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commercial + international

2 March 2022

Ms Jaclyne Fisher  
Panel Member  
Anti-Dumping Review Panel  
GPO Box 2013  
Canberra City  
Australian Capital Territory 2601

By email

Dear Ms Fisher

## **ADRP 2022/151 - Review of Ministerial Decision Aluminium Zinc Coated Steel exported from the Republic of Korea and the Socialist Republic of Vietnam**

We act for Dongkuk Steel Mill Co., Ltd (“Dongkuk Steel”) in relation to this review.

We refer to the Anti-Dumping Review Panel’s (“the ADRP”) notice under Section 269ZZI of *Customs Act 1901* (“the Act”), stating the ADRP’s decision to review:

*the decision by the Minister for Industry, Energy and Emissions Reduction (the Minister) to publish a dumping duty notice under section 269TG(1) and (2) of the Customs Act 1901 in respect of Aluminium Zinc Coated Steel of a width equal to or greater than 600 millimetres exported from the Republic of Korea (Korea) and the Socialist Republic of Vietnam (the Reviewable Decision).*

Dongkuk Steel makes this submission in accordance with s 269ZZJ of the Act as an interested party with respect to the Reviewable Decision according to Section 269ZX of the Act. Dongkuk Steel is a company directly concerned with the production and exportation of the goods the subject of the Reviewable Decision from Korea. Specifically, Dongkuk Steel is directly affected by the Reviewable Decision in relation to the following grounds for review:<sup>1</sup>

*The Minister erred in finding that exports from Korea caused material injury to the Australian industry producing like goods.*

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<sup>1</sup> ADRP 2002/151, Notice under section 269ZZI, at page 1.

Dongkuk Steel was one of the cooperative exporters of the goods under consideration (“the GUC”) from Korea in Investigation 558.<sup>2</sup> The information submitted by Dongkuk Steel formed the basis of the Anti-Dumping Commission’s (“the ADC”) findings and recommendations in Report 558, and ultimately the Reviewable Decision.<sup>3</sup> This include the ADC’s consideration of Dongkuk’s submissions in relation to the existence material injury of the Australian industry and its causal link with the dumping margin determined for the GUC exported from Korea, including by Dongkuk Steel. For the ADRP’s convenience, and for completeness of record, Dongkuk Steel attach again and respectfully refer the ADRP to the following submissions it lodged with the ADC during the original investigation, which are relevant information under Section 269ZZK of the Act, and of direct relevance to the relevant ground of review:<sup>4</sup>

- submission dated 6 September 2021, “*Dongkuk Steel comments on material injury and causation*”; and
- submission dated 12 October 2021, “*Comments of Dongkuk Steel concerning Statement of Essential Facts*”.

In the 12 October 2021 submission, Dongkuk Steel provided detailed legal and factual reasons that the Commissioner and ultimately the Minister should not be satisfied that BlueScope Steel suffered material injury cause by dumped impots from Korea.<sup>5</sup> Dongkuk Steel’s submission concluded that:

*We respectfully submit that the positive evidence on the Commission’s record, as summarised in the SEF itself, points to a finding that there is no or insufficient evidence supporting BlueScope’s material injury claim. As such, the Commissioner should terminate the investigation in relation to exports from Korea under Section 269TDA(13) of the Act, on the basis of negligible injury by reason of the exports from Korea. Alternatively, the Commissioner may be of the view that injury may have been caused by dumping of exports from Korea, and that the injury is more than negligible, but not material. In that case the Commissioner would not have the power to terminate the investigation, and instead would recommend to the Minister that anti-dumping duty not be imposed with respect to Korean exports for the reason that the injury lacked materiality in the required sense.*

We note that this request has been mirrored in the application to ADRP by Macsteel International Australia as an importer of the GUC.<sup>6</sup>

Regarding the issue of material injury, we would also like to draw the ADRP’s attention to BlueScope’s own recent financial disclosure covering the half year period of 1 July to 31 December 2021. This half year period falls substantially within the injury examination period, which ranged from 1 April 2016 to the date of the reviewable decision, being 24 December 2021. In the latest financial disclosure, BlueScope

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2 ADC Report 558, at page 9.

3 See, for example, ADC Report 558 at pages 73, 83 to 93, and 95.

4 See, ADC EPR558-056 and EPR558-060, both submissions are non-confidential.

5 See EPR 558-060, at pages 2-7.

6 See Macsteel’s application, at page 11, “*Macsteel’s contends that the correct or preferable decision was for REP 558 to conclude that injury caused by exports from Korea was negligible. Accordingly, the Commissioner ought to have terminated the investigation insofar as it related to Korea, pursuant to subsection 269TDA(13) of the Act. Alternatively, the Commissioner should have recommended that the Minister publish a notice pursuant to subsection 269TL of the Act, deciding not to impose duties on the subject goods exported from Korea.*”

reported “net after tax profit of \$1.64 billion, \$1.31 billion increase over 1H FY2021”. This was described by BlueScope as “clearly the best half-year performance BlueScope has produced in its 20-year history as a listed company”. This includes an underlying EBIT of \$687.8 million for its Australian Steel Products division, which was “up 165 per cent on 1H FY2021 and 66 per cent on 2H FY2021”.<sup>7</sup> Such disclosure reinforced Dongkuk Steel’s consistent view throughout the investigation that the Australian industry did not suffer material injury from dumped imports from Korea. The information concerning the more recent economic conditions of BlueScope is relevant information under Section 269ZZK of the Act. This is because the Commissioner was required to have regard to such information for the purpose of making recommendation to the Minister, especially in its consideration of Dongkuk Steel’s submission that “in the investigation period BlueScope has experienced ‘sharp growth and strong recovery’. Dongkuk states that BlueScope’s performance during the investigation period was the start of a strong growth cycle representing the ‘continuation of an uninjured economic condition that shows no sign of abating’”.<sup>8</sup>

Dongkuk Steel respectfully submit that the ADRP should find that the Reviewable Decision was not correct or preferable with respect to exports of the GUC from Korea. The correct and preferable decision is that the Minister should not be satisfied of the condition in each of Section 269TG(1)(b) and (2)(b) “that... material injury to an Australian industry producing like goods has been or is being caused” by dumped exports of the GUC from Korea. On that basis the Minister would not have reached the satisfaction required for the purposes of declaring that Sections 269TG(1) and (2) apply to Dongkuk Steel, and the notices should be revoked.

Dongkuk Steel stands ready to provide the ADRP with further assistance and collaborations as the ADRP sees fit in this review.

Yours sincerely



**Charles Zhan**  
Partner

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7 <https://www.bluescope.com/media/3575/1h-fy2022-bluescope-results-asx-release.pdf>

8 See Report 558, section 8.11.1 and 8.11.2 at pages 92 to 94

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12 October 2021

**The Director**  
**Investigations 4**  
**Anti-Dumping Commission**  
**Level 6, 215 Spring Street**  
**Melbourne**  
**Victoria 3000**  
**Australia**

By email

Dear Director

## **Investigation 558 – Aluminium zinc coated steel ( $\geq 600\text{mm}$ )**

### **Comments of Dongkuk Steel concerning Statement of Essential Facts**

As you know we represent Dongkuk Steel Mill Co., Ltd. (“Dongkuk”) in this investigation.

<b>A</b>	<b>Introduction</b>	<b>1</b>
<b>B</b>	<b>SEF confirms BlueScope is not injured</b>	<b>2</b>
<b>C</b>	<b>Effect of factors unrelated to Dongkuk’s exports require further consideration</b>	<b>7</b>

#### **A Introduction**

We refer to the Statement of Essential Facts for this investigation (“SEF”), published by the Anti-Dumping Commission (“the Commission”) on 22 September 2021.

Dongkuk takes this opportunity to provide its comments concerning the SEF, as invited by the Commission. We note that the Commissioner is required to have regard to the comments of interested parties both in the ordinary course of his investigation, in order to decide whether to terminate the investigation with respect to the exports from Dongkuk under Section 269TDA of the *Customs Act 1901* (“the Act”), or in finalising his recommendation to the Minister under Section 269TEA(3)(a)(iv) of the Act.

## B SEF confirms BlueScope is not injured

In Dongkuk’s submission to the Commission dated 6 September 2021 (hereinafter “the Dongkuk Injury Submission”) we observed, based on the Commission’s industry verification report (“the Industry Report”) concerning BlueScope Steel Limited (“BlueScope” or “the Applicant”), that BlueScope has not been and is not materially injured.<sup>1</sup>

In particular, we referred to:<sup>2</sup>

- 1 BlueScope’s strong performance as reflected in its FY2021 financial report, which tells of a period of strong growth that was sustained in the investigation period (“the POI”) and that accelerated thereafter into the subsequent financial year.
- 2 Improved conditions during the POI with respect to almost all of the key factors considered in the Industry Report, including:
  - a) sales volume;
  - b) market share;
  - c) price effects;
  - d) profit and profitability;
  - e) return on investment;
  - f) productivity; and
  - g) capital investment

In the SEF, the Commission states that it is preliminarily satisfied:

*that the Australian industry has, during the investigation period, experienced injury in the form of:*

- *reduced sales volume*
- *price depression*
- *reduced profit*
- *reduced profitability.*

However, the opposite conclusion should be reached. This is because the SEF’s analysis for each of these factors in fact re-affirmed Dongkuk’s view that the Australian industry did not experience injury during the investigation period.

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<sup>1</sup> See, EPR558/56, at Part B.

<sup>2</sup> Ibid, pages 3 to 6.

Regarding sales volume, the SEF finds:

*BlueScope's volumes of its like goods over the injury period have generally trended upwards having increased overall by approximately 4.8%.*<sup>3</sup> [underlining supplied]

and:

*BlueScope experienced:*

- *a reduction in sales volumes of approximately 1%, albeit in a market that contracted approximately 5%*
- *increased market share*<sup>4</sup>

Regarding price depression, the SEF finds:

*...BlueScope has experienced improving unit selling prices across the injury analysis period.*

...

*After assessing the analysis presented in respect of the injury analysis period, as well as the more granular analysis for the investigation period, the commission considers that:*

- *price depression is not evident across the injury analysis period, however appears to be emerging during the investigation period*
- *price suppression is evident throughout the injury analysis period into the early stages of the investigation period, however appears to have dissipated toward the latter stages of the investigation period.*<sup>5</sup> [underlining supplied]

Regarding profit and profitability, the SEF finds:

*BlueScope has experienced injury in the form of loss of profits and reduced profitability during the injury analysis period and an improvement in the period of investigation.*<sup>6</sup> [underlining supplied]

and:

*BlueScope experienced:*

...

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<sup>3</sup> SEF, at page 74

<sup>4</sup> SEF, at page 99

<sup>5</sup> SEF, at page 77

<sup>6</sup> SEF, at page 78

- *improved profit and profitability, such that a break-even point on sales had been achieved at the conclusion of the period* [underlining supplied]

In relation to the other factors of which BlueScope complains, namely productivity, capital investment, and return on investment, the SEF considered that *“the evidence does not support a finding of injury in respect of these factors during the investigation period”*.<sup>8</sup>

Accordingly, the SEF’s analysis suggests that there is no or insufficient evidence for the Commissioner - and accordingly not enough evidence for the Minister - to be satisfied that BlueScope has been materially injured or is being caused material injury, whether or not caused by effects of dumping.

We recall that the notion of “injury” under the Anti-Dumping Agreement refers to *“material injury”*.<sup>9</sup> The Act refers to “material injury” in a way that is consistent with that definition.<sup>10</sup> The Ministerial Direction on Material Injury (“the Material Injury Direction”) correctly reflects the fundamental requirement of materiality:<sup>11</sup>

*I direct that identification of material injury be based on facts and not on assertions unsupported by facts.*

*Consistent with Australia’s international trade obligations under the World Trade Organization’s Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures, I would expect it to be shown that the industry is suffering injury, and that the injury caused by dumping or subsidisation is material in degree. The injury must also be greater than that likely to occur in the normal ebb and flow of business.*

*Subject always to the law, I direct you to consider material injury to be injury that is not immaterial, insubstantial or insignificant. I direct that there is no threshold amount that is capable of general application. Rather, identifying material injury will depend upon the circumstances of each case and will differ from industry to industry and from time to time. A material injury assessment involves a range of factors that are considered together; no one or several of these factors can necessarily give decisive guidance.* [underlining omitted]

Thus, it would be insufficient, and indeed incorrect, to determine the existence of “injury” by identifying some form of injury that is *“immaterial, insubstantial or insignificant”*, and to give the word “material” a separate function, based on the degree of connection between dumping and that injury. Plainly, injury that is not material, substantial and significant is not material injury. If the economic condition of an

<sup>7</sup> SEF, at page 100.

<sup>8</sup> SEF, at page 80

<sup>9</sup> Anti-Dumping Agreement, Footnote 9:

*Under this Agreement the term “injury” shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.*

<sup>10</sup> For example, Section 269TG (2)(b) refers to “material injury to an Australian industry” as a standalone notion to the notion of “dumping” under (a) and the causative effect of dumping, governed by the phrase “because of that”.

<sup>11</sup> Ministerial Direction on Material Injury, April 2012, ACDN No.2012/24.

industry does not reflect symptoms of injury, then there is simply no injury. An industry that is not injured cannot be materially injured because of the level of dumping.

We submit that in the present case BlueScope's performance during the investigation period does not support a finding of injury. Any injury it had experienced, if at all, appeared to be immaterial, insubstantial and insignificant. If there was injury, then it can only have been so slight as to be the kind of injury that was not or is no greater than injury "*likely to occur in the normal ebb and flow of business*".

As the SEF notes, the Material Injury Direction also provides that:

*In considering the circumstances of each case, the commission must consider whether an industry that at one point in time is 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 direction relates to the determination of the causative effect of dumping on an already identified state of injury, or in the Ministerial direction's words, the "*materiality of injury caused by a given degree of dumping*". It does not relate to the determination of the existence of injury that is "*not immaterial, insubstantial or insignificant*". In any case, the SEF's analysis of BlueScope's economic condition demonstrates that the Ministerial direction question in relation to the investigation period must be answered in the negative. BlueScope experienced sharp growth and strong recovery in the investigation period, in comparison to the previous years, and has continued that cycle of recovery since then. As Dongkuk noted in its previous submission:<sup>12</sup>

*With the benefit of the latest financial report covering the post POI injury period, the Commission can now have confidence in the fact that BlueScope's performance during the POI was the start of a strong growth cycle. BlueScope has achieved a record level of financial success in the period immediately following the POI. This is not a sudden reversal of a materially injured economic condition. This is the continuation of an uninjured economic condition that shows no sign of abating.*

*We refer to the following statements by BlueScope concerning its investment and growth outlook:*

*In Australia, the business continues to pursue inter-material growth in value added products, such as COLORBOND® steel and TRUECORE® steel, with both product suites seeing continued growth in demand. To support further growth and address current operating constraints, BlueScope is in the initial phases of assessing additional coating capacity at Port Kembla.*

*Accordingly, we expect the Commission will find that BlueScope's economic condition, in so far as the POI is concerned, was not "materially injured". Rather, it was more likely to be part of the normal flow of its business, backed by strong and healthy Australian market conditions.*

*In this context it is also important to recognise that BlueScope achieved an EBIT of AUD305.1 million in FY2020 and AUD674.3 in FY2021. BlueScope's "metal coated" and "painted" products typically account for more than half of its ASP business unit sales volume each year.*

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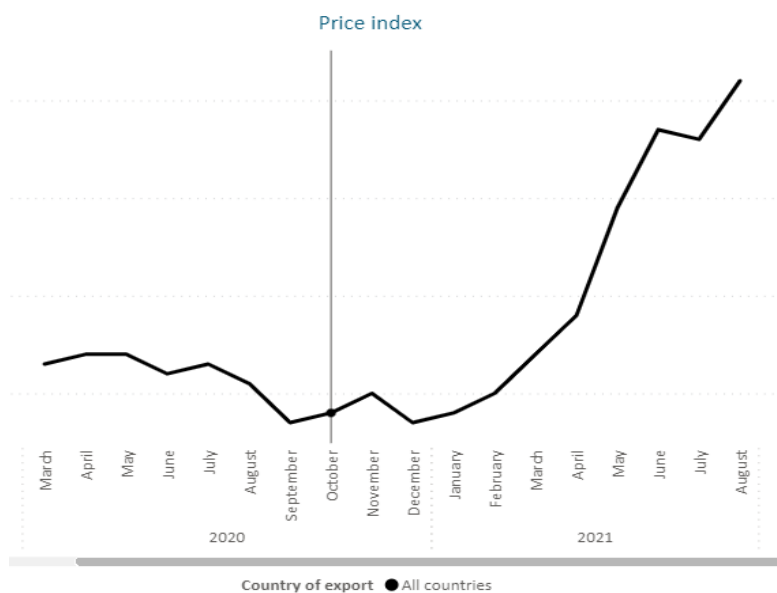
<sup>12</sup> Dongkuk Injury Submission, at page 6



*As an integrated producer of like goods, and with the like goods also used as a feed for its premium painted product, it is only logical to have regard to the overall financial performance of the ASP business unit in order to gain a correct understanding of whether it is experiencing “material injury”. This is a relevant and important factor in considering BlueScope’s material injury assertion, but hardly addressed in either BlueScope’s application or the Industry Report. BlueScope has been operating at a significant profit level. We assume that a substantial part of that profit is attributed to products which uses the like goods as a feed, as well as products that are sold to customers who buys both the like goods and non-like goods from BlueScope in order to qualify for its rebate structure. This require the Commission to closely scrutinise BlueScope’s proposition that its sales of like goods, in insolation, were somehow unprofitable – this is further discussed below at Part C of this submission. [footnote omitted]*

The information referred to in Dongkuk’s submission above is directly relevant to the business sector of BlueScope with respect to the like goods, and is directly on point with respect to the question posed in the Ministerial Injury Direction to which the SEF refers. BlueScope’s own information shows that its condition was not “weakened” and that it was entirely capable of and did “shrug off the effects of the presence of dumped products in the market”. The fact is that BlueScope’s economic condition was more healthy in the investigation period as compared to the previous two years, and that its economic condition has become even more robust since then, to a level not experienced at any other time in the injury investigation period. All of this has been achieved by BlueScope without the need for any anti-dumping measures on the subject imports.

More specifically, BlueScope’s sales revenue and profitability since the investigation period dispel any speculation that a price depression situation “appears to be emerging”. It did not emerge. The fact is that the Australian market for the GUC and like goods has skyrocketed since the investigation period. This is as reflected in BlueScope’s financial report for FY2021. It is also evident from the Commission’s TRINDEX for the GUC pertaining to the post-POI period:<sup>13</sup>



<sup>13</sup> <https://www.industry.gov.au/data-and-publications/trade-remedy-index>

At the same time, BlueScope is likely to have at least maintained, if not further strengthened, its dominant position, which was at a level exceeding 85% market share during the investigation period.<sup>14</sup>

We respectfully submit that the positive evidence on the Commission's record, as summarised in the SEF itself, points to a finding that there is no or insufficient evidence supporting BlueScope's material injury claim. As such, the Commissioner should terminate the investigation in relation to exports from Korea under Section 269TDA(13) of the Act, on the basis of negligible injury by reason of the exports from Korea. Alternatively, the Commissioner may be of the view that injury may have been caused by dumping of exports from Korea, and that the injury is more than negligible, but not material. In that case the Commissioner would not have the power to terminate the investigation, and instead would recommend to the Minister that anti-dumping duty not be imposed with respect to Korean exports for the reason that the injury lacked materiality in the required sense.

### **C Effect of factors unrelated to Dongkuk's exports require further consideration**

In the Dongkuk Injury Submission, we drew the Commission's attention to two key aspects of BlueScope's business with respect to the like goods which had a significant effect on its performance, but are entirely unrelated to dumping from Dongkuk or Korea more generally. They are:

- 1 The multiple impacts of BlueScope's TRUECORE strategy, particularly:
  - a) BlueScope's positioning of TRUECORE in competition with non-GUC, including timber frame and slit product, which are not subject to competition from Dongkuk;
  - b) the cross-sectoral effect of BlueScope's TRUECORE pricing on BlueScope's other products; and
  - c) BlueScope's own direct evidence exclusively attributes price effects, if any, to imports from Vietnam.
- 2 The limited effect of any competition between Dongkuk's exports and BlueScope.

In this submission, we would like to provide further clarification on these issues to assist the Commission in undertaking an adequate and objective assessment of them.

Firstly, in relation to Dongkuk's comments concerning BlueScope's TRUECORE pricing, the SEF states:

*Dongkuk submitted that BlueScope's competition with timber framing and its commercial strategy for the like goods, not dumped goods from Korea, are injurious.*

*Dongkuk considers that BlueScope targets its TRUECORE® brand into the framing market, where it prices aggressively against its competition of lower priced timber framing. Therefore, there is a 'substantial loss-making position for the like goods' where price variation data available in the application evidences BlueScope seeking to suppress the prices of its TRUECORE® product at the expense of sales of its other products in the same business unit, in order to gain market share.*

<sup>14</sup> SEF, Figure 2. TRINDEX indicates import volume for "all countries" declined since the investigation period.

Subsequent to the application, the commission verified BlueScope's model-level price variation data. The verification process resulted in the amending of the price variation values. Table 34 summarises the revised and verified model-level price variation values.

...

The revised and verified data differs from the data presented in the application. Notably, the revenue of BlueScope's like goods now increases in the investigation period. In contrast, the trend in the application, which Dongkuk uses to evidence a loss making position for BlueScope's like goods in its submission, decreased. The commission considers that the verified price and variation data does not support the assertion that BlueScope positions itself into a loss making position on account of its marketing strategy. [footnote omitted]

We welcome the SEF's clarification that, based on corrected data provided by BlueScope, "revenue of BlueScope's like goods now increases in the investigation period". Thus, the revised data further confirms that BlueScope did not experience price depression during the investigation period.

On the other hand, the increasing price trend does not disprove Dongkuk's comment that, based on the feedback from its customers, BlueScope had been actively under-pricing its TRUECORE product in order to gain market share in a market dominated by timber frame. Of course the price variation data, by itself, cannot show whether BlueScope has or has not "position[ed] itself into a loss making position on account of its marketing strategy". However, the position can be tested, and should be tested, by examining BlueScope's actual price level per model, and the per model profitability. Dongkuk expects that such an analysis, if undertaken, will support Dongkuk's comments.

In this regard we note that BlueScope's application, even with its flaws and inaccuracies,<sup>15</sup> already indicated a strong bias towards low profit/profitability for TRUECORE product:<sup>16</sup>

*Index of profitability variations (model control code)*

Model Categories	2016/17	2017/18	2018/19	2019/20
TrueCore	100.00	5.83	4.22	15.82
G550 0.42mm x 940mm	100.00	3.54	-72.63	-50.38
G550 0.48mm x 940mm	100.00	30.00	-22.26	-7.69
Zincalume G300 0.55mm x 1200mm	100.00	109.79	44.46	259.80
Other	100.00	75.70	34.21	65.69
Total	100.00	-344.55	-838.08	-335.47

Accordingly, we respectfully request the Commission to revisit and reassess the issues identified at Part C.1(a) and (b) of the Dongkuk Injury Submission.

Secondly, in relation to the issue concerning competition from Vietnam, identified at Part C.1(c) of the Dongkuk Injury Submission, we reiterate our observation that all relevant positive evidence of price

<sup>15</sup> Inaccurate because, as the SEF notes, the data provided by BlueScope was incorrect, and that the verified information would show BlueScope's sales of like goods at an overall breakeven position for the POI, similar to the 2016/17 period, instead of showing significant loss-making position.

<sup>16</sup> BlueScope's Application, at page 28

competition as offered by BlueScope is directed at imports from Vietnam and China. There is no positive evidence that BlueScope had either lost sales orders or had to reduce its prices due to competition from Dongkuk or from Korea generally. The only plausible explanation for this lack of evidence is that BlueScope did not experience any direct competition from Dongkuk that could be considered as “injurious” during the investigation period. This is particularly likely when BlueScope’s customers are often practically “locked-in” by their rebate arrangements with BlueScope.

This leads us to the third issue, concerning the effect of BlueScope’s use of total demand-based buyer threshold rebate arrangements, which insulate BlueScope from the effect of competition. It appears that the SEF has not given adequate consideration to the full impact of BlueScope rebate arrangements. These were a key feature of the ACCC’s recent examination of the competitive landscape of the “*market for the supply of metal roofing and building products*” involving BlueScope and its customers.<sup>17</sup> The effect of BlueScope’s rebate scheme is not only to exclude smaller customer who are left without viable supply from BlueScope, but also to provide BlueScope with a significant level of security in both sales volume and pricing power, unaffected by imports from Dongkuk or Korea more generally. Smaller customers who do not qualify for the buyer threshold, and are left without supply from BlueScope, would have accounted for at least some market share supplied by the subject imports. For these customers, there is no competition between BlueScope and the subject imports at all. This is not acknowledged in the SEF. Instead, the SEF focusses on the existence of “common customers” of BlueScope and the subject imports, and observes that “[t]here does not appear to be evidence to suggest that customers of BlueScope that received rebates are customers exclusive to BlueScope”.<sup>18</sup>

In our view, this approach misses the point, because it fails to appreciate the effect of BlueScope’s rebate scheme. As noted in the Dongkuk Injury Submission:

*BlueScope adopts a “consumption commitment” rebate structure for its selected customers. Dongkuk understands that this is offered only to large scale customers. It requires customers to commit a very high portion of their total requirements of steel coil to BlueScope - almost the entire portion - in order to qualify for rebate. This volume commitment and rebate structure allows BlueScope to secure the demand of large scale customers. Depending on the range of products included, the rebate structure also gives BlueScope the flexibility to offer differentiated price and rebates to accommodate sectors where there is stronger competition and sectors where it enjoys clearer dominance and higher premium (such as COLORBOND) – a bundled pricing and rebate structure that allows cross-subsidisation between different product groups and maximise overall sales volume and profitability.*

As such, it would be entirely possible for BlueScope to secure, say, 90% to 95% total demand/ consumption from its selected customer as a condition of the rebate scheme. This 90% to 95% of the customer’s demand would therefore be essentially insulated from competition offered by imports from Dongkuk/Korea. The same customer, being a large customer to start with, may still seek to source the balance of demand from Dongkuk, either as a matter of supply-chain management to ensure a minimal level of alternative supply, or to supplement volumes that BlueScope was unable to supply due to its production constraints. However, such a “common customer” or “common customers” does not make imports from Dongkuk, whether at a dumped price or not, and whether an “undercutting” price or not,

<sup>17</sup> See, ACCC Final Determination, Authorisation number: AA1000520, at 2.11, 3.4-3.6, 4.18, 4.54-4.58, <https://www.accc.gov.au/system/files/public-registers/documents/Final%20Determination%20-%20202.12.20%20-%20PR%20-%20AA1000520%20Steeline.pdf>

<sup>18</sup> SEF, page 102.

injurious to the 90% to 95% of its supply already secured by the customer under its rebate agreement with BlueScope.

As the Commission is aware, BlueScope's sales of like goods commanded more than 85% of the total Australian market during the investigation period. We expect that this ratio would only be higher if its internal supply of like goods as a feed material for the production COLORBOND was also accounted for. Indeed, we say that this should be accounted for in the assessment of the economic condition of the Australian industry that *produces* like goods. In comparison, imports from Korea accounted for less than 7% of the total market volume during the investigation period. BlueScope's market share, and the lack of evidence from BlueScope that could demonstrate the direct effect of competition from imports from Dongkuk/Korea confirm Dongkuk's view that BlueScope's significant volume commitment based rebate scheme provided BlueScope with a protective shield against the effect of competition from Dongkuk/Korean imports. Such position is unaffected by the fact that Dongkuk's products may have been supplied to customers who have agreed to buy and did buy most, if not nearly all, of their supply of the goods from BlueScope during the investigation period under the rebate arrangements.

We respectfully request the Commission to reconsider Dongkuk's comments regarding the above issues. In our view, these factors, which are unrelated to the effect of dumping from Dongkuk/Korea, effectively undermine BlueScope's material injury claims. At the very least, Dongkuk's Injury Submission raises very significant doubt as to the extent to which BlueScope's material injury claims can be sustained by positive evidence.

It is the Commission's responsibility to base any finding of material injury caused by dumping on positive evidence. Ultimately, the obligation for providing that positive evidence lies with BlueScope, as the claimant of dumping and material injury. A deficiency in positive evidence does not reverse the burden on both BlueScope (as applicant) and the Commission (as investigator) and place it on Dongkuk. If BlueScope cannot supply the necessary positive evidence, then the deficiency must lead to a finding that the Commissioner cannot be satisfied that material injury caused by dumping has occurred.

We submit that the present investigation presents a clear case where the domestic industry is unable to establish a *prima facie* case of material injury in the investigation period. There is even less evidence for it to do so now, not because of the technical and pragmatic difficulties in gathering evidence, but because its financial performance has continued to excel.

\*\*\*\*\*

Yours sincerely



**Charles Zhan**  
Partner

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6 September 2021

**The Director**  
**Investigations 4**  
**Anti-Dumping Commission**  
**Level 6, 215 Spring Street**  
**Melbourne**  
**Victoria 3000**  
**Australia**

By email

Dear Director

## **Investigation 558 – Aluminium zinc coated steel ( $\geq 600\text{mm}$ ) Dongkuk Steel comments on material injury and causation**

As you know we represent Dongkuk Steel Mill Co., Ltd. (“Dongkuk Steel”) in this investigation.

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### **A Introduction**

We refer to the Australian Industry Verification Report (“the Industry Report”) concerning BlueScope Steel Limited’ (“BlueScope” or “the Applicant”) in this investigation, published by the Anti-Dumping

Commission (“the Commission”) on 26 August 2021. We note that the Industry Report was published one week before the then due date for the publication of the Statement of Essential Facts (“the SEF”). On 2 September 2021, the due date for the SEF was extended to 22 September.

Dongkuk Steel welcomes the publication of the Industry Report and the Commission’s decision to extend the due date for the SEF. The Industry Report provides interested parties with necessary information about the Applicant’s economic conditions, and performs an important procedural and substantial role for such investigation. The Industry Report enables interested parties to make informed comments on the critically important aspect of this investigation.

The Industry Report confirms BlueScope’s dominant market power and highlights significant deficiencies in BlueScope’s injury and causation allegations.

In this submission Dongkuk Steel provides its comments in light of the Industry Report. In addition, Dongkuk Steel takes this opportunity to refer the Commission to additional available information to further assist the Commission’s understanding and assessment of BlueScope’s material injury and causation claims in this investigation.

## **B BlueScope has not been and is not materially injured**

BlueScope is the largest steel producer in Australia. It identifies itself to be “a technology leader in, and the largest global producer of, metal coated and painted steel building products”. In Australia, BlueScope has a vertically integrated operation that produces like goods to the goods under consideration (“the GUC”). As noted in the Industry Report, BlueScope does not produce products with aluminium-zinc (“AZ”) coating that meets the description of the GUC. The like goods produced by BlueScope are aluminium-magnesium (“AM”) coating based products.<sup>1</sup>

BlueScope offers the like goods in the Australia market mainly under the “TRUECORE” brand, targeted to the steel frames market, and the “ZINCALUME” brand, targeted to the roofing and walling market. Further, we understand that BlueScope also supplies the like goods internally, as a feed material for its flagship product “COLORBOND”. As will be explained in further detail below, BlueScope’s marketing strategies for these products have a profound impact on its financial performance and must be properly accounted-for in the injury and causation analysis.

To start with, BlueScope’s operations in Australia, including for the like goods, is anything but “injured”. BlueScope’ stellar financial strength in recent years is well documented. The company has performed and continues to perform at historically high levels. As at 30 June 2017, the Australian tax consolidated group within which BlueScope operates was estimated to have had carry forward tax losses of approximately \$2.3 billion.<sup>2</sup> By 30 June 2020, this had been reduced to \$1.3 billion.<sup>3</sup> By 30 June 2021, this was almost halved again, to \$710 million.<sup>4</sup>

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<sup>1</sup> Industry Report, at page 7.

<sup>2</sup> BlueScope Directors’ Report and Accounts FY2017, page 17, <https://www.bluescope.com/media/2262/fy2017-full-year-appendix-4e-directors-report-and-accounts.pdf>

<sup>3</sup> BlueScope Directors’ Report and Accounts FY2020, page 22, <https://www.bluescope.com/media/2878/fy2020-full-year-appendix-4e-directors-report-and-financial-report.pdf>

<sup>4</sup> BlueScope Directors’ Report & Financial Report FY2021, page 29, <https://www.bluescope.com/media/3215/fy2021-full-year-appendix-4e-directors-report-and-financial-report.pdf>

BlueScope’s remarkable performance is once again highlighted in its most recent financial report, for FY2021. This information about BlueScope’s contemporary economic condition updates the information concerning the Australian market for the injury period starting from 1 April 2016, and provides the Commission with useful and relevant context for the purposes of its material injury and causation determination.

BlueScope’s full year financial results released on 16 August highlight the following with respect to its Australian Steel Products (“ASP”) business unit:<sup>5</sup>

- domestic sales volumes ex-mill increased 3% in FY2020<sup>6</sup> and 15% in FY2021, reaching the highest level since FY2008;
- FY2021 steel sales of TRUECORE and COLORBOND products were the highest on record for the ASP business – continuing the 10% and 3% growth trajectory in FY2020;<sup>7</sup>
- sales revenue has increased by 8% since FY2020; and
- underlying EBIT increased by 121% since FY2020;

BlueScope’s financial report explains that the increase in domestic volume is driven by growth in the building and construction industry.<sup>8</sup> It highlights that sales of TRUECORE and COLORBOND products, among other products, were the highest on record for the Australian business unit, which was “*assisted by both specific sales initiatives and broader segment demand growth*”.<sup>9</sup> These are all consistent with Dongkuk’s understanding of BlueScope’s market activity and positioning throughout the injury period.

BlueScope’s strong commercial performance in FY2021 provides important contemporary and supplementary information for the Commission’s assessment of the material injury allegations levelled by BlueScope against the GUC from Korea. The FY2021 information confirms that BlueScope was not suffering injury in the POI. Its financial results tell of a period of strong growth that was sustained in the investigation period (“the POI”) and that accelerated thereafter into the subsequent financial year. This is fully reflected in the Industry Report, which usefully establishes that BlueScope’s performance with respect to the like goods improved during the POI in almost every aspect.

We illustrate this proposition by referring to the relevant parts of the Industry Report:

- 1 **Sales volume** - the Commission states that “*BlueScope’s volumes of its like goods over the injury period have generally trended upwards having overall increased by approximately 4%*”:<sup>10</sup>

Period	YE Mar 2017	YE Mar 2018	YE Mar 2019	YE Mar 2020
Index of sales volume	100.0	99.5	105.8	104.8

**Table 8 – Injury period change in sales volume**

<sup>5</sup> Ibid.

<sup>6</sup> BlueScope Directors’ Report and Accounts FY2020, page 11.

<sup>7</sup> Ibid.

<sup>8</sup> FY2021 report page 16.

<sup>9</sup> Ibid, page 16.

<sup>10</sup> Industry Report, page 20.



2 **Market share** - the Commission states that “BlueScope has experienced injury in the form of reduced market share during the injury period, and an improvement in its market share during the investigation period”.<sup>11</sup>

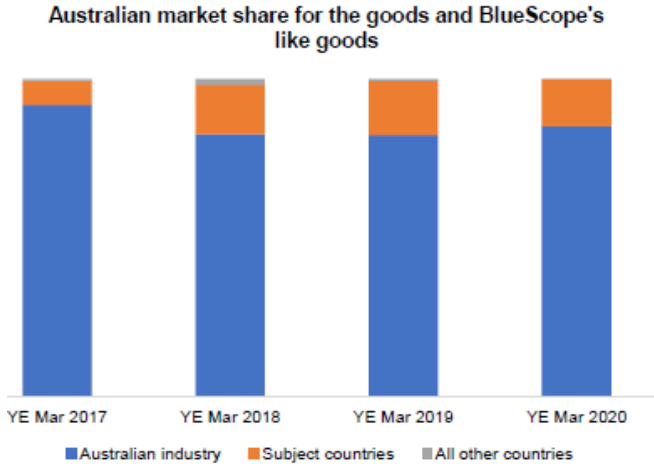


Figure 2 – Australian market share

3 **Price effects** – the Commission notes that BlueScope’s price increased throughout the injury period, and that BlueScope managed to increase price despite a sharp drop in cost - and closed the gap between CTMS and price from the two years prior to the POI, as further discussed below, the CTMS and price gap is a reflection of BlueScope’s own strategy to promote TRUECORE product starting from FY2018:<sup>12</sup>

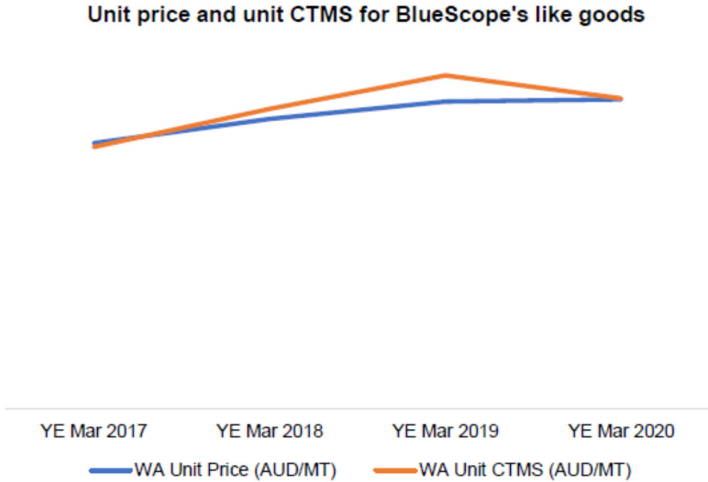


Figure 3 – Unit price and unit CTMS comparison

<sup>11</sup> Ibid, page 21.

<sup>12</sup> Industry Report, at page 22.

- 4 **Profit and profitability** – the Commission states that “BlueScope incurred losses and negative profitability in respect of its like goods during the injury period. The losses and negative profitability peaked at YE Mar 2019 with partial recovery in the period of investigation”.<sup>13</sup>

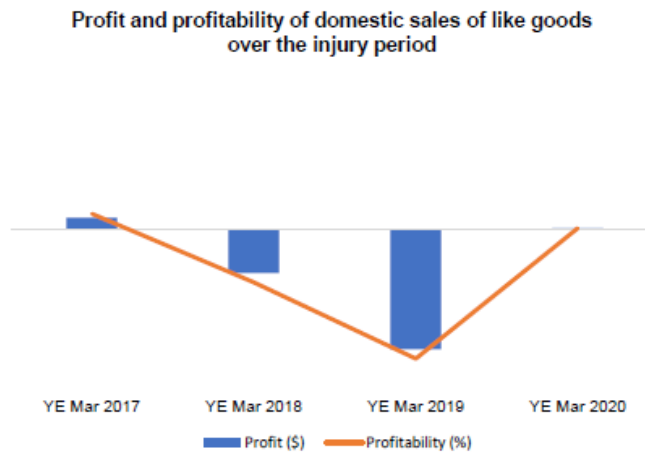


Figure 4 – Profit and profitability

- 5 **Return on investment** – the Commission states that “BlueScope’s return on investment for its like goods was negative at the start of the injury period and has overall reduced over the period (refer Figure 5). BlueScope’s return on investment has improved in the investigation period”.<sup>14</sup>

**Return on investment over the injury period**



Figure 5 – Return on investment

- 6 **Productivity** – the Commission states that “BlueScope has not experienced injury in the form of reduced productivity with respect to its like goods in the injury period”.<sup>15</sup>

<sup>13</sup> Industry Report page 22.

<sup>14</sup> Ibid, page 24.

<sup>15</sup> Ibid.

7 **Capital investment** – the Commission states that “BlueScope’s capital investment for its like goods has overall declined over the injury period, with a pronounced drop at YE Mar 2018” and improved over the POI.<sup>16</sup>

The Industry Report expresses a view that BlueScope “has experienced injury” in each of the above areas except for sales volume and productivity. However, such observation can only be made in relation to the periods *prior* to the POI, ie, with respect to FY2018 and FY2019. BlueScope experienced sharp growth and strong recovery in the POI, in comparison to the previous years. None of BlueScope’s economic conditions during the POI shows “material injury” in comparison to the two preceding years, and they are very close to its performance during 2017.

With the benefit of the latest financial report covering the post POI injury period, the Commission can now have confidence in the fact that BlueScope’s performance during the POI was the start of a strong growth cycle. BlueScope has achieved a record level of financial success in the period immediately following the POI. This is not a *sudden reversal* of a materially injured economic condition. This is the *continuation of an uninjured economic condition* that shows *no sign of abating*.

We refer to the following statements by BlueScope concerning its investment and growth outlook:<sup>17</sup>

*In Australia, the business continues to pursue inter-material growth in value added products, such as COLORBOND® steel and TRUECORE® steel, with both product suites seeing continued growth in demand. To support further growth and address current operating constraints, BlueScope is in the initial phases of assessing additional coating capacity at Port Kembla.*

Accordingly, we expect the Commission will find that BlueScope’s economic condition, in so far as the POI is concerned, was not “materially injured”. Rather, it was more likely to be part of the normal flow of its business, backed by strong and healthy Australian market conditions.

In this context it is also important to recognise that BlueScope achieved an EBIT of AUD305.1 million in FY2020 and AUD674.3 in FY2021. BlueScope’s “metal coated” and “painted” products typically account for more than half of its ASP business unit sales volume each year. As an integrated producer of like goods, and with the like goods also used as a feed for its premium painted product, it is only logical to have regard to the overall financial performance of the ASP business unit in order to gain a correct understanding of whether it is experiencing “material injury”. This is a relevant and important factor in considering BlueScope’s material injury assertion, but hardly addressed in either BlueScope’s application or the Industry Report. BlueScope has been operating at a significant profit level. We assume that a substantial part of that profit is attributed to products which uses the like goods as a feed, as well as products that are sold to customers who buys both the like goods and non-like goods from BlueScope in order to qualify for its rebate structure. This require the Commission to closely scrutinise BlueScope’s proposition that its sales of like goods, in insolation, were somehow unprofitable – this is further discussed below at Part C of this submission.

We respectfully submit that the correct and logical conclusion based on both the Industry Report and BlueScope’s latest financial report is that material injury has not been suffered by the Australian industry producing the like goods.

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<sup>16</sup> Ibid, page 25

<sup>17</sup> BlueScope Directors Report & Financial Report FY2021, page 9.

## C Pricing effects unrelated to Dongkuk’s exports are far greater

Dongkuk Steel now provides further information to assist the Commission’s understanding of BlueScope’s business with respect to the like goods in the Australian market. The information demonstrates that BlueScope’s production and sales like goods cannot have been materially affected by exports of the GUC from Dongkuk or by those from Korea more generally.

### 1 Significant impact of the TRUECORE strategy

BlueScope explains in its Application that it sells like goods on the Australian market under two main brands, being TRUECORE and ZINCALUME. These two brands are technically very similar, but target different markets. TRUECORE is positioned and marketed to the frame market occupied by timber frames in the building and construction sector. BlueScope announced its re-engineered marketing strategy for TRUECORE in its FY2018 financial report:<sup>18</sup>

*FY2018 saw the relaunch of TRUECORE® steel with new branding and an advertising campaign targeted at consumers, builders and fabricators. Growth in this area has exceeded forecasts, with a number of builders having already converted, or are in the process of trialling the product.*

The timing and impact of the TRUECORE strategy is also reflected in BlueScope’s product category based volume index contained in the Application. There appears to have been an exponential expansion of the TRUECORE products, as compared to other product groups:

*Index of production variations (model control code)*

Model Categories	2016/17	2017/18	2018/19	2019/20
TrueCore	100.00	126.50	165.60	167.75
G550 0.42mm x 940mm	100.00	93.16	88.14	85.03
G550 0.48mm x 940mm	100.00	93.07	104.85	131.30
Zincalume G300 0.55mm x 1200mm	100.00	98.33	96.93	89.63
Other	100.00	97.92	106.06	97.77
Total	100.00	99.54	105.79	104.37

Notes:

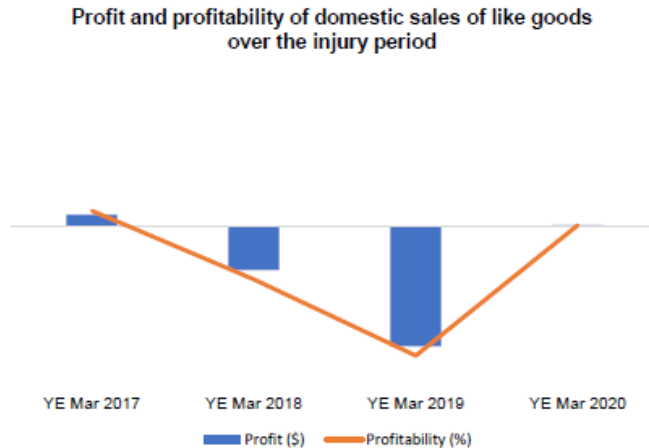
1. Data from label A of Appendix A6.1.
2. Years ending March.

BlueScope’s efforts to market the TRUECORE product have continued successfully in the post-POI period with record sales of TRUECORE reported for the 2021 financial year.<sup>19</sup> The significant growth of TRUECORE sales has been at the cost of other like goods product categories, which have experienced reduced sales. As the Industry Report shows, BlueScope has been running at high productivity levels in recent years. The sharply increased and ever-growing production and sales of TRUECORE means that BlueScope has had to shift production away from other products.

The relaunch of TRUECORE in FY2018 corresponded with a sharp decrease in profitability for two years, which recovered in the POI as the profitability of TRUECORE improved:

<sup>18</sup> BlueScope Directors’ Report and Accounts FY2018, page 10.

<sup>19</sup> BlueScope Directors’ Report & Financial Report, page 16.



**Figure 4 – Profit and profitability**

This is not surprising. A significant hurdle that BlueScope had to overcome, in order to compete in the frame market, was comparatively much lower priced timber frames. BlueScope target that market with aggressive pricing in order to make its steel frame an attractive alternative to timber frame. BlueScope’s aggressive marketing push for its TRUECORE product is also confirmed by the Application, which shows that the price level for TRUECORE was kept at a much lower level in the two years prior to the POI, and did not follow the price movement of other products in that period. When the TRUECORE price started to increase in the POI, other products were in turn offered at a lower price point, indicative of an adjustment in pricing strategy:<sup>20</sup>

*Index of price variations (model control code)*

Model Categories	2016/17	2017/18	2018/19	2019/20
TrueCore	100.00	104.52	112.19	116.82
G550 0.42mm x 940mm	100.00	110.62	118.59	114.20
G550 0.48mm x 940mm	100.00	110.88	119.25	113.64
Zincalume G300 0.55mm x 1200mm	100.00	111.59	119.57	117.04
Other	100.00	111.11	117.65	113.62
Total	100.00	109.23	115.73	113.42

This is despite the cost variation of TRUECORE moving at a far higher level in comparison to other like goods categories in the two years prior to the POI, again suggesting that BlueScope made a conscious decision to suppress the prices of TRUECORE in order to gain market share in the framing market:

<sup>20</sup> BlueScope Application. EPR588-1, at page 27

*Index of cost variations (model control code)*

<b>Model Categories</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>
TrueCore	100.00	117.65	131.96	121.65
G550 0.42mm x 940mm	100.00	115.05	127.10	121.34
G550 0.48mm x 940mm	100.00	115.44	127.82	120.83
Zincalume G300 0.55mm x 1200mm	100.00	111.29	124.12	114.85
Other	100.00	112.59	127.02	116.08
<b>Total</b>	<b>100.00</b>	<b>114.14</b>	<b>126.73</b>	<b>118.42</b>

Dongkuk submits that these product category based indices clearly show that BlueScope decided to push sales of TRUECORE into the framing market, at the cost of and subsidised by its sales of other products, and that in so doing it created a substantial loss-making position for the like goods overall. Any such loss was subsidised within the ASP business unit by continued strong profit earnings from the downstream painted product COLORBOND, and other product lines.

As demonstrated above, BlueScope’s strategy to promote TRUECORE had significant price and profit effects on its overall position with respect to the production and sales of like goods. Such impacts were as a result of BlueScope’s own commercial strategy, and not because of competition from the GUC.

We ask the Commission to take these unique circumstances into consideration in its injury and causation analysis in the following aspects. We explain this position further as follows.

a Different source of competition in the frame market

First, TRUECORE targeted the frame market, where the main competition is against timber frame. Dongkuk Steel does not consider its exports of the GUC were in competition with the TRUECORE/frame market, mostly due to the significantly lower price point, and BlueScope’s successful marketing campaign. Dongkuk Steel understands that its exports of the GUC cannot even compete with BlueScope’s slit TRUECORE products, which were offered at a much lower price level than Dongkuk’s unslit GUC.

As the framing market is traditionally dominated by timber frame, BlueScope had to offer its product at a price level competitive enough to compete with equivalent timber frame. Competition from timber, being a non-GUC alternative, would have had much higher impact on BlueScope’s pricing for TRUECORE than the GUC exported from Dongkuk Steel and Korea generally.

b TRUECORE’s internal price influence on ZINCALUME

Secondly, the aggressive pricing of TRUECORE in the frame market also affected BlueScope’s sales of other products. TRUECORE and ZINCALUME are technically almost identical, except for TRUECORE’s blue colour appearance. From a customer perspective, the pricing of TRUECORE inevitably created price pressure that also influenced BlueScope’s sales of ZINCALUME in the roofing and walling market. In other words, BlueScope’s sales of non-TRUECORE like goods were also affected by its own pricing strategy for TRUECORE.

## c Competition mostly with exports from Vietnam - both GUC and non-GUC

Thirdly, insofar as import competition is concerned, price competition from Vietnam must be considered to have been far more relevant to BlueScope's sales of like goods than GUC exported from Korea, both in terms of the GUC in this investigation and in the narrower aluminium zinc coated steel investigation.<sup>21</sup> This was identified by BlueScope in its application:

*BlueScope provides the below instances of price undercutting and price depression in the market in conjunction with its parallel application for anti-dumping and countervailing measures on aluminium zinc coated steel, of a width less than 600mm, from the People's Republic of China and Vietnam. Both applications need to be considered/consolidated for injury analysis purposes as their use-in-market and competitive price dynamics are interchangeable. This point cannot be under-emphasised, and an assessment of the following price undercutting/price depression examples, in conjunction with those detailed in the above-noted parallel application, clearly demonstrates this.<sup>22</sup> [underlining supplied]*

The Industry Report confirms that the main price effects of imports on BlueScope come from Vietnamese exports of both the GUC in this investigation, and the GUC in the parallel investigation:

*BlueScope submitted that its production costs have increased over the injury period, and that it has been unable to increase selling prices due to competition with dumped and subsidised imports.*

*BlueScope provided a number of examples in its application as evidence of price undercutting. The examples seek to evidence BlueScope's like goods of 'wide' aluminium zinc coated steel (i.e. of a width equal to or greater than 600 mm) competing against imports of both wide and slit<sup>9</sup> aluminium zinc coated steel from Vietnam. BlueScope explained that the examples which include competition with slit aluminium zinc coated steel seek to evidence Vietnamese importers offering slit product (which is generally a higher priced product compared to the subject goods) at wide aluminium zinc coated steel prices, thereby placing downward pressure on its wide aluminium zinc coated steel prices.*

*The verification team examined the examples provided and the documents supplied by BlueScope in its application. The evidence indicates that BlueScope's wide aluminium zinc coated steel competes against both wide imports of aluminium zinc coated steel from the subject countries, and slit imports of aluminium zinc coated steel from Vietnam.*

[underlining supplied]

<sup>9</sup> *Slit aluminium zinc coated steel is the subject of a separate investigation which is being conducted in parallel to this investigation (that investigation is Investigation 559).*

<sup>21</sup> Investigation 559, dumping and subsidisation investigation of aluminium zinc coated steel of a width less than 600 mm exported from China and Vietnam.

Whether or not BlueScope has suffered material injury from dumping associated with the GUC during the POI, the main source of competition are exports from Vietnam, both GUC and non-GUC, and not Dongkuk Steel's exports from Korea. We respectfully submit that Vietnamese exports' distinct impact on BlueScope require the Commission to treat the Vietnamese exports separately.

In conclusion, Dongkuk Steel's exports of the GUC, regardless of any dumping margin, did not impact on BlueScope's financial condition. BlueScope's prices of the like goods were dictated by its own sales strategy to enter the framing market, where it needed to overcome competition from cheaper timber frames. In turn, low TRUECORE prices had an overflow price effect on ZINCALUME prices. Competition from the low-priced GUC exported from Vietnam, and from slit aluminium zinc coated steel from Vietnam and China, which may be non-GUC but must still be considered an "other factor" to exports from Korea, also would have impacted on BlueScope's sales of TRUECORE. All of these factors are unrelated to the GUC exported by Dongkuk Steel or from Korea generally.

We respectfully ask the Commission to ensure that any injurious effects from these other factors are properly recognised and are not wrongly attributed to any dumping margin determined for Dongkuk Steel's exports of the GUC.

## 2 BlueScope's ZINCALUME sales were not materially affected by Dongkuk Steel exports

In relation to the roofing and walling product sector, Dongkuk Steel understands that most of BlueScope's sales are to the large scale and high-volume building materials sectors which are not directly exposed to competition from Dongkuk Steel.

BlueScope adopts a "consumption commitment" rebate structure for its selected customers. Dongkuk understands that this is offered only to large scale customers. It requires customers to commit a very high portion of their total requirements of steel coil to BlueScope - almost the entire portion - in order to qualify for rebate. This volume commitment and rebate structure allows BlueScope to secure the demand of large scale customers. Depending on the range of products included, the rebate structure also gives BlueScope the flexibility to offer differentiated price and rebates to accommodate sectors where there is stronger competition and sectors where it enjoys clearer dominance and higher premium (such as COLORBOND) – a bundled pricing and rebate structure that allows cross-subsidisation between different product groups and maximise overall sales volume and profitability.

BlueScope's rebate structure is targeted at large scale customers who are selected by BlueScope. These customers account for a substantial part of total market share. Smaller customers are significantly disadvantaged, with little security of supply, and are only offered unrebated pricing. This pricing is not commercially viable for them to compete in the downstream market, where smaller operators face BlueScope's own production competition from BlueScope's own/affiliated fabrication distributor and with BlueScope's customers who have access to the rebate structure.

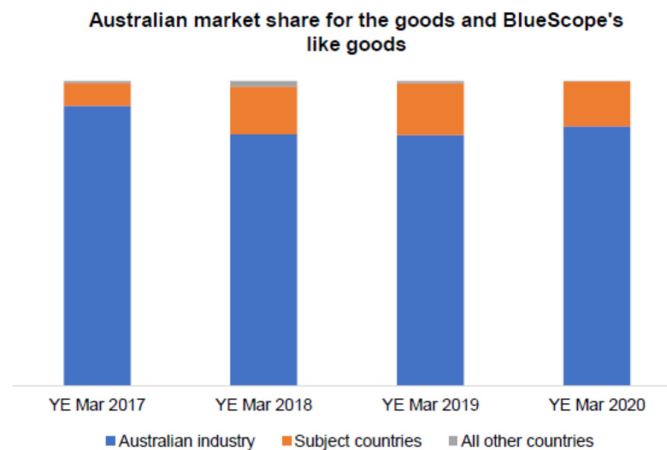
These circumstances have recently been the subject to an inquiry by the Australian Competition and Consumer Commission ("ACCC") concerning an application by Steeline Members Pty Ltd for authorisation of collective bargaining.<sup>23</sup> As noted in the ACCC report:

<sup>23</sup> See, ACCC Final Determination, Authorisation number: AA1000520, at 2.11, 3.4-3.6, 4.18, 4.54-4.58, <https://www.accc.gov.au/system/files/public-registers/documents/Final%20Determination%20-%2012.20%20-%20PR%20-%20AA1000520%20Steeline.pdf>



*Selection Steel submits that it previously supplied roll forming inputs to a number of Steeline members as well as to other national roll formers. However, the introduction by BlueScope of buyer threshold rebate arrangements (which Steeline’s members are able to access through the Steeline buying group) impedes its ability, and the ability of other smaller competitors to BlueScope, to compete on price. Selection Steel is concerned that BlueScope’s rebate arrangements in effect restricts roll formers, such as Steeline’s members, from exploring opportunities from alternative suppliers of roll forming inputs.*

Selection Steel’s comments correctly identify the competitive dynamics between the like goods offered by BlueScope and Dongkuk Steel’s exports of the GUC during the POI. That is, Dongkuk Steel’s products are mostly offered to customers who are unable to access the high volume commitment-based rebate structure, and to those who simply cannot secure viable supply from BlueScope. As such, Dongkuk’s exports, regardless of any dumping margin, could not have been the source of material injury to BlueScope. This is partly reflected in BlueScope’s increased dominance of the market during the POI:



**Figure 2 – Australian market share**

Since the POI, the Australian market has experienced a significant surge in prices for the subject goods. There are several likely causes for this development:

- supply constraints – limits on BlueScope’s capacity to keep up with strong building and construction market demand;
- 2020 summer bushfire – this impacted the house construction market by causing a preference for steel framing, which increased demand for BlueScope’s TRUECORE products;
- COVID-19 – again, a major impact on logistics and supply;
- International conditions - higher global iron ore and steel prices.

These factors have led many Australian customers, especially those without any consumption rebate agreement with BlueScope or other means of accessing Australian supply, to seek alternative sources of supply, including from Dongkuk Steel, at prices higher than BlueScope’s.

**D Investigation should be terminated, and no measures imposed**

In light of the above, we expect the Commission will find that BlueScope's material injury and causation claims are not supported by sufficient evidence and have not been made out.

We urge the Commission to terminate the investigation at the earliest opportunity under Section 269TDA(13) of the Act, on the basis that the injury caused by any dumped imports from Korea during the POI, if any, was negligible.

If the Commission does find it necessary to report to the Minister, we submit that the Commission should recommend that the Minister should not impose anti-dumping measures against exports of the GUC from Korea, on the basis that there is insufficient evidence that *material* injury to the Australian industry producing like goods has been or is being caused by "dumped" imports from Dongkuk Steel, or from Korea generally.

Yours sincerely



**Charles Zhan**  
Partner



**Macky Markar**  
Associate