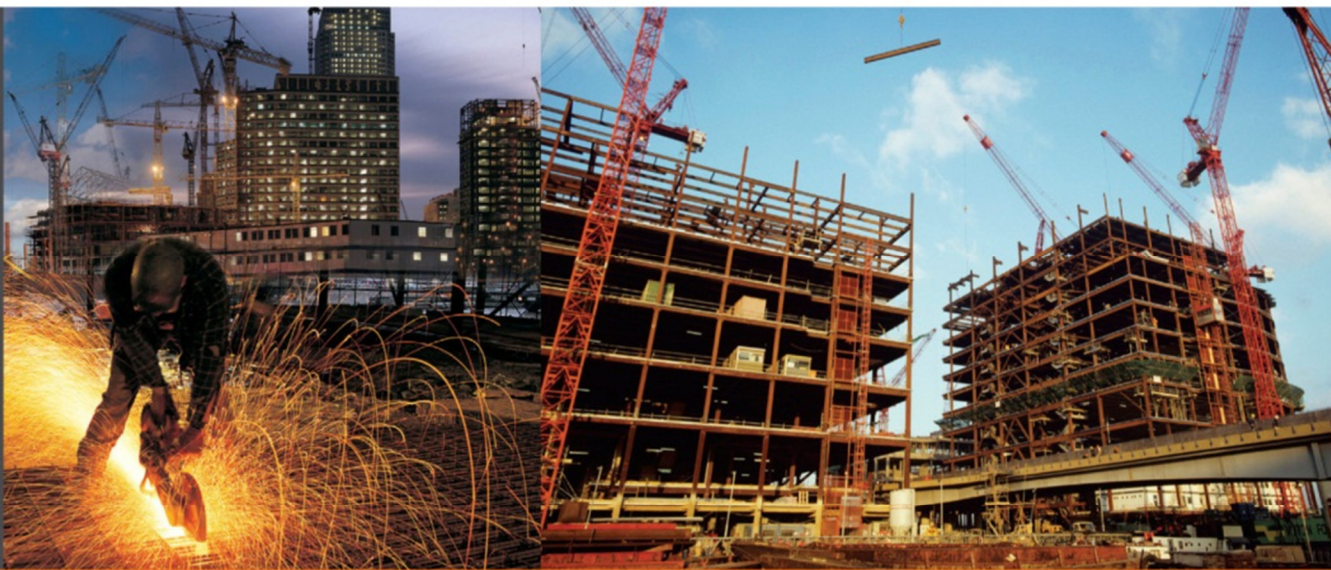




Australian Government
Anti-Dumping Review Panel

▶ **REPORT OF THE ANTI-DUMPING REVIEW PANEL**



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REVIEW OF DECISION TO IMPOSE DUMPING DUTIES ON:

ZINC COATED (GALVANISED) STEEL EXPORTED FROM THE REPUBLIC OF KOREA.

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Introduction

1. POSCO has applied, pursuant to sections 269ZZA and 269ZZC of the Customs Act (**the Act**), for a review of the decision of the Attorney-General to impose dumping duties with respect to galvanised steel exported to Australia from the Republic of Korea.
2. The application for review was accepted and notice of the proposed review, as required by section 269ZZI, was published on 20 September 2013. The Senior Member of the Review Panel has directed in writing pursuant to section 269ZYA that the Review Panel for the purpose of this review be constituted by me.
3. On 31 October 2013 I required the Anti-Dumping Commissioner (**the ADC**) to reinvestigate certain findings pursuant to section 269ZZL of the Act. The report on those investigations was given to the Review Panel on 28 November 2013. A non-confidential version of the report is annexed.
4. With its application for Review, POSCO provided a detailed submission by Moulis Legal, a law firm, POSCO retained to represent it in this review. A Submission was also received from Bluescope Steel Limited (Bluescope) on 17 September 2013.
5. In conducting this review, I have had regard to the matters set out in the application for review by POSCO and the documents to which reference is made in that application. I also had regard to the submission by Bluescope and to the report of the ADC under sub- section 269ZZL (2).

Background

6. On 3 August 2012 an application was made by Bluescope, pursuant to section 269TB, that the Minister publish dumping notices in respect of, among other things, galvanised steel exported from Korea. The

application was accepted and an investigation was initiated on 5 September 2012.

7. The findings made as a result of the investigation were set out in Report 190 of the International Trade Remedies Branch of the Australian Customs and Border Protection Service (**Customs**). On 25 July 2013 the Attorney-General accepted the recommendations made in Report 190 and made declarations pursuant to subsections 269TG(1) and (2) of the Act that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act)* applied to certain goods, including galvanised steel exported from Korea by POSCO. Notice of the Attorney-General's decision was published on 5 August 2013.

Ground for Review

8. POSCO contends that the decision to impose anti-dumping measures with respect to its exports was not the correct or preferable decision for the following reasons:
 - a. POSCO's galvanised steel exported to Australia was a particular kind of product which, as well as being particular, was not dumped at actionable levels, being considerations that should have led the Attorney-General not to impose dumping duties against POSCO's galvanised steel in the circumstances of the investigation;
 - b. POSCO's zero-spangle galvanised steel exported to Australia was a particular kind of product which, as well as being particular, was not a "like good" to the goods produced by the Australian industry, being considerations that should have led the Attorney-General not to impose dumping duties against POSCO's zero-spangle galvanised steel in the circumstances of the investigation;

- c. POSCO's zero-spangle galvanised steel for automotive industry uses exported to Australia was a particular kind of product which, as well as being particular, was not a "like good" to the goods produced by the Australian industry and it did not cause material injury to the Australian industry, being considerations that should have led the Attorney-General not to impose dumping duties against POSCO's zero-spangled galvanised steel for automotive industry uses in the circumstances of this investigation;
- d. like or directly competitive goods to POSCO's zero-spangle galvanised steel for any uses, or its zero-spangle steel for automotive industry uses, are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade, being considerations which should have led the Attorney-General to decide to exempt those POSCO goods under section 8(7) of the Dumping Duty Act;
- e. coated steel produced by Bluescope and internally transferred by Bluescope to its paint lines to be sold as painted coated steel was relevantly "like goods" produced by the Australian industry, and that the financial performance of the Australian industry including those like goods must be properly evaluated, being considerations which should have led the Attorney-General to decide that the Australian industry had not suffered material injury or that material injury was not caused by dumped goods;
- f. BlueScope's pricing policy, and the analysis and presentation of that pricing policy in Report 190, could not be taken to establish that dumped goods caused price depression, suppression or price undercutting to the Australian industry producing like goods, being a consideration which should have led the Attorney-General to the conclusion that these propositions were not established.

Consideration of Ground for Review

9. Each of the reasons put forward by POSCO is considered below, with one exception. The submission by POSCO that its product should be the subject of an exemption under subsection 8(7) of the Dumping Duty Act cannot be considered in an application for review by the Review Panel. The decisions of the Minister which can be reviewed by the Review Panel are set out in section 269ZZA of the Act. They include the decision of the Minister to publish a dumping duty notice under subsection 269TG(1) or (2) of the Act but do not include a decision to exempt or not exempt a product from dumping duties under subsection 8(7) of the Dumping Duty Act.

POSCO's CGI is a particular kind of product

10. In its submission, POSCO contended that there were major differences between a type of galvanised steel it exported to Australia during the investigation period and that produced by Bluescope. POSCO exported both hot rolled galvanised steel (**HGI steel**) and cold rolled galvanised steel (**CGI steel**), whereas Bluescope only produced CGI steel. POSCO referred to its submission to Customs dated 8 April 2013 explaining the differences in the types of galvanised steel and to its argument that these differences precluded a finding of "like goods".
11. Report 190 dealt with the differences between HGI steel and CGI steel as submitted by OneSteel Australian Tube Mills Pty Ltd (**ATM**) at paragraph 6.6.4 of the Report. There is no reference to the submission of POSCO on this issue. This may have happened because Customs took the view that the submission of 8 April 2013 dealt only with the issue of zero spangle galvanised steel¹.

¹ See the list of submissions on page 33 of the Report.

12. In dealing with the issue of whether the different types of galvanised steel were like goods, the Report finds that they are “broadly like goods”. There was however no analysis of the characteristics of the HGI steel in terms of those which Customs usually uses to determine whether certain goods, which are not identical, have nevertheless characteristics closely resembling each other. These terms are physical likeness, commercial likeness, functional likeness and production likeness.
13. Given the reference to the products only being “broadly” like goods, the lack of reference to the submission of 8 April 2013 on this issue and to an analysis of the characteristics of the products, I required the ADC to reinvestigate the finding at paragraph 6.6.4.
14. On 28 November 2013 I received a report from the ADC. In that report, the ADC reviewed the submissions by POSCO, ATM and others. The ADC examined whether or not the locally produced CGI steel and the imported HGI steel were like goods against the considerations of physical likeness, commercial likeness, functional likeness and production likeness. With physical likeness, the ADC particularly looked at the mechanical/chemical and coating properties of the HGI steel and CGI steel and the dimensions of the HGI steel and CGI steel.
15. The ADC found that, while there were differences between CGI steel and HGI steel in relation to the substitutability or “likeness” of the goods in different circumstances, they were nevertheless like goods. In coming to this conclusion, the ADC placed greater emphasis on the physical likeness and functional likeness of HGI steel and CGI steel, as it is these features which primarily affect whether consumers will purchase one product or the other. In conclusion, the ADC stated “while there are instances in which HGI and CGI are non-substitutable, CGI and HGI can be produced in a range of common dimensions and grades and used interchangeably in a number of applications”².

² Section 3.5.2 of the Report of the ADC.

16. With regard to those circumstances in which the HGI steel and the CGI steel would not be substitutable for each other, the ADC noted that exemption from dumping duties may be granted for the HGI steel products if they met certain requirements. The exemption to which the ADC was referring is an exemption under subsection 8(7) of the Dumping Duty Act.
17. I am satisfied that the report from the ADC has properly considered the issue of whether or not the locally produced CGI steel is a like good to the imported HGI steel and agree with the finding for the reasons set out in that report.
18. The confirmation of the finding that the exported HGI steel and the locally produced CGI steel are like goods does not however dispose of the POSCO submission. A further submission is made by POSCO with respect to its exports of CGI steel. The submission by POSCO appears to be that even though particular goods, such as its exports of CGI steel, come within a certain class of goods, “circumstances that apply to those goods can relevantly exclude them from the class of goods against which dumping measures are ultimately imposed”³.
19. The circumstances relied upon by POSCO to exclude its CGI steel from the dumping measures are that:
- a. CGI is different to the other goods within the relevant class:
 - b. the production processes for CGI and HGI dictate that different prices need to be charged for each product:
 - c. POSCO’s CGI was not dumped to a degree which would have permitted dumping duties to be imposed against it in that the dumping margin for its CGI steel exports during the period of investigation was 1.98%, a de minimis margin.

³ Page 10 of Attachment A to the application for review by POSCO.

20. POSCO's submission is based on an extract from the decision of Justice Nicholas in *Panasia Aluminium (China) Ltd v Attorney-General of the Commonwealth*⁴. The relevant section from his Honour's judgment, relied upon by POSCO is to the following effect:

*"... it is important to keep in mind that there is nothing in Part XV B of the Act (or the Anti-Dumping Agreement) that requires that duty be imposed upon some goods within a relevant class... that are sold at or above normal value. On the contrary, pursuant to s.269TL of the Act, the Minister may decide, on the recommendation of the CEO, not to impose dumping duty on 'particular goods or goods of a like kind to particular goods'".*⁵

21. The reference in section 269TL to "particular goods or goods of a like kind to particular goods" picks up the terminology of subsection 269TG (3) of the Act which refers to goods that are particular goods as goods to which a notice under subsection 269TG (1) applies and to like goods in relation to goods of a particular kind to which a notice under subsection 269TG (2) applies. Section 269TL requires the Minister to give public notice if the Minister decides not to make a declaration under subsection 269TG (1) with respect to "particular goods" or under subsection 269TG (2) with respect to "like goods in relation to goods of a particular kind".

22. I do not understand Justice Nicholas in the *Panasia*⁶ decision to be saying anything other than that the fact that certain goods come within a broad class of goods, such as the goods under investigation, does not mean that they cannot be excluded from anti-dumping measures. If goods being exported to Australia are not dumped or, if dumped, injury to an Australian industry producing like goods is not being caused by the dumping, then clearly the Minister could not be satisfied as to those matters as required by subsections to 269TG(1) and 269TG(2). If however the Minister is satisfied that particular goods exported to

⁴ [2013] FCA 870

⁵ Ibid at para 145

⁶ [2013] FCA 870

Australia are being dumped and, as a result of that dumping, injury has been caused to an Australian industry producing like goods, then the Minister that can make a declaration applying anti-dumping measures to like goods to those particular goods which are exported to Australia in the future.

23. The CGI steel exported to Australia by POSCO is a like good to the HGI steel it exports, both coming within the general class or broad category of galvanised steel goods the subject of the investigation. The Minister was satisfied that the galvanised steel exports by POSCO were being dumped and that the Australian industry producing like goods had suffered injury as a result of the dumping. This being the case, there was no reason why the Minister would exclude exports of CGI steel from a declaration that applied the anti-dumping measures to exports of galvanised steel by POSCO. The fact that there are some differences between the HGI steel and the CGI steel, providing they are still like goods, does not provide a basis for excluding the exports of CGI steel from the anti-dumping measures.

Zero Spangle Galvanised Steel is not a “like good”

24. POSCO also submitted that with respect to galvanised steel it exported during the investigation period, like goods were not produced by the Australian industry. The goods it exported were described as zero spangle galvanised steel. The term “spangle” refers to a distinctive visible pattern left on the surface of the steel as a result of the zinc coating process. Zero spangle galvanised steel does not have a spangle and is used in applications for which a smooth or clear surface is required such as, for example, in the automotive industry with the exterior of automobiles.

25. It is accepted by all parties that BlueScope did not produce zero spangle galvanised steel but there was an issue as to whether or not a similar product produced by Bluescope, namely reduced spangle galvanised steel, was a like good to the zero spangle galvanised steel.

26. In its submission, POSCO criticised the lack of analysis by Customs of this issue in Report 190. POSCO referred to its submission dated 8 April 2013 in response to the Statement of Essential Facts and to the evidence provided to Customs to address the issue of whether or not reduced spangle galvanised steel was like goods to the zero spangle galvanised steel. POSCO complained that the degree of consideration given to the evidence which POSCO had provided was not apparent from Report 190.
27. The principal contention by POSCO was that the zero spangle galvanised steel and reduced spangle galvanised steel were not substitutable products and that Bluescope did not sell commercial quantities of reduced spangle galvanised steel. The quantities of the reduced spangle product sold by Bluescope is of limited relevance to the issue of like goods but the question of substitutability is an important factor to be considered.
28. POSCO's submission set out the principal points which it submitted made it clear that zero spangle galvanised steel and reduced spangle galvanised steel were not substitutable goods. POSCO contended that:
- a. the visible spangle which the reduced spangle product still had, meant that customers requiring galvanised steel with a clear surface would not purchase reduced spangle galvanised steel;
 - b. only a portion of the galvanised steel products produced by Bluescope were available with reduced spangle and within these product classes, the products available with reduced spangle were limited in terms of dimensions;
 - c. the reduced spangle product had to undergo further processes to reduce the spangle, unlike the POSCO product, and was more expensive to produce which meant that the POSCO product would be priced lower than the Bluescope product could be produced.
 - d. the majority of POSCO's zero spangle galvanised steel for the non-automotive sector was made to specifications which the BlueScope product could not match or reproduce.

29. The issue of whether or not BlueScope produced like goods to the zero spangle product is dealt with by Customs at paragraph 6.6.2 of Report 190. The finding was that zero spangle galvanised steel fell within the description of the goods which were being investigated. However, there was no specific finding that the goods produced by Bluescope were like goods to the zero spangle goods exported by POSCO, although this must have been implicit in the overall finding that the goods under investigation, including zero spangle galvanised steel, were being dumped and such dumping was causing injury to an Australian industry producing like goods.
30. The fact that a product comes within the description of the goods under investigation does not mean that the issue of like goods, if it is raised with respect to a certain product, does not need to be investigated. In this respect the criticism made by POSCO of the lack of analysis by Customs of this issue in Report 190 has some merit.
31. Given the lack of a specific finding as to whether or not there were like goods produced by Bluescope, or an analysis of the different characteristics of the exported product and the locally produced product and the fact that it was conceded that Bluescope did not produce zero spangle galvanised steel, I required the ADC to reinvestigate the issue of whether or not Bluescope produced like goods to the zero spangle galvanised steel exported during the investigation period.
32. As noted above, the ADC reported on the reinvestigation on 28 November 2013. As with the reinvestigation into the issue of HGI steel and CGI steel, the ADC examined the issue of likeness by looking at the physical likeness, commercial likeness, functional likeness and production likeness of the products. With physical likeness, the ADC focused particularly on the mechanical/chemical properties, coating properties, dimensions and

finish of the products. The ADC also had regard to the submissions made by POSCO and others on this issue.

33. The conclusion by the ADC was that the spangle galvanised steel produced by Bluescope had similar characteristics to imported zero spangle steel. There were however differences in relation to the substitutability of the products in different circumstances. The ADC noted that there were instances in which regular or minimal spangle and zero spangle steel were non-substitutable. However the ADC also found that all finishes could be produced in a range of common dimensions and grades and used interchangeably in a number of applications. The locally produced galvanised steel had characteristics closely resembling imported zero spangle steel. Accordingly, the ADC concluded that the Australian industry produced like goods to the zero spangle galvanised steel imported during the investigation period.
34. In my view, in the reinvestigation of this issue, the ADC has appropriately considered the issue of whether or not the locally produced product is a like good to the product exported by POSCO, having examined the characteristics of the zero spangle galvanised steel and the locally produced galvanised steel and taken into account the submissions by POSCO and others. I agree with the conclusion that they are like goods for the reasons set out in the report of the ADC.
35. The fact that there are some applications for which the locally produced product is not suitable does not prevent a finding of it being a like good to the imported zero spangle product. As noted by the ADC, this may however provide the basis for an exemption under subsection 8(7) of the Dumping Duty Act.

Zero spangle for automotive industry use

36. POSCO produces and exports to Australia a zero spangle galvanised steel product which is used in the automotive industry, including for the manufacture of exterior panels on automobiles. Bluescope does not produce a galvanised steel product which is used for the exterior of automobiles.⁷
37. A complaint is made by POSCO that the submission made to Customs, namely that Bluescope did not produce anything substitutable for the POSCO product, was not properly considered by Customs. POSCO's concern is that Customs appears to have mistakenly taken the view that there was no power to consider particular goods differently from other goods under investigation.⁸ If this was Custom's view, then there would be a basis for POSCO's complaint. However, the comments relied upon by POSCO are made in Report 190 when Customs is dealing with the submission by a number of parties that the description of the goods under investigation was too broad. Customs response was that it was too late to alter the description. That does not mean, of course, that the issues of dumping, injury and like goods cannot be considered for particular products falling within the broad description of the goods under investigation.
38. As already noted above⁹, there is some basis for the criticism of the approach taken to the issue of like goods in Report 190. However, the reinvestigation by the ADC has addressed this issue and the finding that the galvanised steel produced by Bluescope is a like good to that exported by POSCO has been confirmed. Given this, there is no basis for excluding the POSCO product from the goods the subject of the declaration under subsection 269TG (2). While there does seem to be a reasonable basis for

⁷ Report 190, page 35

⁸ POSCO submission page 17

⁹ Paragraph 30

an exemption under subsection 8(7) of the Dumping Duty Act, this is not an issue which can be dealt with in a review by the Review Panel.

Material Injury not suffered

39. POSCO submits that in an injury analysis it is necessary that the whole of the industry producing like goods be considered. This submission refers to the reference in the WTO Anti-Dumping Agreement¹⁰ to the domestic industry being “the domestic producers as a whole of the like products or to those of them whose collective output constitutes a major proportion of the total domestic production of those products”. POSCO also refers to a decision of the WTO Appellate Body in *United States-Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan*¹¹ to the effect that an injury determination is a determination that the domestic producers as a whole, or a major proportion of them, are injured.

40. There is however only one producer of galvanised steel in Australia, namely Bluescope, and it is this producer that was the subject of the material injury analysis. There is therefore no inconsistency between the approach taken in Report 190 and that required by the Anti-Dumping Agreement or the decision in *United States-Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan*¹².

41. The argument by POSCO focuses on the internal transfer of galvanised steel to BlueScope’s painted steel business as an input in the production of painted steel. POSCO’s contention is to the effect that the analysis of the injury suffered by Bluescope should have included an analysis of the downstream production of painted coated steel, that this is highly profitable and that given the extensive production and sales of downstream goods by the Australian industry, there was no material

¹⁰ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

¹¹ WT/DS 184/AB/R

¹² Ibid

injury suffered by the Australian industry producing like goods or no material injury caused by dumped goods.

42. In its analysis of the injury claimed to have been suffered by Bluescope (the only Australian producer of like goods), Customs investigated BlueScope's coated steel business and the findings of material injury are based on that investigation. It did not investigate the painted steel business as this business was not the subject of the dumping investigation. The profitability of that business and the volume of production and sales of the downstream industry is not relevant to the consideration of whether or not the Australian industry producing like goods to those under investigation had suffered material injury from the dumped goods.

43. Part of the submission by POSCO was that BlueScope's policy of internally transferring coated steel products at market value was inappropriate as it did not reflect the market value of the painted coated steel form in which the coated steel was ultimately sold. There is however nothing inappropriate in transferring an input product at the market value of that product.

44. POSCO's submission in this respect must fail.

Imports did not cause price injury

45. This submission is based on the use by Bluescope of an import parity pricing policy (**IPP**). It is contended that any injury suffered by Bluescope was not caused by the dumped products but rather by the use by Bluescope of the IPP. Report 190 explains that Bluescope uses its IPP to set a benchmark price for its galvanised steel with a view to selling at prices considered competitive with imports.

46. POSCO's submission refers to information in Report 190 which shows that there is a close relationship between the lowest quote for the

imported product and the IPP benchmark price. There is nothing however in POSCO's submission on this issue which demonstrates why this is not an appropriate pricing policy to ensure that Bluescope maintains market share against imports.


47. In its submission, POSCO also refers to the graph at page 118 in Report 190 which shows that prices for imports from China, Korea and Taiwan were lower than those from other countries. POSCO criticises the use of this analysis.

48. The use of the graph in Report 190 was to demonstrate that prices of the goods imported from China, Korea and Taiwan were lower than those from other countries. The conclusion was that those prices would therefore be putting the greatest price pressure on Bluescope in setting its IPP. As it was exports from those countries which had been found to have been dumped, this analysis supports the claim that dumped imports are causing injury through price depression. There appears to be no flaw in that analysis.

Conclusion

49. For the reasons provided above, I am not persuaded that the decision by the Attorney-General to impose anti-dumping measures under subsections 269TG (1) and (2) with respect to exports of galvanised steel from Korea was not the correct or preferable decision.

50. Pursuant to section 269ZZK of the Act, I recommend to the Minister that he affirm the reviewable decision.



Joan Fitzhenry
Anti-Dumping Review Panel
13 December 2013