Commission is unable to find any evidence to suggest that the Australian industry has experienced injury in the form of reduced employment numbers and reduced ability to raise capital for re-investment.*

10 BlueScope 2013 Annual Report, p 10.

11 *Ibid.*,

12 Australian Industry Verification report, p 48.

The fact there has been an increase in investment during the POI as well as an improvement in return on investment demonstrates a failure to evidence any material injury in the form of reduced return on investments.

H BlueScope's "Import Parity Pricing" policy

In investigation after investigation BlueScope and the ADC continue to rely on BlueScope's "IPP" as an indicator of injury caused by dumped imports. From P-Maharashtra's perspective, constantly pricing its goods by reference to what BlueScope contends is its lowest competitor's price is not a logical method by which to set prices.

P-Maharashtra sincerely hopes that the ADC will take a much harder look at what it is being told, and consider how the IPP itself causes injury to BlueScope; what the IPP says about BlueScope's competitive tactics; and how the adoption of the IPP does not serve to isolate imports from India and Vietnam as an independent source of injury at all.

Much has been written about BlueScope's IPP. For example, in the Report emanating from the previous investigation, the ADC explained BlueScope's 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…*

The choice to price its goods by reference to the lowest competitor's price, and to continually advertise that choice, does not make sense. BlueScope is the biggest player in the market. Its pricing policy – that it has publicly declared time and time again – is the single most powerful price factor in the market. It is a policy that constantly places downwards price pressure on the market.

Imagine if a major competitor in Australia made public its intention to persistently meet and beat its competitors' prices, come what may. To quote from the ACCC website

> *Predatory pricing is one way in which a business may misuse its market power. Predatory pricing occurs when a company with substantial market power or share of a market sets is*

> *prices at a sufficiently low level with the purpose of damaging or forcing a competitor to withdraw from the market. This conduct is illegal.*[13]

It is BlueScope's business behaviour which creates and amplifies downward price competition. The IPP is a declaration that BlueScope knows of no other way to compete in the market for the subject goods.

Moreover, the IPP does not allow the ADC to say that it was the price of the minimal volumes of exports from India and Vietnam that have caused BlueScope's alleged material injury. As per Article 3.5 of the WTO Anti-Dumping Agreement:

> *…The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.*

We suggest that the prices of Indian exports are merely dots in the mass of imports that are all priced in a similar way. It is that "band" that BlueScope uses to work out and implement its IPP. Thus, Indian imports cannot be a cause of material injury – if there be evidence of such injury – because the IPP would have dictated BlueScope's pricing to be at the levels it has been even without those imports.

For instance, in the BlueScope verification report on the public record, BlueScope is reported as having said to the ADC that at different periods import offers from India and Vietnam sometimes sat above its benchmark IPP prices, were below those prices at other times, and at other times were "consistent" with the benchmark.[14] Therefore we submit that it cannot be established that it is the prices of the minimal volumes of galvanised steel from India that are dictating BlueScope's prices.

I Captive production, and considering the industry as a whole

It is self-evident that BlueScope produces a huge amount of galvanised steel. A very large proportion – we would suggest half – of its production of galvanised steel goes to its own paint lines. On the basis of

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13 https://www.accc.gov.au/business/anti-competitive-behaviour/predatory-pricing

14 Australian Industry Verification Report, p 54.

estimates previously mentioned in the industry, this could amount to almost 600,000 tonnes made from internal transfers that are further processed and painted so as to be sold as Colorbond steel.

Macquarie Bank has reported on the financial performance of this product as follows:

> ***BSL retains a defensible domestic cash-cow product leveraged to Australian residential and non-residential activity:*** *Colorbond, and to a certain extent Zincalume remain BSL's key domestic profitability drivers. Colorbond remains the product that steel importers have not been able to put under pricing pressure given its current competition barriers. While BSL controls only c75% of the domestic flat products market, in Colorbond/prepaint this figure is c90%-95%. To reiterate some of its barriers to competition: 1. The inventory requirements to have an appropriate colour palette geographically available to end market customers is not inconsiderable and poses an issue for steel traders either not willing to take that risk or who do not have the distribution footprint; 2. transportation of prepaint without damage can be difficult and expensive; 3. offering a significant warranty (i.e. up to 30 years from installation) remains an advantage for BSL that competitors are yet to meet, and 4. Colorbond has a strong consumer preference in the Australian market. At this juncture, we have not seen Colorbond's market share challenged in a substantive way.*[15]

In the same report, sales of this product are said to be a *"cash cow"* for BlueScope.[16]

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,[17] where the Appellate Body considered a provision of the anti-dumping law of the United States that required the investigation 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:

> *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]*

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15 http://www.macquarie.com.au/dafiles/Internet/mgl/au/apps/retail-newsletter/docs/2012_08/BSL210812e.pdf (21 August 2012)

16 *Ibid.*:

> *Increasingly a leveraged play on the Australian Construction cycle. Its key domestic cash-cow product, Colorbond, remains leveraged to domestic residential and non-residential construction, thus BSL's earnings recovery is increasingly linked to Australian housing activity.*

17 *United States – Anti-dumping Measures on Certain Hot-Rolled Steel Product from Japan* (WT/DS184/AB/R), 24 July 2001

products". The investigation and examination must focus on the totality of "domestic industry" and not simply on one part, sector or segment of the domestic industry[18]

In relation to "captive production", the Appellate Body stated:

…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"[19]

These passages from the same WTO Appellate Body authority are also apposite:

204. We have already stated that it may be highly pertinent for investigating authorities to examine a domestic industry by part, sector or segment. However, as with all other aspects of the evaluation of the domestic industry, Article 3.1 of the Anti-Dumping Agreement requires that such a sectoral examination be conducted in an "objective" manner. In our view, this requirement means that, where investigating authorities undertake an examination of one part of a domestic industry, they should, in principle, examine, in like manner, all of the other parts that make up the industry, as well as examine the industry as a whole. Or, in the alternative, the investigating authorities should provide a satisfactory explanation as to why it is not necessary to examine directly or specifically the other parts of the domestic industry. Different parts of an industry may exhibit quite different economic performance during any given period. Some parts may be performing well, while others are performing poorly. To examine only the poorly performing parts of an industry, even if coupled with an examination of the whole industry, may give a misleading impression of the data relating to the industry as a whole, and may overlook positive developments in other parts of the industry. Such an examination may result in highlighting the negative data in the poorly performing part, without drawing attention to the positive data in other parts of the industry. We note that the reverse may also be true – to examine only the parts of an industry which are performing well may lead to overlooking the significance of deteriorating performance in other parts of the industry.

205. Moreover, by examining only one part of an industry, the investigating authorities may fail properly to appreciate the economic relationship between that part of the industry and the other parts of the industry, or between one or more of those parts and the whole industry. For instance, we can envisage that an industry, with two parts, may be overall in mild recession, where one part is performing very poorly and the other part is performing very well. It may be that the relationship between the two parts is such that the healthier part will lead the other part, and the industry as a whole, out of recession. Alternatively, the healthy part may follow the other part, and the industry as a whole, into recession.

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18 *Ibid.* paragraph 190.

19 *Ibid.* paragraph 198.

> *206. Accordingly, an examination of only certain parts of a domestic industry does not ensure a proper evaluation of the state of the domestic industry as a whole, and does not, therefore, satisfy the requirements of "objectiv[ity]" in Article 3.1 of the Anti-Dumping Agreement.*[20]

Accordingly, the injury analysis must be performed in relation to the entire domestic industry, and not just a proportion of it. Not only does this impact on production and market share considerations, P-Maharashtra also considers that it must be relevant to profitability. BlueScope's policy of internally transferring coated steel products at market value is inappropriate because it does not reflect the value of the galvanised steel when it is ultimately sold.

Thus, like many interested parties before it, P-Maharashtra again poses these questions:

- Will the ADC include the huge volumes of coated steel that go through to BlueScope's paint lines in its volume analyses, both in terms of production and market share?
- Will the ADC finally recognise that injury indicators should not be allowed to be manipulated by "business unit" accounting, where self-serving choices can be made between cost and market value in recording internal transfers?
- Will the ADC finally recognise that Colorbond's already considerable market share and profitability is boosted by persistent anti-dumping complaints against galvanised steel, which have a market-chilling effect and which restrict supply and force up prices of galvanised steel for BlueScope's competitors at the next "stage" of production?

P-Maharashtra again calls on the ADC to investigate the whole of BlueScope's production and commercial sale of galvanised steel, whether transferred internally or externally sold, and considering also the final form in which it is sold as being relevant to the assessment of whether injury has been caused to *"the Australian industry"*.

Colorbond steel is a painted galvanised product. It is an "iconic brand" which has become "Australia's single most popular roofing brand".[21] A reasonably well-informed bystander would conclude that

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[20] *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, paras 204 to 206.

[21] BlueScope COLORBOND website <http://colorbond.com/learn/articles/why-colorbond-steel-is-so-popular-on-australian-homes>

BlueScope's profitability on its Colorbond sales allows it to bear or to finance the damaging impacts of its IPP on its unpainted galvanised steel.

We request the ADC to look at the "domestic industry" in its proper context. This should include the galvanised steel that is treated to become Colorbond steel, the pull-along effect that the profitability of Colorbond must have in valuing that galvanised streel, and the Colorbond steel itself.

The ADC is urged to break free of its non-questioning adherence to categorisations of products and "business units", and to the internal assignment of costs and prices, which applicants in anti-dumping investigations such as this contend prove their complaint that they have been injured by alleged dumping. BlueScope's entire production of galvanised steel must be considered. Proper values and revenues should be ascribed to that production. The ADC should not close its eyes to the profits that an applicant such as BlueScope makes on its ultimate sales of the goods under consideration – in whatever form those sales take.

With respect, it would be a misuse of the anti-dumping instrument for an applicant to behave in the market in such a way that it earns its profits where it wants to, and organises itself internally (functionally and in its accounting) so as to demonstrate losses where the opportunity for anti-dumping protection best presents itself.

J Product differentiation – BlueScope has no "zero spangle"

P-Maharashtra produces a unique "zero spangle" product which has a smooth surface and, as the descriptor indicates, is not spangled. P-Maharashtra maintains that its zero-spangled product is superior to the products manufactured by the Australian industry.

Zero-spangled product is the product of choice in the automotive industry.[22] However, zero-spangled product is also considered a superior product in non-automotive industries. For example, customers may request zero-spangled product for special order projects that have a unique structure, and for furniture, door frames and the like. For structures such as these that are intended to be visible or are in some way decorative, customers will specially order coated steel that has a better appearance. P-Maharashtra's coated steel can be ordered with a smooth, non-spangled surface, which has a superior

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[22] During the period of investigation, the goods exported to Australia by P-Maharashtra were only used in non-automotive industries.

appearance and which is also more suited to projects which involve painting. A zero-spangle product has a smoother surface, and no “spangle discolouration” is able to show through the painted surface.

So far as P-Maharashtra is aware, BlueScope is not able to produce zero-spangled product. The best it can do is to manufacture a minimum spangle product which, as the descriptor indicates, is not a zero spangle product.

Therefore, BlueScope cannot allege they have suffered an “injury” in relation to P-Maharashtra’s zero-spangled product as it is a product that services a specific sector of the market which BlueScope does not and cannot service.

K Conclusion

In conclusion, P-Maharashtra asserts that there is insufficient evidence to prove that BlueScope has suffered material injury in the form of exports of galvanised steel from India and Vietnam, and that on a close and rational examination the information provided by BlueScope actually evidences the opposite.

In summary, BlueScope has not suffered material injury, and such injury has not been caused by imports from India and Vietnam, for the following reasons:

- Only three factors have been identified as being potential causes of injury. Although it is the nature and degree of any individual injury factor that is relevant, it certainly must be considered to be extremely difficult to establish that injury has been suffered in a material way if that is not reflected in a multiple number of injury factors.

- Following the imposition of dumping duties in the previous investigation, BlueScope’s market share, sales volume and profitability have all increased.

- Price suppression by reason of Indian and Vietnamese imports is not demonstrated. BlueScope has increased its unit price since the expanded entry of those imports into the market and its CTMS has decreased over the same period.

- BlueScope has experienced improvements in its return in investment during the period of investigation.

- BlueScope still adopts its IPP and is increasing its prices and its market share at the same time.

P-Maharashtra asks the ADC to carefully consider the total production and the overall performance of BlueScope in relation to all of its production of galvanised steel, and not to be confined in its analysis by BlueScope's internal organisation and the accounting conventions that it applies in its financial records.

P-Maharashtra respectfully requests that the ADC give full consideration to the information provided in P-Maharashtra's Exporter Questionnaire response, and to the matters raised in this submission. As a result of that consideration, the ADC should terminate this investigation at the soonest possible opportunity, either on the basis that P-Maharashtra did not engage in the dumping of the goods under consideration, or that material injury cannot be said to have been caused by P-Maharashtra's exports of those goods to Australia.

Daniel Moulis
Principal

Andrea Jamieson
Lawyer