



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 11 July 2018 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application for review to the ADRP of a review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10 and/or 11 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

¹ By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name	Dongbu Steel Co., Ltd (“Dongbu”)
Address:	22F, LG Namsan Tower 98 Huam-ro Jung-gu Seoul Korea
Type of entity (trade union, corporation, government etc.):	Dongbu is a listed company (joint-stock corporation) in the Republic of Korea

2. Contact person for applicant

Full name	Alistair Bridges
Position	Senior Associate
Email	alistair.bridges@moulislegal.com
Telephone number:	+61 3 8459 2276

3. Set out the basis on which the applicant considers it is an interested party:

Pursuant to Section 269ZZC of the Customs Act 1901 (“the Act”) a person who is an interested party in relation to a reviewable decision may apply for a review of that decision.

The reviewable decision in this case relates to an application made to the Commissioner under Section 269ZHB requesting that the Minister continue the anti-dumping measures.

Under Section 269T of the Act an “interested party” for the purpose of that kind of a reviewable decision is defined as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia.

Dongbu is a manufacturer and exporter, to Australia, of the goods to which the decision relates, namely zinc coated (galvanised) steel. Dongbu is thus an “interested party” for the purposes of the Act and this application.

4. Is the applicant represented?

Yes No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

- | | |
|--|--|
| <input type="checkbox"/> Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice | <input type="checkbox"/> Subsection 269TL(1) – decision of the Minister not to publish duty notice |
| <input type="checkbox"/> Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice | <input type="checkbox"/> Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures |
| <input type="checkbox"/> Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice | <input type="checkbox"/> Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry |
| <input type="checkbox"/> Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice | <input checked="" type="checkbox"/> Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures |

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods are described as:

- Flat rolled products of iron and non-alloy steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc; and*
- Flat rolled products of alloyed steel of a width less than 600mm and equal to or greater than 600mm, plated or coated with zinc exported from:*
- *China by Angang Steel Co., Ltd or Benxi Iron and Steel (Group) International Economic & Trading Co.; or*
 - *Taiwan by Yieh Phui Enterprise Co., Ltd.*

7. Provide the tariff classifications/statistical codes of the imported goods:

The goods are currently classified to the following tariff subheadings of Schedule 3 to the Customs Tariff Act 1995:

Tariff Subheading	Statistical Code	Description
7210		FLAT-ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600 mm OR MORE, CLAD, PLATED OR COATED:
7210.4		Otherwise plated or coated with zinc:
7210.49.00		Other
	55	Of a thickness of less than 0.5mm
	56	Of a thickness of 0.5mm or more but less than 1.5mm
	57	Of a thickness of 1.5mm or more but less than 2.5mm
	58	Of a thickness of 2.5mm or more

7212	FLAT-ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF LESS THAN 600 mm, CLAD, PLATED OR COATED:	
7212.30.00	61	Otherwise plated or coated with zinc
7225	FLAT-ROLLED PRODUCTS OF OTHER ALLOY STEEL OF A WIDTH OF 600mm OR MORE:	
7225.9	Other	
7225.92.00	38	Otherwise plated or coated with zinc
7226	FLAT-ROLLED PRODUCTS OF OTHER ALLOY STEEL OF LESS THAN 600mm:	
7226.9	Other	
7226.99.00	71	Other

8. Anti-Dumping Notice details:

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission’s website) to the application****

Anti-Dumping Notice (ADN) number:	Anti-Dumping Notice No 2018/96
Date ADN was published:	17 July 2018
Please refer to Attachment 1 – ADN.	

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked ‘**CONFIDENTIAL**’ (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked ‘**NON-CONFIDENTIAL**’ (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant’s representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

See Attachment 2, in respect of which confidential and non-confidential versions have been provided.

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

See Attachment 2, in respect of which confidential and non-confidential versions have been provided.

11. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

See Attachment 2, in respect of which confidential and non-confidential versions have been provided.

PART D: DECLARATION

The the applicant's authorised representative declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:



Name:

Alistair Bridges

Position:

Senior Associate

Organisation:

Moulis Legal

Date:

16 August 2018

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative:	Alistair Bridges
Organisation:	Moulis Legal
Address:	Level 39, 385 Bourke Street Melbourne VIC 3000 Australia
Email address:	alistair.bridges@moulislegal.com
Telephone number:	+61 3 8459 2276

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

See Attachment 3 – letter of authority.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /

16 August 2018



In the Anti-Dumping Review Panel

Application for review – continuation inquiry concerning zinc coated (galvanised) steel from Korea

Dongbu Steel Co., Ltd

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Introduction

The Anti-Dumping Commission (“the Commission”) on 25 August 2017, by way of public notice, invited certain persons to apply for the continuation of anti-dumping measures applying to the export of zinc coated (galvanised) steel (hereinafter “Zinc Gal” or “the GUC”) from China, Korea and Taiwan to Australia.¹

The applicable dumping duty notice was due to expire on 5 August 2018. The original investigation, applied for by BlueScope Steel Limited (“BlueScope”), first imposed anti-dumping measures on the GUC on 5 August 2013.

In response to the invitation, BlueScope applied to the Commission on 6 October 2017 for the

¹ ADN 2017/159.

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continuation of the anti-dumping measures applicable to the exportation of the GUC from China, Korea and Taiwan to Australia.²

On the basis of BlueScope's application, the Commission initiated a continuation inquiry ("the Inquiry") in respect of:

*whether the continuation of anti-dumping measures, in the form of a dumping duty notice in respect of zinc coated (galvanised) steel exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea) and Taiwan, and in the form of a countervailing duty notice in respect of galvanised steel exported from China, is justified.*³

Based on recommendations contained in Report 449,⁴ the Assistant Minister for Science, Jobs and Innovation and Parliamentary Secretary to the Minister for Jobs and Innovation ("the Parliamentary Secretary") decided on 12 July 2018 to continue the anti-dumping measures imposed on the GUC exported to Australia from China, Taiwan (by certain exporters) and Korea (by certain exporters).⁵ The decision of the Minister was published on the Commission website on 17 July 2018.

Specifically, the Parliamentary Secretary decided to publish notices in relation to exports of Zinc Gal exported from China, Taiwan and Korea under Section 269ZH(1) of the *Customs Act 1901* ("the Act").⁶ These notices had the effect of continuing the dumping duties on exports from all exporters from China, and certain exporters from Taiwan and Korea, based on different variable factors to those that had previously applied.⁷

Dongbu Steel Co., Ltd ("Dongbu") is a Korean manufacturer and exporter of Zinc Gal.

As outlined in this application, Dongbu seeks review by the Anti-Dumping Review Panel ("ADRP"), under Sections 269ZZA(1)(d) and 269ZZC of the Act, of the decision made by the Parliamentary Secretary to continue the measures against the exportation of the GUC by Dongbu from Korea to Australia.

We now address the requirements of both the form of application that has been approved by the Senior

² See EPR 449 Doc 001 – Application.

³ ADN 2017/159 at page 1.

⁴ Report 449.

⁵ ADN No 2018/96.

⁶ A reference in this Application to "the Act", or to a "Section", or "Subsection" or "Subparagraph" is a reference to a Section, Subsection or Subparagraph of the Act, unless otherwise specified.

⁷ See ADN and Section 8(5) notice

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Member of the Review Panel under Section 269ZY, and of Section 269ZZE(2), in relation to our clients' grounds of review, being those requirements not already addressed within the text of the approved form itself, which we have also completed and lodged with the ADRP.

The decision to continue the measures against Dongbu is not based on positive evidence and is not supported by the evidence

9 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

The Commission states in Report 449:

... the Commission considers it likely that material injury would be experienced by BlueScope as a result of the continuation and recurrence of dumping of galvanised steel exported from Korea by Dongbu.

In so finding, the Commissioner claimed to have a basis to recommend the continuation of the measures against Dongbu's Zinc Gal under Section 269ZHF(1)(a)(iii) without falling foul of the requirements of Section 269ZHF(2), which provides as follows:

The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

Section 269ZHF(2) represents .Australia's domestic implementation of its obligations under Article 11.3 of the WTO *Anti-Dumping Agreement*. Article 11.3 provides as follows:

Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review. [our emphasis, footnotes omitted]

Of relevance is the fact that under both Article 11.3 and Section 269ZHF(2) the threshold for the continuation of the measures is based on a finding that continuation or recurrence of dumping and injury is "likely". WTO jurisprudence provides the following guidance as to how "likelihood" should be

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determined:

This language in Article 11.3 makes clear that it envisages a process combining both investigatory and adjudicatory aspects. In other words, Article 11.3 assigns an active rather than a passive decision-making role to the authorities. The words 'review' and 'determine' in Article 11.3 suggest that authorities conducting a sunset review must act with an appropriate degree of diligence and arrive at a reasoned conclusion on the basis of information gathered as part of a process of reconsideration and examination. In view of the use of the word 'likely' in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated - and not simply if the evidence suggests that such a result might be possible or plausible.⁸

The Anti-Dumping Commission's *Dumping and Subsidy Manual* expressly adopts this interpretation of the term "likely" for the purposes of Section 269ZHF(2).⁹ So, it seems fairly uncontentious that a determination under Section 269ZHF(2) of the Act must be made only if evidence demonstrates that a continuation or recurrence of dumping would be probable.

Dongbu believes that the correct or preferable view is that the evidence before the Commission does not establishes this.

To explain why, it is worth reciting the reasoning in Report 449 that led to the recommendation for continuation:

The Commission, in REP 456 and 457, has found that galvanised steel exports from Dongbu were dumped at a margin of 2.4 per cent.

The Commission found that Dongbu prices had undercut those of the Australian industry. This can, however, be the result of BlueScope's pricing model.

Dongbu submits that, due to the finding in SEF 449 and 450 that Dongbu's FOB export price was, on a weighted average, higher than any other exporter, Dongbu has no reason to lower its prices and would not account for any injury experienced by the Australian industry. Dongbu also states that it has no reason to chase market share in export markets as it is focussing on the more profitable domestic market.

The Commission has re-examined Dongbu's FOB export price to Australia. The Commission has found that Dongbu's price was in fact one of the lowest of all exporters subject to the measures, and that the finding in the SEF 449 and 450 was incorrect. Dongbu's price was also lower than the FOB export price of exporters from Korea that are not subject to the dumping duty notice.

⁸ See Appellate Body Report, *US - Corrosion-Resistant Steel Sunset Review*, para. 111. Also see Appellate Body Report, *US - Oil Country Tubular Goods Sunset Reviews*, para. 179.

⁹ See page 163.

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This analysis is contained in Confidential Attachment 1.

Dongbu accounted for approximately 33 per cent of galvanised steel exports from Korea to Australia, of goods subject to measures, during the inquiry period. Dongbu's importers in Australia are similar to importers of galvanised steel from China and Taiwan. Given the lower pricing of goods exported from China and Taiwan, the Commission is of the view that should the measures be allowed to expire, Dongbu will compete directly with the lower prices from China and Taiwan, and would likely export galvanised steel to Australia at dumped prices.

Dongbu submits that SEF 449 and 450 makes it unclear to the reader that this approximate portion of Dongbu's galvanised steel exports is below the three per cent volume of all imports of the goods, which would be seen to be a negligible volume in an investigation and would see an investigation terminated pursuant to subsection 269TDA(3). An investigation would also be required to show a threat of material injury involving a process similar to that undertaken in a continuation inquiry, whereby the Commission will be required to look at future behaviour.

The Commission considers that Dongbu's exports were at dumped prices during the inquiry period despite its claimed focus on sales in the domestic market and constrained manufacturing capacity. Again, the Commission notes that Dongbu's prices are lower than most other exporters, including those not subject to measures. It is therefore likely that future exports of galvanised steel from Dongbu would be dumped on the Australian market in the absence of the current measures. Further, the Commission considers it likely that the dumping of galvanised steel exported from Korea by Dongbu would place downwards pressure on prices in the Australian market, and that BlueScope would respond by reducing its own prices in order to maintain its market share. Noting the economic condition of the Australian industry and its present vulnerability, the Commission considers it likely that material injury would be experienced by BlueScope as a result of the continuation and recurrence of dumping of galvanised steel exported from Korea by Dongbu. [footnotes omitted]¹⁰

The crux of the Commission's reasoning for the continuation of the measures as they pertain to Dongbu is in the final paragraph. Essentially this reasoning is, the goods were dumped, they will continue to be dumped, and this will cause injury to the Australian industry by placing downward price pressure on prices in the Australian market. Dongbu disagrees with this conclusion. In addressing its reasoning for this, Dongbu will briefly analyse its pricing behaviour in the inquiry period, will consider the relevance of its sales volumes to Australia, will discuss the relativities of its prices in the Australian market and will discuss the "vulnerability" of the BlueScope to future injury.

1 Analysis of Dongbu's pricing practices

Dongbu's exports were found to be dumped by a margin of 2.4%. This is 0.4% above a *de minimis* margin that, if found in an investigation, would require that investigation to be terminated. It is the second lowest dumping margin of any exporter still subject to the measures. [CONFIDENTIAL TEXT DELETED

¹⁰ Report 449, pages 47 and 48.

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– details of pricing considerations]

Given this, the sales people concerned did a reasonable job of aligning the export prices with the domestic prices which formed the basis for the normal value. This behaviour is not indicative of an entity that intends to dump, nor is the margin deduced by the Commission evidence that injurious dumping will occur in the future.

Indeed, the predictive value that is credited to the dumping margin in Report 449 needs to be much more closely examined. It was based on the sale of only [CONFIDENTIAL TEXT DELETED – number] of the goods, all of which were exported in the period between [CONFIDENTIAL TEXT DELETED – period].¹¹ Thus, the Commission used a sample of sales over [CONFIDENTIAL TEXT DELETED – period] in order to ascertain the likelihood that the goods would be dumped in the future. Moreover, these sales were simply spot sales to traders. Dongbu had no ongoing sales agreements or arrangements in relation to the Australian market that would require it to continue to export at dumped prices, or that would commit it to supplying target volumes.

We would suggest that more significant to the question of future dumping is the nature of the export price of these sales *vis-à-vis* the measures that were in place when they were made. In particular, we note that at the close of the most recent variable factors review the ascertained export price (“AEP”) was set as a floor-price for future imports of Dongbu’s goods. That AEP was [CONFIDENTIAL TEXT DELETED – AEP]. The AEP determined in the continuation inquiry was [CONFIDENTIAL TEXT DELETED – AEP].

Each AEP represents the weighted average FOB export price during the relevant period of review or inquiry. In the period of inquiry Dongbu’s weighted average FOB export price was [CONFIDENTIAL TEXT DELETED – percentage] higher than the floor price ([CONFIDENTIAL TEXT DELETED – percent] if the currency of export, [CONFIDENTIAL TEXT DELETED – currency], is adopted).

If Dongbu was set on competing with lower priced goods in the Australian market, as Report 449 suggests it will be, it could have sold higher volumes at a price that was [CONFIDENTIAL TEXT DELETED – percent] lower than that it charged, without the importer incurring any dumping duty. It did

¹¹ This variable factors review was requested by Dongbu itself, out of its interest in understanding what the Commission’s views were as to its normal value and ascertained export price, so that its future trade could abide by those factors in the future. Indeed it was the second such review voluntarily requested by Dongbu for that same purpose. We suggest to you that being an active and willing participant in the system of monitoring variable factors is hardly the mark of an exporter that intends to engage in dumping in the future.

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not do so. It cannot, therefore, be assumed that Dongbu would simply chase market prices down in the future. It did not do that in the past, when it “could” have. We submit that if it did not demonstrate that behaviour in the past, a finding that it would manifest that behaviour in the future is unsafe and unsupported.

We do not believe this evidence shows that dumping in the future is probable. It is, at best, agnostic as to whether dumping would occur in the future.

2 Dongbu’s export volume

Sales volume is, by necessity, a consideration in the likelihood of whether injury will continue or recur. The analysis of Dongbu’s Australian sales volumes in Report 449 is relatively shallow. That analysis is:

Dongbu accounted for approximately 33 per cent of galvanised steel exports from Korea to Australia, of goods subject to measures, during the inquiry period.

This was also the analysis in the SEF. The focus on Dongbu’s sales volume as a percentage of Korean exports subject to the investigation tends to over-emphasise Dongbu’s presence in the Australian market. In particular, Report 449 fails to adequately discuss the following:

- The majority of the goods exported from Korea were made by Dongkuk, and were therefore not subject to the measures. Understood in this light, what is being said is that Dongbu’s exports were only one-third of the minority (i.e. non-Dongkuk) exports to Australia from Korea during the period of review. To illustrate this more clearly, we refer to the following graph from Report 449:

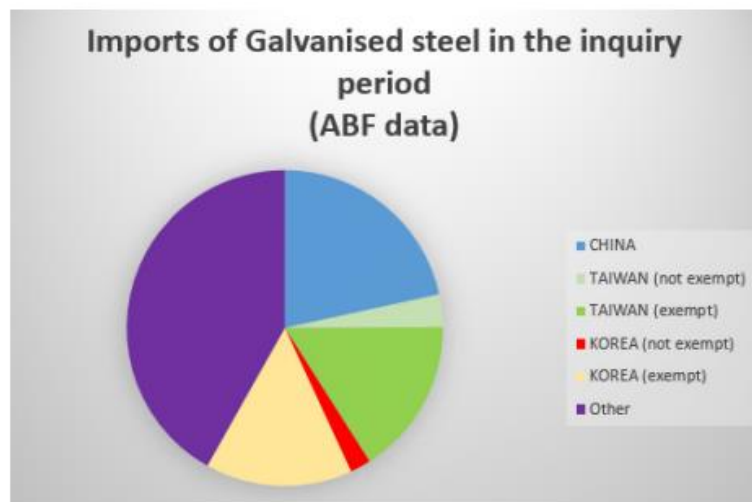


Figure 1 – Imports of Galvanised steel from subject countries in the inquiry period¹⁷

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Dongbu's exports were *one-third* of the *red portion* of the graph.

- Dongbu's export sales were less than 0.5% of the entire Australian market for the goods.
- Dongbu is fairly certain that its export volume would have been less than 3% of the volume of total imports of the goods during the inquiry period.

If an application for dumping measures was brought against Dongbu solely, that application would need to be terminated in accordance with Section 269TDA(3) of the Act. The policy here would appear to be that a small volume of imports should not be considered to be materially injurious to the Australian industry, in the context of competition from a very high volume of exports from other exporters – irrespective of the relativities of pricing.

Section 269TDA(3) is equally applicable to investigations based upon allegations that dumping has caused material injury or that dumping *threatens* material injury, the latter of which requires a similar forward-looking exercise as that which was undertaken in this inquiry. The implication of this is that the volume of Dongbu's exports is not a sufficient-enough volume to justify the imminence and foreseeability of a finding of a threat of material injury.

The simple fact that the volume of goods from Korea upon which the Commission intends to continue measures (i.e. just Dongbu's) would not allow for the imposition of measures in the first place is highly relevant to the current exercise. This fact must surely vitiate against the "likelihood" that injury would recur in the absence of measures.

In terms of looking to what the future volumes may be, we note the following facts that suggest Dongbu's capacity or desire to increase its sales to Australia is restrained:

- Dongbu exports to [CONFIDENTIAL TEXT DELETED – number] countries beside Australia;
- Dongbu is increasingly focussed on its domestic sales of the goods, having increased the volume of these by over [CONFIDENTIAL TEXT DELETED – percent] since the original investigation;
- Dongbu had over [CONFIDENTIAL TEXT DELETED – percent] capacity utilisation in the period of review;
- Dongbu's sales to Australia were all spot sales to traders; and

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- Dongbu did not have any long term supply arrangements within the Australian market.

Thus, unless things were to change dramatically due to some unforeseen circumstance, it is unlikely that Dongbu's export volumes to Australia would increase significantly to the extent that it would cause injury to the Australian industry. Dongbu is not dependent upon the Australian market, it does not have significant excess capacity to expand production, and it is much more focussed on its own domestic market than it is the Australian market. Dongbu has few customers in the Australian market, and those that it does have are traders who can just as easily source goods from exporters not subject to the measures.

3 Relativity of Dongbu's prices in the Australian market

There was some confusion in the pronouncements of the Commission during the continuation inquiry with respect to the comparison of Dongbu's exports with other prices in the Australian market. The SEF found that:

Dongbu's FOB export price to Australia was, on a weighted average, higher than that of any other exporter subject to the anti-dumping measures during the inquiry period. Dongbu's galvanised steel prices were also higher than the prices of goods exported to Australia by Dongkuk, which is exempt from the measures.¹²

However, this position was reversed quite significantly in Report 449, and was stated to be incorrect.¹³ The reason for this is unclear – it appears to be a very significant error to make, but its nature is elusive. Indeed, it may simply be that the Commission took a different approach to comparing Dongbu's price to other exporter's prices in Report 449 than was taken in the SEF. We note for example that Report 449 does not state that the revised finding that Dongbu's prices were lower than other exporters was based upon a comparison of weighted average prices, as was stated to be the case in the SEF.

We also note that the analysis that led to the new finding in Report 449 is said to be included in Confidential Attachment 1, which is said to be a "Galvanised Steel Market Analysis".¹⁴ The finding in the SEF was not stated to have been drawn from that attachment. More significantly, this does not appear to be the same Attachment to Report 449 that considers undercutting by the imported goods (being Confidential Attachment 4, "price analysis"). It would appear that this conclusion is drawn from a more

¹² Report 449, page 47.

¹³ Fourth paragraph of the extract from Report 449, set out on page 4 above.

¹⁴ Page 47 and page 54 respectively.

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general consideration than the actual price analysis that was undertaken.

But the implications of this reversal of position are not reflected throughout the Report. In particular:

- The Report also found that imports of zinc coated steel from China and Taiwan were imported at “*lower pricing*” than Dongbu’s, which is a contradiction of the proposition, also stated in Report 449 and apparently forming a main basis of the decision to continue the measures against Dongbu, “*that Dongbu’s price was in fact one of the lowest of all exporters subject to the measures*”.¹⁵
- On one form of price comparison undertaken by the Commission it noted that:

*Under the first approach, the Commission observes that there are prices in the market which tend to be cheaper than those of exporters subject to the measures. Despite this, the Commission observes that goods originating from China and Taiwan undercut BlueScope’s prices.*¹⁶

What is pertinent is the fact that there are prices in the market that “*tend to be cheaper*” than those of the exporters subject to the measures. We note, specifically, that Report 449 states that Dongbu’s prices are lower than the Korean exporter that was not subject to the measures, however there is no mention of the relativities of price between Dongbu and the imports of Taiwanese zinc coated galvanised steel that were not subject to the measures.

Ultimately, we submit that the picture regarding Dongbu’s prices is entirely unclear and unsatisfactory. From the findings of fact in the Report, it could be understood that Dongbu’s prices were *higher* than the prices from China and Taiwan. As Dongbu is the only exporter subject to measures that is not from China or Taiwan, this would mean it in fact had the highest export price of any of the exporters subject to the measures. At the very least, we think it likely that Dongbu’s prices are higher than exports of the goods from Taiwan that are not subject to the measures, which make up a significantly greater portion of

¹⁵ Page 47.

¹⁶ Page 42. The approach to price comparison was said to be:

...the Commission has taken Free on Board (FOB) prices from the subject countries, and all other countries as declared in the ABF import database and added importation costs (equivalent to the values demonstrated by the most efficient importer verified in each inquiry) and a weighted average of ocean freight and insurance costs from cooperating exporters during the inquiry period. The Commission has compared these to an ex works (EXW) equivalent price (that is, the FIS price minus delivery costs) for BlueScope to obtain a whole of market, high level comparison of prices.

Apparently, this *is* included in Confidential Attachment 4.

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the Australian market than do Dongbu's.

The simple fact is that Report 449 is confused on this point, and so too must be Minister's decision. This lack of clarity has adversely effected Dongbu's ability to address all of the evidence upon which the reviewable decision was based. We respectfully request that the ADRP ask the Commission to clarify this, within a short enough time to enable us to address any such clarification, if necessary, in a follow-up submission within the prescribed 30 day period for interested party submissions.

But even if Dongbu was the lowest priced in the market overall, we recall that its dumping margin was only 2.4%. This means that its Australian sales prices were on average only 2.4% less than its ordinary course of trade domestic sales. Again, Dongbu has the second lowest dumping margin, so its relative competitiveness in the Australian market would seem to be driven more by the efficiency of its factory, rather than the just-above-*de-minimis* dumping margin. Again, if Dongbu had been seeking to compete on price, it could have sold the goods at a price that was a further [CONFIDENTIAL TEXT DELETED – percent] cheaper, without its importers incurring any additional anti-dumping measures. It did not do this.

4 Vulnerability of the Australian industry to future injury

Finally, Report 449 concludes that the dumping of galvanised steel from Korea by Dongbu would continue, and would place “*downward pressure*” on prices in the Australian market. The consequence of this is that BlueScope would “*respond*” by reducing its own prices in order to maintain its market share. The prophesized response appears to be to “*downward pressure*” rather than directly to Dongbu's prices. And, due to BlueScope's “*present vulnerability*”, Report 449 believes that it is likely that BlueScope would suffer material injury as result.

As noted above, we disagree with the suggestion that dumping will continue into the future. We also disagree with the remainder of this analysis.

In terms of “*downward price pressure*”, we note the following from BlueScope's Verification Report:

Following the verification visit, BlueScope provided additional information to explain its pricing strategy and provided additional correspondence with customers to support its claim that it is forced to lower prices in response to import offers (Confidential Attachment 2). Most of the correspondence reviewed by the verification team does not expressly state which supplier is offering a lower price, however, indicates the country that the offer is from. Most of the

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*correspondence referred to one of the subject countries.*¹⁷

So, the price pressure, such as it is, appears to simply be assertions from BlueScope's customers to the effect that goods from foreign countries are cheaper than BlueScope's.

First of all, [CONFIDENTIAL TEXT DELETED – discussion of Dongbu's customers] We also do not think it is safe to suggest that because BlueScope's customers may try to negotiate lower prices with BlueScope on the basis of generalised exporter information that the measures should continue against Dongbu.

More generally, the nature of the "vulnerability" is not spelt out in Report 449. We note that in the inquiry period BlueScope had the second highest sales volume it had in any year since 2008 and the highest market share since that year, so it is likely that this is a reference to BlueScope's apparent historic and continuing lack of profitability on its sale of the goods.¹⁸ We are not certain that this necessarily constitutes a "vulnerability" to future injury, so much that it would infer the possibility of the continuance of this well-established trend of non-profitable sales. In so far as this inference is available it can also be inferred that that would continue even were the measures to continue against Dongbu. Secondly, it is only an inference rather than evidence.

To the extent that BlueScope's prices are pegged to imports, this is a result of BlueScope's choice to adopt an Import Pricing Parity model. We understand that BSL targets an "effective threat" when setting its IPP each month. There is limited publicly available information regarding this practice, although, it is apparent that BlueScope has regard to a supplier's volume, quality and the price of the product when determining if they are an "effective threat".¹⁹ Having said all of that we also note that the original investigation made the finding that the benchmark IPP price "closely" matched the lowest quoted price. It seems unlikely in the light of significant volumes of product available in the Australian market to which no measures apply that Dongbu would be considered to be an effective "threat" for the purpose of BSL's pricing mechanism.

We would suggest that a more factually based conclusion would need to consider the basis upon which BlueScope identifies an "effective threat" and then determine what it would take for Dongbu, based on

¹⁷ Page 17.

¹⁸ Pages 29 and 30.

¹⁹ REP 370 - Galvanised Steel – India, Malaysia and Vietnam, page 67.

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the evidence gathered in the inquiry, to meet that description, and how likely that set of circumstances is.

10 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

As explained above, Dongbu submits that the correct or preferable decision, fully taking into account the evidence at hand, would be that it cannot be established that the expiration of the measures would be likely, in the sense of a probability, to lead to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure was intended to prevent.

As a result, the correct or preferable decision is that the measures, insofar as they pertain to Dongbu, should be allowed to expire.

11 Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

The proposed decision referred to under 10 above would result in a decision that is materially different from the reviewable decision, because it would result in the discontinuation of measures that apply to Dongbu for the export of the GUC from Korea to Australia.

Conclusion and request

The decision to which this application refers is a reviewable decision under Section 269ZZA of the Act. Where references are made to the Commission and its recommendations, it is those recommendations which were accepted by the Parliamentary Secretary and form part of the reviewable decision that our client seeks to have reviewed.

Dongbu is an interested party in relation to the reviewable decision.

Its application is in the approved form and has otherwise been lodged as required by the Act.

We submit that the application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

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This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct or preferable decision that should result from the grounds that are raised in the application are dealt with in 10 above.

The Review Panel is requested to recommend to the Parliamentary Secretary that, in accordance with Section 269ZZM the reviewable decision (being the decision to publish notices under Sections 269ZHG(1) and (4)(a)(iii)) be revoked and substitute another decision to publish a notice that declares the Minister's decision to discontinue the anti-dumping measures as they apply to the export of the GUC

Lodged for and on behalf of Dongbu.

Alistair Bridges
Senior Associate