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POSCO

Alleged dumping of zinc coated (galvanised) steel exported from the Republic of Korea

POSCO's exports to Australia have not caused material injury to the Australian industry

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A Introduction

On 5 September 2012, Australian Customs and Border Protection Service (“Customs”) published Australian Customs Dumping Notice No 2012/40 (“ACDN 2012/40”), which officially initiated a dumping investigation into zinc coated (galvanized) steel (“GI”) exported to Australia from a range of countries, including from the Republic of Korea.

ACDN 2012/40 explained that the Australian industry, BlueScope Steel Limited (“the Complainant”), had alleged in its application that GI exported from Korea had been imported at dumped prices and that this had caused the Australian industry material injury through:

- loss of sales volume;
- reduced market share;
- reduced revenues;
- price undercutting;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced return on investment;
- reduced ability to raise capital for re-investment; and
- reduced employment.

Without detracting from the primary position of our client, POSCO, which is that it has not imported GI into Australia at dumped prices – this submission is intended to establish that its imports have not caused any injury, material or otherwise to the Australian industry.

B Relevant law

For a dumping duty notice to be published under Section 269TG of the *Customs Act 1901* (“the Act”), it must be established that imports 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

Section 269TAE of the Act elaborates the concept of material injury. Section 269TAE(1) essentially requires the Minister to determine whether material injury has occurred on the basis of the effect or likely effect of the importation of those goods. However, this must be done subject to Subsections 269TAE(2A) and (2B). Relevantly, these provide:

(2A) *In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods 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;*

and any such injury or hindrance must not be attributed to the exportation of those goods.

(2B) *In determining:*

- (a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry*

...

because of the exportation of goods into the Australian market, the Minister must take account only of such changes in circumstances, including changes of a kind determined by the Minister, as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.

We also note the recent publication of the *Ministerial Direction on Material Injury 2012*. The Direction itself correctly indicates that it must be read subject to the law. The Direction also provides:

- that “*identification of material injury must be based on facts and not on assertions unsupported by facts*”;
- the CEO “*must have regard to the facts of the individual case*”, and “*identifying material injury depends upon the circumstances of each case and will differ from industry to industry and from time to time*”;
- “*the injury caused by dumping or subsidisation is material in degree*”;
- that material injury must be “*greater than that likely to occur in the normal ebb and flow of business*”; and
- that “*dumping and subsidisation need not be the sole cause of injury to the Australian industry*” however, “*whether dumping... is the sole cause of injury or where there are other contributing factors... the injury caused by dumping... must be material in degree*”.

The Minister notes that, in considering whether material injury exists:

an industry that was at one point healthy and could shrug off the effects of the presence of dumped... products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping.

This however does not detract from the law and the direction that “*injury caused by other factors must not be attributed to dumping*”. Injury caused by other factors cannot be ignored, and the injury caused by any proven dumping must be “*material*”, being “*not immaterial, insubstantial or insignificant*”. The injury caused by dumping must be greater than would otherwise have occurred in “*the normal ebb and flow of business*”. Furthermore, there must be evidence to establish that the injury has been caused by the existence of the dumped goods in the market.

Given that these factors require some degree of prognostication it is clear that the facts relied upon to establish this causation, as well as the materiality of the alleged injury, must be both accurate and adequate for the task.

C Market segmentation in Australia

In summary:

- ***POSCO sells the majority of its GI to the automotive industry.***
- ***Sales to the automotive industry, construction industry and general manufacturing industry are sales in separate and distinct markets and should be treated as such for the material injury analysis.***

POSCO is a multinational steel-making company, which exports a wide range of steel products to every major nation in the world, including Australia. For many years POSCO has both imported into Australia, and exported from Australia, a range of steel products, including GI. Through these activities, POSCO has built a loyal customer base in Australia. The volumes of its imports into Australia are consistently small in terms of both POSCO's global business activities and Australia's market.

During the period of investigation, POSCO exported [CONFIDENTIAL INFORMATION DELETED – export quantities] to the Australian “market”. Of POSCO's total imports in the 2011-12 periods, [CONFIDENTIAL INFORMATION DELETED – export quantities] was sold to the automotive sector (equal to [CONFIDENTIAL INFORMATION DELETED – export quantities] of POSCO's total exports of GI). The remaining [CONFIDENTIAL INFORMATION DELETED – export quantities] was sold to Australian customers for construction sector purposes.

The Complainant alleges that dumping of GI began to cause it material injury during FY 2011 and FY 2012. There is no evidence of this, nor can there be any evidence to that effect in the context of this investigation, because the investigation period for dumping margin analysis does not extend to those periods. POSCO denies that it engaged in the “dumping” of goods on the Australian market in either period.

POSCO supports the submission of GM Holden that sales to the three industries named by the Complainant (the construction industry, the automotive industry and the general manufacturing

industry) should be treated as sales into three separate markets for the purposes of undertaking any material injury analyses.¹ Certainly, in POSCO's experience sales to each of these industries differ greatly in terms of relevant influencing market dynamics. POSCO believes that treating the sales to each sector individually will lead to a more accurate understanding of the factors impacting on the Australian industry, including that of imported GI.

We note that it may be difficult from Customs' perspective to distinguish between sales to these different markets. However the difficulty or otherwise of the exercise does not detract from its relevance, and we submit that the exercise must be accomplished. A rigorous and accurate material injury analysis based on the effect of products going into different markets should be undertaken.

In fact the industry segments to which we have referred are not truly market segments at all – they are entirely separate markets serviced by different products within the scope of the GUC as defined in the initiation notice for this investigation.

¹ *Submission of GM Holden Limited, dated 15 October 2012, page 9.*

D Contractions in demand in the different GI markets

Summary:

- **Each of the three markets identified by the Complainant has seen a contraction in demand over the period of investigation.**
- **Injury suffered as a result of a contraction of demand must not be attributed to the subject imports.**

As noted, the Complainant considers that there are three different market segments in which GI is sold. These three segments are:

- construction;
- automotive; and
- general manufacturing.

The demand in each of these markets will have an explicit and observable effect on the volumes of GI sold in those markets.

In its recent hot rolled coil (“HRC”) anti-dumping investigation, Customs indicated that any injury suffered by the Complainant in its sale of HRC to the automotive industry was a result of the deteriorating conditions in the Australian automotive industry:

While BlueScope’s sales to this sector have decreased over the injury period, it can also be seen that the volume of cars manufactured in Australia have declined and that this decline has affected all suppliers into this market. Consequently, Customs and Border Protection’s preliminary view is that BlueScope has not suffered injury in the automotive sector due to dumped imports. What injury BlueScope may have suffered is due to the contraction of the automotive market.²

POSCO endorses the opinion expressed by Customs in this extract. The workings of the Australian economy will always have a much larger effect on the Complainant’s sales than a

² *International Trade Remedies Branch Statement of Essential Facts Number 188, Preliminary Affirmative Determination 188, Alleged Dumping of Hot Rolled Coil Steel Exported from Japan, the Republic of Korea, Malaysia and Taiwan (hereinafter “SEF 188”), page 45.*

relatively small level of imports ever could. Customs' SEF finding in its HRC investigation exhibits an important degree of economic realism in the assessment of markets and the impacts on them.

The period of investigation for the HRC investigation was 1 April 2011 to March 2012. POSCO does not consider it likely that the conditions in the car industry would have substantially changed in the three-month-later period now under consideration in this GI investigation. POSCO submits that, under the present circumstances, a finding that any injury suffered by the Complainant in the automotive market was caused by factors other than the depressed automotive industry itself could not be supported. The depressed conditions in the Australian automotive industry must have an equal effect on both HRC and GI sales into that industry.

However, the automotive market is not the only Australian market that has been suffering from low demand. The construction sector was not considered in the HRC case. There is ample information available about the economic performance of the construction industry. A recent *Australian Financial Review* article³ quotes figures from the Australian Industry Group and Housing Industry Australia which indicate that in October 2012 construction activity declined for the 29th month in a row. These figures show that since May 2010 construction activity – which according to the Complainant is the largest consumer of GI by volume, and drives demand for GI generally – has been in decline.^{4 5}

Similarly, manufacturing has been depressed within Australia for the 8 months until October 2012.⁶

³ Robert Harley, "Construction Slows for the 29th Month in a Row", *Australian Financial Review*, 8 November 2012. Please refer to Attachment 1.

⁴ *BlueScope Steel Limited Application for Anti-Dumping Duties Galvanized Steel Exported from the People's Republic of China, Republic of Korea and Taiwan* (hereinafter "the Application"), page 17.

⁵ *Ibid.*

⁶ AAP, "Manufacturing Contracts for 8th Month in a Row", *Australian Financial Review* 1 November 2012. Please refer to Attachment 2.

All of this evidences a contraction of demand in each of the three markets identified by the Complainant. This conclusion is further supported by the fact that, despite globally depressed steel prices,⁷ overall sales of GI in the Australian market appear to be falling (see H below for more details).

As explained in B above, Section 269TAE(2A) of the Act provides that in determining whether the subject imports have caused material injury, the Minister must consider whether injury has been caused or threatened by any other factor. A factor expressly noted is “*contractions in demand or changes in patterns of consumption*”.

To the extent that such injury is caused by contractions in demand for the goods concerned, it must not be attributed to the exportation of the goods.

The Complainant is the largest source of GI sold in Australia. Concurrent contractions in the level of demand in every market in which GI is sold within Australia will have an injurious impact on the Complainant. Those injuries must not be attributed to the exportation of GI.

⁷ SEF 188, pages 45 – 51.

E POSCO's contractual relationship with its automotive market customer

Summary:

- ***Sales to the automotive industry were made subject to global contracts which fix the price of GI.***
- ***Sales made subject to such contracts cannot cause material injury to the Australian industry.***

[CONFIDENTIAL INFORMATION DELETED – export quantities] of POSCO's total imports of GI during the period of investigation, were sold to the automotive industry. Of this, [CONFIDENTIAL INFORMATION DELETED – export quantities] was sold to [CONFIDENTIAL INFORMATION DELETED – customer details] under ongoing multi-jurisdictional contracts such as are commonly used in the global automotive industry.

Every [CONFIDENTIAL INFORMATION DELETED – customer details] requests price tenders for sources of GI for its factories in Australia, [CONFIDENTIAL INFORMATION DELETED – operations in other markets], in order to lock-in prices of GI supply for the coming year. It is an open tender, so any steel producer may put in a submission.

POSCO, in collaboration with its regional offices, will gather the information needed to enter the tender. This information includes price quotes, based on expectations of volumes over a number of markets, for GI which meets the exacting and specific standards of the products required by [CONFIDENTIAL INFORMATION DELETED – customer details]. If [CONFIDENTIAL INFORMATION DELETED – customer details] accepts POSCO's tender, the two parties will negotiate a [CONFIDENTIAL INFORMATION DELETED – contract details] price for supply to each of the country markets which are to be supplied under the over-arching contract. During the POI, one [CONFIDENTIAL INFORMATION DELETED – contract details] price was applicable for POSCO sales of GI to Australia, [CONFIDENTIAL INFORMATION DELETED – operations in other markets]. The final terms of the contract are then settled between POSCO and [CONFIDENTIAL INFORMATION DELETED – customer and contract details].

Once agreement has been reached between the head offices, POSCO Australia and [CONFIDENTIAL INFORMATION DELETED – customer details] will enter into a contract of supply for each component for the [CONFIDENTIAL INFORMATION DELETED – contract details]. This price for each component will be the [CONFIDENTIAL INFORMATION DELETED – contract details] price agreed to between POSCO and [CONFIDENTIAL INFORMATION DELETED – customer details]. Subject to this contract, [CONFIDENTIAL INFORMATION DELETED – customer details] will place orders with POSCO Australia for POSCO GI throughout the year.

POSCO understands that such a contract also exists between the Complainant and [CONFIDENTIAL INFORMATION DELETED – customer details] (and presumably between the Complainant and other entities in the automotive industry).

The observation that was made by Customs in the SEF issued in the HRC investigation is also apposite to the circumstances pertaining to GI sales to the automotive industry:

Furthermore, as sales in this industry are based on long term contract and price arrangements, BlueScope's claims to have suffered injury from 2010-11 due to dumped imports would appear to exclude this sector.⁸

POSCO's exports to Australia for use by [CONFIDENTIAL INFORMATION DELETED – customer details] are therefore not interacting with the Complainant's prices on a transactional basis, and they cannot have a valid effect on each other.

⁸ SEF 188, page 45.

F Product differentiation – “zero spangle” and quality

Summary:

- ***POSCO produces and sells zero spangle GI. Only zero spangle GI is used for the exterior of automobiles.***
- ***The Complainant does not produce zero spangle GI, nor any other form of steel that may be used for the exterior of automobiles.***
- ***Therefore imports of zero spangle GI should not be considered to have caused material injury to the Complainant.***

In C, D and E above, POSCO has outlined why its imports and sales to the Australian automotive industry could not be causing material injury to the Complainant. POSCO would recommend Customs terminate the investigation in relation to sales of GI to the Australian automotive industry at the soonest possible convenience. Such a move could be facilitated by the adoption of a new statistical code, applicable to sales of GI to the automotive industry, which would allow such imports to continue unencumbered by the investigation mechanism.

Further to this point, it should be noted that part of the GI exported to Australia by POSCO for use by the automotive industry is only used for a limited purpose. POSCO only exports “zero spangle” GI to Australia. The Complainant does not produce zero spangle GI.

The term “spangle” refers to distinctive patterns that zinc coating leaves on coated steel – however it is possible to produce GI without a spangle. A photograph of zero spangle GI is at Attachment 3.

The Complainant’s production processes are not set up to produce zero-spangle GI, because the Complainant’s main market is the construction market. Having spangled GI allows potential consumers in that market to easily distinguish between zinc coated (and therefore rust-resistant) steel and uncoated (and therefore rust-prone) steel.

As you would be aware, the exterior of a car is painted. Only zero-spangle is used for the exterior of a car, because a spangle distorts the application of the paint, and results in a sub-par paint job. Therefore, the Complainant’s product cannot be used for the exterior of automobiles. [CONFIDENTIAL INFORMATION DELETED – product sales] of the GI that

POSCO exports to the Australian automotive industry is used for the exterior of Australian produced automobiles.

Therefore, we submit that there is no relevant competitive interaction between the zero-spangle GI that POSCO supplied for the production of automobile exteriors, and the spangled GI produced by the Complainant.

The other [CONFIDENTIAL INFORMATION DELETED – product sales] of GI that POSCO sells to the Australian automotive industry is used for non-external automotive components. In that regard POSCO believes that its product is far superior to that produced by the Complainant in terms of quality.

G Inclusion of all coated steel in the injury investigation

Summary:

- ***The Complainant's pre-painted steel is sold in huge volumes and is reported to be highly profitable. Its substrate is coated steel.***
- ***That coated steel must be included into Customs' material injury analysis.***
- ***Moreover, painted steel that has overlapping uses with unpainted steel will also be relevant to Customs' injury analysis.***

POSCO noted with interest the Complainant's claim that painted (known as "pre-painted") versions of the goods under consideration be excised from the investigation. This excision is believed by the Complainant to be absolute.

The Complainant is a major producer of painted coated steel. We understand that most of that uses aluminium zinc coated steel ("GL") as a substrate, but that some of the painted product uses GI as its substrate.

Australian industry sources suggest that the Complainant produces and sells a massive 600,000 tonnes of painted coated steel per annum. We understand that this is generally referred to as "COLORBOND". Those industry sources also suggest that COLORBOND steel is a very popular and highly profitable product in the Australian market. It has been described to us as being "*iconic*" and as BlueScope's "*sacred cow*". The Complainant itself has recognised that it has "*a strong competitive advantage in coated steel with its world class... COLORBOND® steel products*".⁹

The point we wish to make about this is that the combined Applications appear to fall short of including the actual production of coated steel by the Complainant by 600,000 MT – a whopping 110% less than its true production level. This is coated steel which is transferred to

⁹ *BlueScope ASC Media Release "BlueScope Announces Major Restructure to Australian Operations and Reinforces Commitment to Steel Production in Australia" 22 August 2012. Accessible here: <http://clients.weblink.com.au/clients/BlueScopeSteel2/article.asp?view=3359409>*

the Complainant's paint lines. These production volumes of coated steel – whether GI or GL – cannot be excluded from the respective investigations into those products.

POSCO considers that there is no basis on which it can be said that coated steel used for painted GI (and painted zinc aluminium coated steel) is not coated steel of the type that is subject to this investigation (and the other investigation). The Complainant is free to confine its dumping allegation to whatever products it believes have been dumped. However it cannot “direct” or “limit” Customs in Customs' material injury consideration.

POSCO also notes that it is entirely open for the Complainant to focus on its more profitable field (COLORBOND), to the expense of other less profitable lines. If the Complainant commands a competitive advantage in sales of COLORBOND, then it must have some pricing power. It could have decided to sell its GI at a lower price, and absorb the loss of revenue through the premium available to it on COLORBOND. Also, it can easily decide that its production of painted coated steel should be increased, and its unpainted steel decreased, depending on the relative profitability of each. The true value of coated steel within the Complainant's production process – at the point that it is transferred to its paint lines – must reflect the overall profitability of the final product. Otherwise the analysis will be skewed towards a consideration of only the production of that coated steel in respect of which the Complainant *claims* to have been injured, and not the production of *all* of its coated steel. The Complainant is not entitled to define only one part of its coated steel production as being the industry producing coated steel. If this were not the case, applicants for anti-dumping duties could simply contrive injury outcomes and engineer the results they seek.

We also ask Customs to consider whether BlueScope in fact refuses or limits supply of unpainted coated steel to those Australian customers that might otherwise compete with its painted product. POSCO strongly recommends that Customs investigates all aspects of BlueScope's business behaviour relating to COLORBOND. In particular the trends in prices of COLORBOND in comparison to the price of GI should be considered. The consideration must not be limited only to the information that the Complainant “chooses” to present to Customs.

We submit that the Application was materially flawed. The exclusion of 600,000 MT of coated steel production from the Application – which is *more than* the production of coated steel that

was included – presents a misleading impression of the Australian industry’s production and sales, and of its financial performance.

Without considering the overall financial performance of the Complainant in all of its production of coated steel, Customs will not be able to understand the true position of the Complainant in the production of either of the GI or GL substrates. This will adversely affect the accuracy of Customs’ material injury assessment, and will lead to conclusions that do not reflect reality.

POSCO cannot see the Complainant’s confidential information. However, we have every expectation that the true value and contribution of the Complainant’s coated steel production has not been presented to Customs by the Complainant. It should be.

The above submissions deal with the recognition of the production of all of the Complainant’s coated steel, and not just that which the Complainant decides not to paint. There is a second and separate consideration that must also be acknowledged in the analysis. POSCO submits that it must also be accepted that there are overlapping uses of painted and unpainted GI. In the case of products in that overlapping segment of the market, the profitability (if that be the case) of the Complainant’s painted coated steel must be fully factored-in to Customs’ injury analysis as well. The evidence for this comes directly from the Complainants *Sheet and Coil Product Guide*, which explains the technical aspects of every form of sheet and coil offered.¹⁰ From this document it is evident that some forms of COLORBOND are made from ZINCFORM steel. According to both the Consideration Report and the Application ZINCFORM is a trade name for GI.^{11 12} POSCO also notes that there is substantial crossover between the “uses” of the ZINCFORM and COLORBOND products.

A material injury analysis requires a consideration of the:

- quantity of like goods produced, or manufactured in Australia and sold and consumed in Australia (Section 269TAE(1)(c)(ii) and 269TAE(3)(a));

¹⁰ Available here:
<http://steelproducts.bluescopesteel.com.au/files/dmfile/BluescopeSheetCoilProductGuideNov20101.pdf>

¹¹ Consideration Report, page 8.

¹² Application, page 5 and 10.

- the effect that the exportation has had, or is likely to have had on the price paid for like goods produced and manufactured in Australia and sold in Australia (Section 269TAE(1)(f));
- the conditions of competition between those goods (ie the goods under consideration) and like goods that are domestically produced (Section 269TAE(e)(ii)); and
- the levels of profit earned in the industry, that are attributable to the production or manufacture of like goods (Section 269TAE(3)(h)).

Without considering sales of the painted ZINCFORM product, Customs will not be able to understand the true position of the Complainant in the GI market. This will adversely affect the accuracy of Customs' material injury assessment, and will lead to conclusions that do not reflect reality.

POSCO invited the Complainant to comment on the matters raised in G of this submission, by way of its letter to Customs dated 5 November 2012. POSCO is at least appreciative that the Complainant acknowledged POSCO's invitation by responding to those matters in its letter to Customs dated 14 November 2012. The responses themselves are brief and not particularly helpful. That the Complainant has not complained about the *dumping* of painted steel in its application is not the point. The point is that it is the production and sale of coated steel and of goods "like" coated steel that is the subject of the *injury* analysis under the Act. It seems likely that the Complainant has not included all of its coated steel in its application. And even though it has not included it in its application, the Complainant also seems to suggest that Customs should ignore the fact that the financial performance of coated steel as the substrate of its own painted product, or when painted and used for similar usages to that of unpainted coated steel, is irrelevant. POSCO believes that it is highly relevant. POSCO does not agree that the healthy volumes, full cost recovery and actual profitability – if that be the case - of possibly 50% of the Complainant's coated steel production can be secreted away by simply not being mentioning in the application, or by the use of some accounting methodology which ignores reality.

H Alleged volume effects

Summary:

- **The volumes of imports used for determining whether there was material injury in the consideration report were understated in some instances.**
- **Based on corrected figures, the material injury analysis undertaken for the Consideration Report is incorrect.**
- **Any reduction in sales and loss of market share suffered by the Complainant was driven by contractions in demand for the GUC and the Complainant's decision to restructure its Australian production facilities.**

The Complainant alleges that imports of GI have caused it injury in the form of lost sales volume and reduced market share. The analysis undertaken in the Consideration Report finds that the Complainant raised reasonable grounds in support of these allegations in the application. However, the analysis in the Consideration Report appears to be based on flawed data.

The Consideration Report illustrates what it considers the trend in the Australian market to be in a graph at page 27. For convenience's sake, we now reproduce that graph:

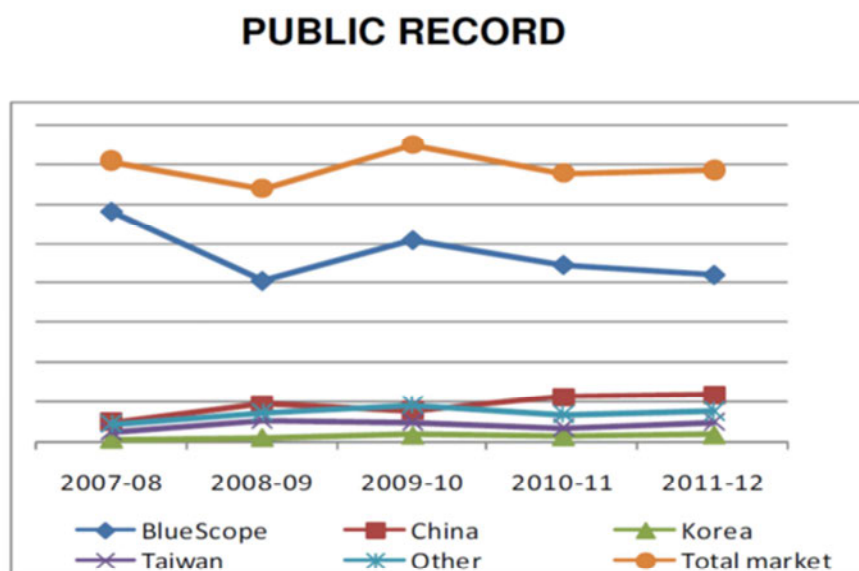


Figure 3: Australian market for galvanised steel - 2007-08 to 2011-12

From this graph, POSCO is able to get a better understanding of Customs' view of the Australian market for GI. According to the Consideration Report, the Australian market for GI in 2011-12 was approximately equal to 685,000 tonnes.¹³ Noting the position of the total market figure for 2011-2012, it is clear that each line of the graph is equal to a volume of 100,000 tonnes of GI. Therefore, the Complainant's share of the market in 2011-2012 was slightly over 400,000 tonnes (on our analysis of the scale of the graph, it would be 418,611.11 tonnes). This leaves the total volume of imports to be equal to approximately 285,000 tonnes (again on our analysis, it is closer to 266,388.89 tonnes).

Based on the graph, we can describe the market during the period as follows:

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Total	704,027.79	637,430.56	742,083.34	675,486.12	685,000
Complainant	580,347.23	399,583.34	504,236.12	437,638.89	418,611.11
Imports according to Customs	123,680.56	237,847.23	237,847.23	237,847.23	266,388.89

We are not entirely sure that the import volumes adopted by Customs are accurate in all circumstances. In preparation for this submission, POSCO purchased relevant importation information from the Australian Bureau of Statistics ("ABS"). According to this information, the GI volumes imported over the same period are:

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Imports of GI (ABS)	270,565	277,997	214,771	201,004	211,932
Difference to Customs' figure	156,398.33	30,635.89	-23,076.23	-36,843.23	-54,456.89

¹³ Consideration Report, page 26.

The volume of imports of GI for 2007-08 and 2008-09 represented on Customs' graph are vastly below the figures in the ABS data. The ABS data itself may be understated at certain points, because some commodity information has been deemed to be classified, and therefore not released by the ABS. Specifically, this relates to:

- Tariff Code 7210490055 from August 2009 – July 2011 and from September 2011 until the present time;¹⁴ and
- Tariff Code 7210490058 from August 2007 until the present time.¹⁵

It is very likely that this withholding of information is the reason for the lower import volume recorded in the ABS statistics in 2009-10, 2010-11 and 2011-12, however, we cannot think of a reason why the ABS recorded volumes in 2007-08 and 2008-09 would be greater than those represented in the graph in the Consideration Report. POSCO therefore considers it appropriate to substitute the larger ABS figures for those years, and accordingly considers the Australian market is more accurately described by the below table:

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Complainant	580,347.23	399,583.34	504,236.12	437,638.89	418,611.11
Imports	270,565	277,997	237,847.23	237,847.23	266,388.89
Total	860,426.12	677,580.34	742,083.34	675,486.12	685,000.00

The Consideration Report finds:

In respect of galvanised steel, Customs and Border Protection considers that there appears to be reasonable grounds that the significant increase in the individual and

¹⁴ Relating to flat-rolled products of iron or non-alloy steel plated or coated with zinc, of width of 600 mm or more, of a thickness of less than 0.5 mm (excl. electrolytically plated or coated or corrugated)

¹⁵ Relating to flat-rolled products of iron or non-alloy steel electrolytically plated or coated with zinc, of width of 600 mm or more, of a thickness of 2.5 mm or more (excl. electrolytically plated or coated or corrugated)

*cumulative volume of imports from China, Korea and Taiwan in 2009-10 contributed to BlueScope's reduced sales volume in 2010-11 and 2011-12. Customs and Border Protection identified that the most significant increase in the aggregated import volume for the nominated countries since 2009-10 occurred in 2011-12.*¹⁶

This appears to be based on two concepts. Firstly, that there was an increase in imports between 2008-09 and 2009-10 and, secondly, that the Complainant's domestic sales volume for GI has continually decreased since 2009-10.¹⁷ According to the above extract, the first concept is the cause of the second concept.

The first concept is not supported by the evidence. As we have noted above, Customs' figures regarding the importation of GI during the 2007-08 and 2008-09 periods appears to be vastly understated. According to POSCO's figures, imports actually fell between the 2008-09 and 2009-10 periods. During the same period, the volume of GI produced by the Complainant increased significantly. Also, as we have explained in G above, we suspect that GI which was transferred to the Complainant's paint lines has been excluded from the Complainant's figures. If there was no "significant increase in the individual and cumulative volume of imports" in 2009-10 then there can be no causative effect between those imports and the reduced (if indeed it was "reduced") sales volume of the Complainant in 2010-11 and 2011-12.

The mere fact that the Complainant's sales have decreased in 2011-2012, while imports have marginally increased, is not enough to say that one has caused the other. As the above graph shows, the Complainant's sales were highly volatile between 2007 and 2012, whereas the level of imports has remained relatively stable. The fluctuations in the Complainant's sales are not matched by offsetting fluctuations in the level of imports. This indicates that there was no causative relationship between the volume of imports and the volume of sales made by the Complainant.

We submit that there is a clear and obvious reason as to why the Complainant's sales decreased in 2011-12. As noted by the Complainant in the application for dumping duties:

¹⁶ Page 64.

¹⁷ Consideration Report, page 53.

BlueScope's performance across sales of all product categories in 2011/12 is impacted by the company's announcement to scale down export activities and mothball its Westernport Hot Strip Mill and No. 5 Coating Line.¹⁸

The fall in sales experienced by the Complainant was as a result of its own restructure. Unlike previous fluctuations in the volumes of GI sold in the Australian market, this was not driven solely by a decrease in market demand, so customers that would have - but for the restructure - sourced their GI from the Complainant had to source their goods from other sources. The only other source of GI available to Australian consumers is imports.

Similarly, the Complainant alleged that it has suffered loss of market share as a result of the allegedly dumped imports. This appears to be accepted by Customs in the Consideration Report but, again, is not made out on a proper consideration of the evidence before Customs.

The market share situation perceived in the Consideration Report is illustrated in the below table:

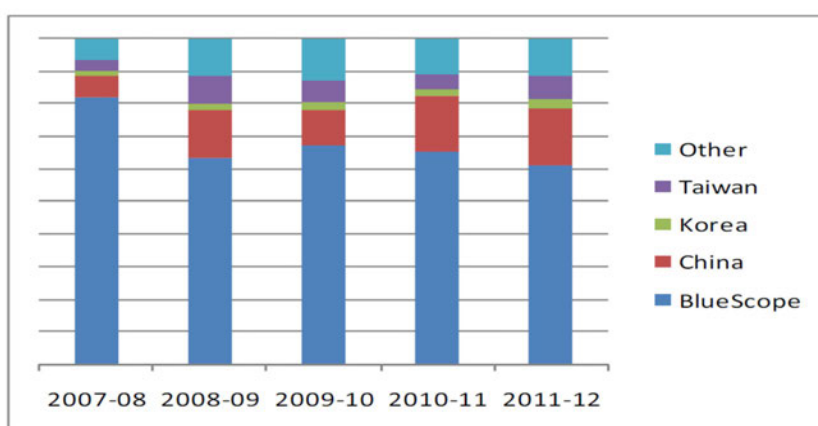


Figure 15: Market shares – galvanised steel – 2007-08 to 2011-12

The Consideration Report goes on to explain this trend as follows:

...BlueScope's market share in the Australian market for galvanised steel continually decreased since 2009-10, reflecting BlueScope's trend in sales volumes. During this period, the market share of the total imports from China, Korea and Taiwan increased...

¹⁸ Page 21.

It is clear that this market share analysis was based on the same figures as those used to determine the *Australian market for galvanised steel* graph, as outlined above. The reason we are comfortable with this conclusion is that it is clear that the total market share must be equal to 100%. Given that there are 11 lines on the graph, it is clear that each line marks each 10% increment between 0 and 100.

The below table sets out market shares in percentage terms over each period, based on the bar chart set from the Consideration Report which is extracted above.

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Total	100%	100%	100%	100%	100%
Australian	82%	63%	68%	65%	61%
Imports according to Customs	18%	37%	32%	35%	39%

However, as noted, POSCO believes that these figures are inaccurate as they relate to the volumes in 2007-2008 and 2008-09. If we substitute the larger ABS volumes for those years, the reported market shares are now:

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Complainant	69%	59%	68%	65%	61%
Imports	31%	41%	32%	35%	39%
Total	100%	100%	100%	100%	100%

This analysis is of incredibly limited value. The problem with the market share analysis is that it is only based on two variables: GI produced by the complainant and GI imported. Thus, a fall in one variable will be counterbalanced by a rise in the other. This does not indicate that the increase in the latter is the cause of the fall in the former.

If we consider the actual level sales of GI, as discussed above, it will become apparent that the percentage increase in the market share of imports is driven by the decrease in the Complainant's sales and, as a result, the decrease in the total Australian market. The level of imports in volume terms remained relatively stable.

For example, in the period between 2010-11 and 2011-12, sales by the Complainant fell by 85,000 tonnes. During the same period, the level of imports rose by 28,000 tonnes. Over the entire injury period (2007-08 to 2011-12) the total level of sales by the Complainant has fallen by around 28%, as opposed to a total fall in the imports of 1.5%. It is apparent that any change in market share has been driven solely by the decrease in overall sales by the Complainant, not by any large increase in import sales. Therefore, there is no evidence that the Complainant's loss of market share is a result of imported GI, dumped or otherwise.

POSCO has already discussed the fact that demand for GI in each of the three market segments has contracted over the last few years in D above. It is considered that to the extent that the Complainant has suffered any injury in the form of lost sales volume and reduced market share, this injury has been caused through a combination of reduced demand for GI in Australia and the Complainant's decision to restructure its operations.

I Alleged price depression, suppression and reduced revenue

Summary

- *Price suppression/depression and the resultant reduced revenue only occurred at the point where the Complainant began to restructure its production facilities in Australia.*
- *The costs of the restructure were not systemic – they were isolated to the Complainant.*
- *Rather than absorbing the costs of the restructure through an increased price, the Complainant chose to protect its competitive position and not raise its price to cover the additional costs brought about by the restructure;*
- *This decision was made at a time when the global steel price was depressed and decreasing.*
- *The price suppression, depression and reduced revenue are not caused by the subject imports.*

The Complainant alleges that it has suffered price depression and suppression and reduced revenue as a result of dumped imports of GI. This is illustrated in the Consideration Report, on page 57, by the following two graphs:

Unit revenue and costs (AUD (\$) per tonne)

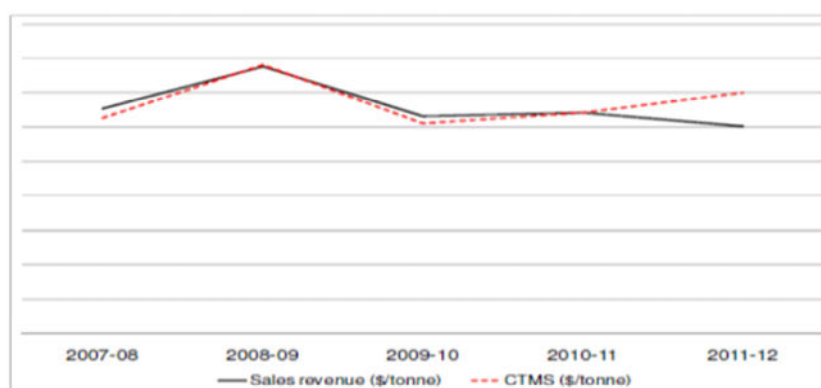


Figure 18: BlueScope's unit sales revenue and costs – galvanised steel – 2007-08 to 2011-12

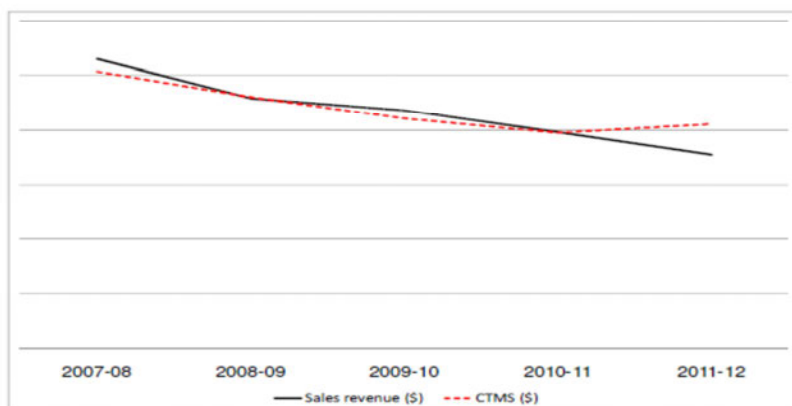
Total revenue and costs

Figure 17: BlueScope's total sales revenue and costs – galvanised steel – 2007-08 to 2011-12

POSCO notes that the point at which the price depression or suppression began to occur (ie, the point that cost was above sales revenue) was during the 2010-11 and 2011-12 periods. This was coterminous with a major restructure of the Complainant's Australian operation, which was announced on 22 August 2011. This restructure included:

- the shutdown of blast furnace No. 6 at its Port Kembla plant;
- the shutdown of the Western Port Hot Strip Mill; and
- an exit from the export business generally.

As noted in the Australian Securities Exchange ("ASX") release disclosing the details of the restructure, the decision to close these facilities was driven by a \$487 million EBIT loss on export sales, which was driven by:

...an unprecedented combination of economic challenges in the form of a record high Australian dollar, low steel prices and high raw material costs and these challenges are compounded by low domestic steel demand in the wake of the GFC.

There is no mention of dumping being a contributory factor that led to the decision of the Complainant to undertake the restructure. The reasons for the restructure were low steel prices and high material costs, compounded by low steel demand in the wake of the GFC. We further note that the Consideration Report states that:

The applications stated that the restructure and closures impacted company performance across sales of all product categories in 2011-12.¹⁹

Customs has been careful to express that the closure might have been a causative factor of the various injuries claimed to have been suffered by the Complainant in the Consideration Report. POSCO supports this preliminary analysis and requests that Customs carefully and forensically trace the impact of the closures on the Complainant. It would be inequitable and beyond the power of the Minister and the Chief Executive Officer of Customs to consider any “injury” caused by the restructure to be “material injury caused by dumping” for the purposes of this investigation.

While it is clear in some instances where the claimed injury was a result of the closures (reduced employment for example) it will not be so clear in others. This is particularly relevant to the price depression/suppression and reduced revenue allegations.

We note – as was similarly noted in the Consideration Report – that sales revenue and costs in respect of GI followed similar trends until 2011-12, as costs increased above revenue. However, we disagree that this necessarily indicates price suppression.

To illustrate this point, we refer to the Complainant’s *Capital Raising Presentation* of 22 November 2011.²⁰ The Presentation explained that the restructure risked the Complainant’s “competitive position”:

Under normal business conditions, the Company operates its facilities at production levels at near capacity. Generally, high levels of production are important to the Company’s financial results because they enable the Company to spread its fixed costs over a greater number of tonnes of production (provided the company can at least recover the variable costs of incremental production). The closure of some of the Company’s steelmaking facilities as a result of the restructure will increase its reliance on its remaining facilities and will increase the average cost per tonne of its steel products as the reduction in fixed costs will not be directly proportional to the reduction in production capacity. That is, fixed costs will be spread over a lower steel production volume. As a result, the restructure may adversely impact the Company’s cost structure and, consequently, its competitive position.

¹⁹ Page 19.

²⁰ Available here: <http://clients.weblink.com.au/clients/BlueScopeSteel2/article.asp?view=3365246>

Between August 2011 and July 2012, the Complainant had lower output and higher fixed costs for every tonne of GI produced, as a direct result of the decision to close the facilities. No other source of GI in the market faced the same conditions, particularly as the conditions were peculiar to the Complainant's internal business conditions. Therefore, the Complainant was faced with the choice of raising its price to cover the increased unit cost of production, and risk an adverse impact to its competitive position, or of under-pricing its competitors in the short run, absorb the resultant loss of revenue and increase the efficiency of the production process, in order to lower its costs of production. This decision occurred at a time when global steel prices were depressed²¹ and falling, resulting in reduced revenue.

The choice to protect the competitive position of the company, and the resultant loss of revenue, cannot be attributed to imports of the subject goods.

²¹ Customs has accepted that steel prices have been depressed globally at pages 48-51 of SEF 188.

J Other claimed injuries

Summary

- ***No nexus exists between the other claimed injuries and the subject imports.***
- ***Therefore there can be no finding that the subject imports have caused the claimed injuries.***

The Application outlines many forms of material injury that have allegedly been suffered by the Complainant as a result of the subject imports. As well as those addressed above, these include:

- reduced profits;
- reduced profitability;
- reduced return on investment;
- reduced ability to raise capital for reinvestment; and
- reduced employment.

As discussed above, the Act requires that the complained injury be caused by the dumped goods. This requires some form of causation. Section 269TAE(2A) provides that Customs must also consider whether the claimed injury is attributable to factors other than dumping. If there are any other factors that may have caused injury, Customs must not attribute that injury to the exportation of those goods. If there is no price suppression/depression caused by the dumping, then the reduction in profits and profitability cannot be linked to the dumping, nor can the reduced return on investment, reduced ability to raise capital and reinvestment, or reduced employment.

POSCO submits that none of the claimed injuries were caused by the subject imports. The Complainant is operating in markets in which demand is contracting, and in which prices are depressed. It recently closed down one of its major production facilities, which has caused its

costs to rise.²² These factors are the cause of the injuries claimed by the Complainant. They would have occurred in the absence of the subject imports.

²² As reported by The Age newspaper, "...BlueScope said it likely will report a loss of \$1 billion for the year ended June 30 after impairment charges as it restructures its Australian operations".
<http://www.theage.com.au/business/earnings-season/bluescope-shares-soar-on-nippon-deal-20120813-243ju.html#ixzz2CGCwWHy2>

K Other injury factor - GI from other countries

Summary

- **Customs must consider the injurious effect factors other than the allegedly dumped goods had on the complainant.**
- **There are sources of GI not included in the scope of the investigation that POSCO knows to be large volume importers of GI at prices competitive to Korean importers.**
- **Global steel prices are depressed.**
- **Customs is required to investigate the effect of these factors. It is not up to the importers or any other interested parties to substantiate the effect of these other sources of GI on the Australian industry.**
- **A failure on Customs behalf to investigate these sources and determine their injurious effect will mean that Customs has no rational basis to find that imports from the subject countries have caused material injury to the Australian industry.**

As discussed above, in SEF 188 Customs found that steel prices had been depressed globally. In SEF 188, Customs decided that this was not a cause of material injury to the Australian industry, for the following reason:

...while steel prices have been depressed globally, the presence of dumped imports in the market has further suppressed BlueScope's prices and made it unable to increase its prices to the extent it would have when competing with undumped prices.²³

With respect, any distinction between dumped imports and undumped imports at depressed prices is arbitrary.

Nonetheless, in the HRC case it would appear that the major sources of imports were covered by the Complainant's dumping allegation. That is not the case here, and therefore Customs cannot and should not apply a similar way of thinking about the preponderant effect of dumped imports, as compared to that of undumped imports.

²³ Page 51.

POSCO competes with many international sources of GI, several of which are surprisingly absent from the current dumping investigation. The first, relevant to the automotive sector, is Japanese GI. Japan is a major importer of GI into Australia, with volumes exceeding those from Korea. It is inconceivable to POSCO that the prices of Japanese GI would not be as competitive as those offered by POSCO.

Secondly, in terms of GI for the construction and manufacturing sectors, POSCO notes that India, New Zealand, Indonesia, Malaysia and Thailand all import GI into Australia in sizeable volumes, at prices that are competitive to those offered by the countries the subject of the investigation.

Customs analysis in SEF 188 does accept – as it must - that globally depressed prices can prevent a domestic industry from raising its prices. The key question is whether the depression and the degree of injury caused thereby is due to dumping, or not. This is important to the injury analysis because Section 269TAE(2A) of the Act provides:

(2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

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

...

and any such injury or hindrance must not be attributed to the exportation of those goods.

To the extent that the injury is caused by depressed prices, as opposed to dumped prices, this cannot be attributed to dumping. The Act also makes it clear that it is the Minister who must consider whether any injury to an industry is being caused or threatened by the volume of and prices of imported like goods that are not dumped. It is not for the various importers and exporters to do this. Customs, as the investigating authority, must investigate. The danger of not investigating other factors that may have caused injury to the Complainant is highlighted in the jurisprudence surrounding the “non-attribution” Article of the World Trade Organisation’s Anti-Dumping Agreement. As was noted by the Appellate Body in *US – Hot Rolled Steel*:

The non-attribution language in Article 3.5 of the Anti-Dumping Agreement applies solely in situations where dumped imports and other known factors are causing injury to the domestic industry at the same time. In order that investigating authorities, applying Article 3.5, are able to ensure that the injurious effects of the other known factors are not "attributed" to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the Anti-Dumping Agreement, justifies the imposition of anti-dumping duties.²⁴

If Customs does not fully investigate the effect of other sources of GI, it cannot have a rational basis to conclude that dumped imports are the cause of the injury. Therefore, any imposition of dumping duties could not be legitimately made.

POSCO submits that there is no difference between prices of imports of GI that are allegedly dumped and those that are depressed. A material injury finding cannot be made in these circumstances.

²⁴ United States - Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan, *Report of the Appellate Body* (WT/DS184/AB/R), paragraph 223.

L Conclusion

POSCO respectfully submits that the foregoing submissions cogently indicate that:

- no material injury has been caused to the Australian industry in its sales to the Australian automotive industry;
- the Complainant has not reflected its production and sales of like goods in the information presented to Customs – this should be requested by Customs and properly included in Customs' overall analysis;
- to the extent that the Complainant has suffered injury, such injury is attributable to contractions in demand in each of the markets it sells its GI, the globally depressed steel price and its decision to restructure its Australian production facilities; and
- there can be no finding that the subject goods have caused material injury in cases where prices of GI from countries that are not the subject of the investigation are similarly priced to those that are..

POSCO requests that Customs give full consideration to the matters raised in this submission, and that as a result of that consideration it should terminate this investigation at the soonest possible opportunity.

Daniel Moulis
Principal

Alistair Bridges
Solicitor

15 November 2012

Construction slows for 29th month

PUBLISHED: 08 Nov 2012 PRINT EDITION: 08 Nov 2012



Commercial and residential construction activity contracted in October but the pace of the decline had slowed, the Australian performance construction index showed.

Photo: Glenn Hunt

Robert Harley

Construction activity declined further in October albeit it at a slower rate, according to the Australian Performance of Construction Index from Australian Industry Group and the Housing Industry Association.

Construction activity has declined for 29 months, according to the index.

HIA and AiG estimate that the industry is running at about 63 per cent of capacity. Jobs shedding continues and the decline in employment shows no moderation.

Two factors make circumstances even tougher for the industry. Input prices and wages are growing despite the declines in activity.

The index brings together activity, new orders, deliveries and employment. Any result below 50 on the index indicates a contraction.

Housing Industry Association chief economist Harley Dale said the October reading of 35.8 remained very weak, but “at least the pace of contraction has eased”.

KEY POINTS

- The rate of contraction slowed in house and commercial construction.
- Of the sub-sectors measured, apartment building was the worst.
- The rate of job losses in the industry has not moderated.

Activity declined in all four construction sectors rated by the index.

The rate of contraction moderated noticeably in house building (41) and commercial construction (37.4).

In engineering (35.1), the improvement was only marginal and project delays and import competition were cutting work.

The apartment construction sector (27.6) was the worst.

Australian Industry Group director of public policy Peter Burn said the pace of decline in the construction industry had turned for the better in October.

“This was most noticeable in the long-suffering housing building sub-sector, where a combination of lower interest rates and a shift in the focus of new home buyer support have helped slow the pace of construction,” Mr Burn said.

Many expect a rebound in housing construction backed by low interest rates. Reserve Bank governor Glenn Stevens noted “indications of a prospective improvement” in dwelling investment, this week.

But the evidence is mixed and there was little encouragement from developers or building material suppliers in updates at company annual meetings.

Mr Dale said the signs of a recovery in residential construction were tentative and had generally been “overplayed”.

“If we were to see a sustained improvement in the key sub-indices of the index – in new orders for example – that would be a key signal of a turnaround,” he said.

The slowing in the rate of contraction in new orders was the most hopeful sign in the past month.

The decline in new orders slowed in the housing, commercial and engineering sectors but remained very weak in apartments.

Businesses reporting declines in activity pointed to the impact of tight credit, project delays and the uncertainty about the economic outlook.

The Australian Financial Review



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Manufacturing contracts for 8th month

[PRINT EDITION: 01 Nov 2012](#)

Australia's manufacturing sector has contracted for an eighth consecutive month amid weakness in selling prices and new orders.

The latest Australian Industry Group performance of manufacturing index (PMI), released on Thursday, rose marginally to 45.2 in October from 44.1 in the previous month.

However, the reading is still below 50, which indicates the index is in contractionary territory, as it has been since March.

The October sub-index for new orders dropped to 43.9 in October from 44.3, with just two sectors expanding in the month: paper, printing and publishing, at 51.1, and transport equipment, at 52.5.

AI Group chief executive Innes Willox said there are a number of factors weighing on the sector.

"Manufacturers continue to find the going very tough in the face of the strong dollar, weaker demand in export markets and flat conditions across the non-mining sectors of the domestic economy," he said.

"Particularly in commercial and residential construction, which has strong linkages with domestic manufacturing.

"For quite some time, the sector has faced a squeeze on margins with prices for non-labour inputs and wages rising steadily while selling prices have been weak."

He added that the contraction in Australia's manufacturing industry was comparable to a similar situation in Europe, despite the strength of the wider domestic economy.

AAP

The Australian Financial Review



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Spangle Zinc Galvanised Steel



Zero Spangle Zinc Galvanised Steel

