



Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne VIC 3000

Mr Paul O'Connor
Panel Member, Anti-Dumping Review Panel
c/- ADRP Secretariat
Legal, Audit and Assurance Branch
Department of Industry, Innovation and Science
10 Binara Street
Canberra ACT 2600

By e-mail: ADRP@industry.gov.au

Dear Mr O'Connor,

Zinc Coated (Galvanised) Steel exported from the Republic of India, Malaysia and the Socialist Republic of Vietnam

I write with regard to the notice under section 269ZZI of the *Customs Act 1901* (the Act), published on 6 October 2017, advising your intention to review the decision of the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) to publish a notice under subsections 269TG(1) and (2) of the Act (the reviewable decision). The reviewable decision was published on the Anti-Dumping Commission's website on 16 August 2017.

I understand that on 13 October 2017, the Commission provided you with additional information in respect of Essar Steel India Ltd's (Essar's) determination of export price for the purpose of the calculation of Essar's dumping margin, and all other relevant information (as defined in subsection 269ZZK(6) of the Act) as requested in your correspondence dated 6 October 2017. On the same date, the Commission attended a teleconference in respect of BlueScope Steel Limited's (BlueScope's) grounds for seeking a review of the Parliamentary Secretary's determination of Essar's export price.

I have considered the application for review of the reviewable decision and have decided to make some comments on the various grounds raised by BlueScope in its application. Please find my comments at **Attachment A**, which I submit for your consideration.

The Commission remains at your disposal to assist you in this matter, and would be happy to participate in a further conference if you consider it appropriate to do so.

Yours sincerely

Paul Sexton
General Manager, Investigations, Anti-Dumping Commission

23 October 2017

1. BlueScope argues that export sales data provided by Essar in respect of the subsidy investigation should not “crossover” into the dumping investigation as, in a dumping investigation, the exporter’s export prices are subject to a more intensive investigation as to whether such prices recover all costs.

BlueScope’s reference to export prices recovering costs suggests that BlueScope has confused the determination of the export price with the determination of a normal value. Only the normal value provisions under the Act¹ contain a cost recovery test (as part of the ordinary course of trade test set out in section 269TAAD).

If BlueScope is seeking to argue that Essar’s export price to Australia has not been sufficiently examined from the point of view of whether the sales were arm’s length transactions, which includes determining whether there are sales at a loss by the importers, then the Commission confirms that it has examined the relevant sales from Essar via a desk top verification.

Furthermore, the Commission examined the sales of those exports of the goods by the importer during a visit to one of Essar’s major Australian customers (importer) Mitsubishi Australia Ltd (Mitsubishi). The public record version of Mitsubishi’s visit report is available on the Commission’s website.² The confidential attachments, including Mitsubishi’s response to the Commission’s importer questionnaire, was submitted to the ADRP secretariat on 13 October 2017.

The Commission would like to restate that it has considered the treatment of Essar’s export price data for the purposes of the dumping and subsidy elements of the investigation as outlined in REP 370. Essar cooperated with the subsidy investigation and submitted its Australian export sales data which was, as stated above, verified to the Commission’s satisfaction via a desk top examination and an importer visit.

The Commission found that export sales data provided by Essar for the subsidy investigation was reliable and relevant. In accordance with subsection 269TAB(3) of the Act, in determining the export price of goods in an investigation where sufficient information has either not been furnished or is not available, the Commission is required to have regard to all relevant information. In this instance, the Commission found that the most relevant information to establish export prices for Essar was the export sales data provided by Essar as part of the subsidy examination which was in turn verified to the Commission’s satisfaction as reliable information.

¹ Section 269TAAD

² [Mitsubishi’s visit report](#)

2. Verification of Essar's Australian sales data.

To verify the accuracy of Essar's Australian sales data, the Commission relied on a desk top verification of the exporter's data and an on-site verification of one of Essar's major Australian customer's as detailed below.

(i) Essar's export sales data

The verification focussed on verifying the information provided by Essar that was considered to be of high risk and material in relation to determining whether the information provided by Essar was complete, relevant and accurate. Both the verification process and calculations used relying on Essar's information were peer reviewed within the Commission.

Upward verification - The exporter's sales listing was reconciled to the total export value and quantity as recorded in the import data base obtained from Australian Boarder Force for the investigation period.

Downward verification –the Commission matched the sample documentation (source documents for 2 shipments for exports sales made during the investigation period) provided by Essar in response to the exporter questionnaire issued in relation to the subsidy investigation to the sales data provided (Confidential Attachments 15 and 16 refer).

(ii) Importer's data - Mitsubishi

As discussed above, the Commission conducted an on-site verification visit to one of Essar's major Australian customers (Mitsubishi), an importer of the goods, and determined that all exports from Essar were at arm's length. This verification was conducted in accordance with ADN 2016/30, including testing the profitability of the importer's sales.

The Commission also considered the verification of Essar's information undertaken in a previous investigation for the same goods (INV 249), which was later terminated (TER 249 refers). In that investigation the Commission found that all exports by Essar to its Australian customers were at arm's length. The Commission noted that Essar's major Australian customers have not changed between the two investigations.

The Commission was satisfied that all export sales by Essar to it major Australian customer were at arm's length during the relevant investigation period.

3. The Commission's treatment of Essar establishes an unsafe precedent that will likely encourage exporters, the subject of both dumping and subsidy investigations, to only cooperate in the subsidy investigations.

The Commission does not accept BlueScope's assertion that an 'unsafe precedent' has been established to encourage exporters to cooperate in only one investigation and not the other when dumping and subsidy investigations are conducted simultaneously.

While elements of a subsidy investigation are undertaken under different legislative provisions to that of a dumping investigation, information provided for one investigation can be used for the other where it is relevant and reasonable to do so (i.e. the cooperating exporter/importer does not have to submit the same information twice).

It is unusual for an exporter to cooperate with a subsidy part of an investigation but not with the dumping part of the investigation (or the reverse). In any event, the Commission determines export prices and normal values in each investigation in accordance with the legislative test set out under the Act and on the basis of the best available information.

In any investigation, interested parties will make their own decisions concerning cooperation based on their own circumstances.

4. BlueScope's assertion that in this case the Commission has "set aside the Commission's usual practice."

It is unclear to the Commission what BlueScope means when it refers to the 'setting aside of a usual practice'. BlueScope may be referring to the practice of ascribing the lowest weighted average export price of other exporters in a case when determining an uncooperative exporter's export price.

This approach was not taken in this investigation. The Commission considered that the information available about Essar's export prices was the most correct and appropriate information to use in both the dumping and subsidy aspect of the investigation as it would lead to a more accurate outcome in terms of determining whether dumping had in fact occurred in relation to Essar's goods exported to Australia.

The Commission considers this approach is consistent with the WTO Appellate Body's determinations about the "use of facts available". For example, in *United States Countervailing Measures on Certain Hot Rolled Carbon Steel Flat Products*,³ the Appellate Body refers to a need to ensure the facts available reasonably replace information with a view to arriving at an accurate determination.⁴ The Appellate

³ WT/DS436/AB/R, December 2014, paras 4.399 to 4.435

⁴ For example, see paragraphs 4.419, 4.424, and 4.426

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Body also noted the relevance of procedural circumstances that may be taken into account⁵ and we note that Essar had provided a detailed explanation why it was unable to cooperate with the dumping investigation.

⁵ Paragraph 4.422