



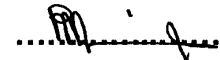
International Trade Administration Commission of South Africa

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## **Report No. 19**

# **Investigation into the alleged dumping of painted flat rolled products of iron or non-alloy steel originating in or imported from Australia: Preliminary determination**

The International Trade Administration Commission herewith presents its Report No. 19: INVESTIGATION INTO THE ALLEGED DUMPING OF PAINTED FLAT ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL ORIGINATING IN OR IMPORTED FROM AUSTRALIA: PRELIMINARY DETERMINATION, with recommendation.



**(Ms N Maimela)**

**Chief Commissioner**

**Pretoria**

**..19/09/..2003**

30 July 2003	Preliminary determination
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**Investigation periods:**

Dumping: 1 July 2001 to 30 June 2002

Injury: 1 January 1999 to 30 June 2002

**Industry standing**

The petition was lodged on behalf of the Southern African Customs Union (SACU) industry by Iscor Limited (Petitioner) which represents 80% of the domestic industry.

**Like product**

The Petitioner submitted sufficient information to indicate that the domestically manufactured product is a like product to the imported product. While BHP Steel SA (Importer) imports the subject product it also imports Zincalume, which is covered with a resin, under one of the tariff headings on which the petition was initiated and provided information that this product is not a like product to the subject product. The Commission determined that only the imported product known as Colorbond constituted the subject product.

**Dumping**

*Normal value*

The Commission decided to use the information BHP Steel (Exporter) provided on normal values for the two products exported to the South African Customs Union (SACU) during the investigation period. This information was not verified.

*Adjustments*

The Exporter claimed adjustments to its normal value, but as all requested information as was not provided in the required format the Commission did not allow

**REPUBLIC OF SOUTH AFRICA**  
**INTERNATIONAL TRADE ADMINISTRATION COMMISSION (the**  
**Commission)**  
**REPORT NO. 19**

**INVESTIGATION INTO THE ALLEGED DUMPING OF PAINTED FLAT ROLLED  
PRODUCTS OF IRON OR NON-ALLOY STEEL ORIGINATING IN OR IMPORTED  
FROM AUSTRALIA: PRELIMINARY REPORT**

**SYNOPSIS**

**General**

The International Trade Administration Commission (the Commission) was established on 1 June 2003 in terms of the International Trade Administration Act, 2002 (Act 71 of 2002)(the ITA Act). As regards anti-dumping matters it superseded the Board on Tariffs and Trade in all respects. For sake of simplicity all references in this report are to the Commission. All references in this report referring to the Commission, and which relate to the period prior to 1 June 2003, should be understood to be a reference to the Board on Tariffs and Trade and all references to the ITA Act which relate to the period prior to 1 June 2003, should be understood to be a reference to the Board on Tariffs and Trade Act (Act 107 of 1986).

*Time frames*

09 October 2002	Accepted as properly documented
10 October 2002	Foreign trade representatives notified
14 -16 October 2002	Petitioner's information verified
06 November 2002	Merit submission to the Commission
15 November 2002	Initiation, Government Gazette Notice 2942 of 2002
7-10 April 2003	Importers' information verifications

the adjustments claimed.

*Export price*

A weighted average export price was calculated on the information supplied by BHP Steel SA.

*Adjustments*

The terms of credit were not adjusted in the cost build-ups provided, however this adjustment was calculated and subtracted from the fob price.

*Margin of dumping*

The margin of dumping based on the exporter and importers information was calculated to be 79 %.

**Material injury**

Isacor claimed that the dumped imports were causing it material injury. The Commission found the following factors indicative of material injury:

1. decrease in profits;
2. price undercutting;
3. price suppression;
4. decline in domestic sales;
5. decline in market share;
6. the magnitude of dumping; and
7. decline in employment.

On the basis of the information before it the Commission found that there was material injury to the SACU industry.

### **Causality**

The absolute import volumes from Australia increased from 41 tons in 1999 to 16 450 tons in 2000, while the market share of the dumped imports increased from 0.1% in 1999 to 30% in 2002. The prices from Australia undercut Iscor's prices, resulting in price suppression.

The exporter, BHP Steel Australia, and its related importer, BHP Steel SA, responded to the petition and stated that the imports recorded under the tariff sub-heading 7210.70 can not be regarded as imports of the subject product, since another product was also classifiable under this tariff sub-heading. They argued that the lower actual volumes of the subject product could not have caused injury to the Petitioner. The Commission found that there was sufficient evidence to indicate that injurious dumping was taking place. It therefore requested the Commissioner for SARS to impose a provisional payment of 79% to prevent further material injury being caused during the course of the investigation.

## **1. PETITION AND PROCEDURE**

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### **1.1 LEGAL FRAMEWORK**

This investigation is conducted in accordance with the International Trade Administration Act, 2002 (the ITA Act), and the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement).

### **1.2 PETITIONER**

The petition was lodged by Iscor Ltd (Petitioner), being the major producer of the subject product in the SACU.

### **1.3 DATE OF ACCEPTANCE OF PETITION**

The Commission accepted the petition as a properly documented in accordance with Article 5.2 of the *Anti-Dumping Agreement* on 9 October 2002. The trade representative of Australia was advised accordingly.

### **1.4 ALLEGATIONS BY THE PETITIONER**

The Petitioner alleged that imports of the subject product, originating in or imported from Australia, were being dumped on the SACU market, thereby causing material injury to the SACU industry. The basis of the alleged dumping was that the goods were being exported to SACU at prices less than the normal value in the country of origin. On the basis of the information the Commission decided to initiate an anti-dumping investigation.

The Petitioner alleged that the SACU industry was suffering material injury in the form of:

- price undercutting

- price suppression in real terms
- decline in domestic sales
- decline in market share
- decrease in profits
- decline in wages per employee

### **1.5 INVESTIGATION PROCESS**

The Commission accepted the petition as properly documented petition on 9 October 2002. The information submitted by the Petitioner was verified on 15 and 16 October 2002. After establishing that there was a *prima facie* case the Commission decided to initiate the investigation. The investigation was initiated on 15 November 2002 in Government Gazette No. 24042 by Notice No 2942.

Prior to the initiation of the investigation, the trade representative of the country concerned was notified of the Commission's intention to investigate, in terms of Article 5.5 of the *Anti-Dumping Agreement*. All known interested parties were informed and requested to respond to the questionnaire and the non-confidential summary of the petition.

The Importers' information was verified from 7 to 10 April 2003. The Commission made its preliminary determination on 30 July 2003.

### **1.6 INVESTIGATION PERIOD**

The investigation period for dumping is from 1 July 2001 to 30 June 2002. The injury investigation involves an evaluation of data for the period 1 January 1999 to 30 June 2002.

### **1.7 PARTIES CONCERNED: SACU industry**

The SACU industry consists of the following producers of the subject product:



- (a) Iscor Ltd ( Petitioner)
- (b) HH Robertson (this producer did not participate in the investigation, but supplied information on its production and sales volumes)

Information was submitted by the Petitioner, which was verified by the investigating officers prior to the initiation of the investigation.

#### **1.7.1 Exporters/Foreign Manufacturers**

The following exporter/manufacturer was identified as an interested party:  
BHP Steel Australia (Exporter), represented by attorneys Webber Wenzel Bowens (WWB).

Although the exporter responded to the exporter's questionnaire there were substantial deficiencies, and the Commission decided not to conduct an overseas verification.

#### **1.7.2 Importers**

Of the 16 importers that were notified and supplied with questionnaires, only two responded, being Safintra and BHPSA.

The following importers were notified but did not respond:

Mitek SA (Pty) Ltd;  
IWD Strapping (Pty) Ltd;  
Metpar Specialised Steel Merchants;  
Macsteel (Pty) Ltd;  
JCP Steel Supplies cc;  
Pro-Roof Sheeting cc;  
Builders Market (Pty) Ltd;  
Discount Steel Africa (Pty) Ltd;

Club Refrigerator cc;  
SS Profiling (Pty) Ltd; and  
Safe Top (Pty) Ltd.

## 2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

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### 2.1 IMPORTED PRODUCTS

#### 2.1.1 Description

The subject product is described as:

Flat-rolled products of iron or non-alloy steel, painted, varnished or coated with plastic.

#### 2.1.2 Tariff classification

The subject product is currently classifiable as follows:

Tariff Subheading	Description	Duty	EU	SADC
7210.70	Flat-rolled products of iron or Non Alloy Steel, of a width of 600mm or more, clad, plated or coated: Painted, varnished or coated with plastics.	5%	5%	Free
7212.40	Flat-rolled products of iron or Non Alloy Steel, of a width of less than 600mm, clad, plated or coated: Painted, varnished or coated with plastics.	5%	5%	Free

#### 2.1.3 Import Statistics

Article 5.8 of the *Anti-Dumping Agreement* provides as follows:

"There shall be immediate termination in cases where the authorities determine that ... the volume of dumped imports, actual or potential, is negligible. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of

imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member."

The import statistics, as contained in paragraph 6.3 of this report, indicated that the volume of dumped imports from Australia account for 49.14% of the total imports of the like product during the period of investigation for dumping.

**2.1.4 Country of origin/export**

The subject product originates in and is exported from Australia.

**2.1.5 Application/end use**

The imported subject product is used for roofing, white goods, guttering, down pipes, wall cladding, etc.

**2.1.6 Production process**

The production process applied is universally similar. The colour coated steel products exported from Australia to the SACU are subject to a similar production process as the Petitioner's products except that where the Petitioner's coils are galvanized with zinc, the exporter's products are coated with zinc and aluminum. Thereafter both are coated with a specialized paint.

**2.2 SACU PRODUCT**

**2.2.1 Description**

Scientific name: Flat-rolled products of iron or non-alloy steel, painted, varnished or coated with plastic.

Common name: Colour Coated steel products.

Trade name of Petitioner is **Chromadek**.

**2.2.2 Application/end use**

The SACU product is used for roofing, white goods, guttering, down pipes and wall cladding etc.

**2.2.3 Tariff classification**

The SACU product is currently classifiable under tariff subheading 7210.70 and 7212.40.

**2.2.4 Physical appearance and characteristics**

The colour range of the imported product might differ from the Petitioner's product. The imported product is alleged to be more corrosive-resistant than the Petitioner's product. The products may also differ slightly in thickness. However, this does not detract from the fact that the products essentially have the same physical appearance and characteristics.

**2.2.5 Production process**

With regard to the product concerned there are nine stages in the production process namely:

- (a) Iron manufacturing
- (b) Steel manufacturing
- (c) Hot strips mill route
- (d) Picking line
- (e) Cold-Rolling
- (f) Galvanized process
- (g) Annealing (Cold roll substrate only)
- (h) Temper rolling (Cold roll substrate only)
- (i) Colour coating line (For galvanized substrate and cold rolled substrate)

## **2.3 LIKE PRODUCTS**

### **2.3.1 General**

In order to establish the existence and extent of injury to the SACU industry, it is necessary to determine at the outset whether the products produced by the SACU industry are like products to those originating in or imported from Australia.

Footnote 9 to Article 3 of the *Anti-Dumping Agreement* provides as follows:

"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."[own underlining].

Article 4.1 of the *Anti-Dumping Agreement* provides as follows:

"For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products..."[own underlining].

Article 2.6 of the *Anti-Dumping Agreement* provide as follows:

"Throughout this Agreement the term 'like product' ('produit similaire') shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration."[own underlining].

The Exporter exports two products to SACU under sub-heading 7210.70 namely Zinalume covered with paint known as Colorbond and Zinalume covered with a resin known as Zinalume.

WWB argued that its client's product, Colorbond, and the Petitioner's Chromadek were not like products as Colorbond is more corrosive

resistant than the Petitioner's product. With regard to Zinalume, which is coated with a resin and imported under tariff sub-heading 7210.70, the Importer stated this product was not a like product to the colour coated steel products, since it was not painted.

### **2.3.2 Analysis**

In determining the likeness of products, the Commission uses the following criteria:

- (a) raw material used;
- (a) physical appearance and characteristics;
- (c) tariff classification;
- (b) method of manufacturing; and
- (c) customer demand and end use.

(a) **Raw material**

The raw materials used in both the imported and domestic products are the same except that the exporter also uses aluminum together with zinc whereas the Petitioner uses only zinc to cover the substrate before it is painted. The raw materials used are iron ore, screened sinter, metallurgical coke, alloys, coating materials and paint. The Exporters Colorbond and the Petitioners Chromadek is painted while the second product exported is sprayed with a transparent resin and not colour coated.

(b) **Physical appearance and characteristics**

The physical appearance and characteristics of Colorbond (imported) and Chromadek (exported) are the same. The Zinalume covered with a resin is not painted.

(c) **Tariff classification**

The products manufactured domestically and those imported are both classifiable under the same six digit tariff subheadings, namely 7210.70 and 7212.40.

The Importer supplied the SARS ruling for the clearance of Zinalume covered with resin under tariff sub-heading 72.10.70. SARS states in its letter that "the steel in question has been coated firstly, with a metallic coating and lastly with a non-metallic (silicone resin) coating and by virtue of the Subheading Explanatory Notes 72.10.70 must apply."

(d) Method of manufacturing

The manufacturing processes of the imported and domestic products are the same namely: iron manufacturing, steel manufacturing, hot strip mill route, picking line, cold rolling, galvanized process, annealing, temper rolling and colour coating. The only difference is that the exported substrate is also coated with aluminium and zinc, before it is painted.

(e) Customer demand and end-use

Customer demand and end-use of the imported Colorbond and domestic Chromadek are the same namely roofing, guttering down pipes, white goods and wall cladding. The colour range of the imported product may differ from the Petitioner's product. The products may also differ slightly in thickness. However, this does not change the fact that the products have essentially the same physical appearance and characteristics.

The Exporter alleged that the exported Colorbond is rather used for roofing in areas at the coast, which is highly corrosive. WWB alleged that the Petitioner's product is not recommended for use in the same corrosive areas as the imported Colorbond. The Exporter alleged that its product is mainly used in specific coastal areas and is not substitutable by the product manufactured by the Petitioner because of certain superior qualities. According to the Importer the Petitioner's brochure states that it



does not recommend its product for distances up to 8 km from a salt spray area, while the Exporter's product is allegedly serviceable up to 400 meter from breaking surf.

The Petitioner responded to this allegation by stating that the allegations are misrepresented: Its brochure, which is clearly demarcated, indeed recommends the use of Chromadek Plus for use in the coastal region from 50 meters to 10 kilometers from the sea and this product is backed by a warranty of up to 10 years.

It was, amongst other, alleged that Colorbond is serviceable 200-400 meters from breaking surf. However, a datasheet of the exporter's product was obtained, which clearly states that the Colorbond warranty is subject to "installation greater than 1 km from severe marine and industrial environments". Colorbond has a life of 10 years from the date of installation. During the verification visit at the importer it stated that it only supplies warranties if so requested by the customer. The importer supplied proof of such requested warranties.

Taking the above into consideration, the Commission decided that the SACU product and the imported Colorbond are "like products", but that Zincalume is not a "like product" for purposes this investigation.

### 3. SACU INDUSTRY

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#### 3.1 INDUSTRY STANDING

Article 5.4 of the *Anti-Dumping Agreement* provides as follows:

"An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry."

The Petitioner provided information with regard to the support and/or opposition to the petition. The Commission requested the only other manufacturer, HH Robertson, for information regarding its production and sales figures during the investigation period. The following table is based on the actual production volumes for the total domestic industry:

Manufacturer	Production volume- Petitioner	Production volume - Neutral
Petitioner:	80%	
Other manufacturers 1.HH Robertson		20%
Total SACU	80%	20%

Based on actual information supplied by the Petitioner the petition was supported by 80% of the SACU industry. It was evident that the petition was supported by domestic producer whose collective output constitutes more than 25% of the total production of the like product produced by the domestic industry and more than 50% of the total production of the like product produced by those expressing an opinion on the application.

The Commission, therefore, decided that the petition was made "by or on behalf of the domestic industry" under the provisions of the *Anti-Dumping Agreement*.

## **4. DUMPING**

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### **4.1 DUMPING**

Section 1 of the ITA Act, provides a definition of the term “dumping”. The Act provides as follows:

“‘dumping’ means the introduction of goods into the commerce of the Republic or the common customs area at an export price contemplated in section 32(2)(a) that is less than the normal value, as defined in section 32(2), of the goods.”.

### **4.2 NORMAL VALUE**

Normal values are determined in accordance with section 32(2)(b) of the ITA Act. This section provides as follows:

“‘normal value’ means -

- (i) the comparable price actually paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or
- (ii) in the absence of information on a price contemplated in subparagraph (i), either -
  - (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or
  - (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative;

### **4.3 EXPORT PRICE**

Export prices are determined in accordance with section 32(2)(a) of the ITA Act, which provides as follows:

"'export price' , subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale ".

Sections 32(5) and 32(6) of the ITA Act further provides as follows:

- (5) The Commission must, despite the definition of "export price" set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on any reasonable basis.
- (6) Subsections (5) applies to any investigation of dumping if, in respect of the goods concerned-
  - (a) there is no export price as contemplated in the definition of dumping;
  - (b) there appears to be an association or compensatory arrangement in respect of the export price between the exporter or foreign manufacturer concerned and the importer or the third party concerned; or
  - (c) the export price actually paid or payable is unreliable for any other reason.

### **4.4 ADJUSTMENTS**

Article 2.4 of the Anti-Dumping Agreement provides as follows:

"A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be

made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties."

Both the ITA Act and the *Anti-Dumping Agreement* provide that due allowance shall be made in each case for differences in conditions and terms of sale, in taxation and for differences affecting price comparability. The Commission considers that for an adjustment to be allowed, quantifiable and verified evidence has to be submitted, and it must further be demonstrated that these differences actually affected price comparability at the time of setting the prices.

#### 4.5 **COMPARISON OF EXPORT PRICE WITH NORMAL VALUE**

The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all adjustments have been made). The margin is then expressed as a percentage of the export price. If the margin is less than 2%, it is regarded as *de minimis* in terms of the *Anti-Dumping Agreement* and no anti-dumping duty will be imposed. The margin of dumping is calculated in the currency of the country of export.

Article 5.3 of the *Anti-Dumping Agreement* provides that:

*"The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation."*

The exporter and importer alleged that the normal value in the petition was based on only one invoice and that it did not meet the minimum requirements for initiation. The exporter and importer also alleged that the Commission erroneously based its decision to initiate an investigation on the import volumes contained in the petition, which, in turn, were based on the import statistics supplied by SARS. In support of its allegations, it referred the Commission to specific WTO Panel rulings in which the focus

was on the requirements for initiations, namely *Mexico - High Fructose Corn Syrup* and *Guatemala - Portland Cement*.

The Commission found that the normal value supplied by the Petitioner was based on a cost build-up (based on Australian and international prices), supported by an Australian quote from an agent of the product under investigation. The Commission found this evidence sufficient to reach a reasonable conclusion that there was a *prima facie* case of dumping and, therefore, that it was sufficient for the initiation of the investigation.

The exporter responded to the questionnaire but its information was not verified due to crucial deficiencies. These included the fact that no cost build-up was provided, making it impossible to establish whether the subject product was sold at a loss or to construct the export price in line with the section 32(5) of the ITA Act, and that domestic sales were not submitted on a transaction basis as specifically requested, thus making it impossible to accurately determine the normal value. The Commission decided that due to these deficiencies the information did not warrant an overseas verification. During the preliminary determination the Commission decided to use the information supplied by the exporter and the importer to determine whether dumping was taking place

The Exporter supplied monthly average domestic selling prices (normal values) and adjustments, during the dumping calculation period for the two products exported to its SACU subsidiary in Australian \$/ ton. The importer supplied export prices plus all the costs incurred from fob to the first independent buyer. From this information it was possible to calculate a dumping margin.

#### **4.6 METHODOLOGY IN THIS INVESTIGATION FOR AUSTRALIA**

##### **Type of economy**

Australia is considered to be a country with a free market economy and therefore the definition of section 1(1) of the ITA Act applies.

##### **4.6.1 Normal value based on the information supplied by BHP Steel Australia (Exporter)**

The Exporter provided its monthly domestic sales totals in value (Australian \$) and volume for the investigation period. A weighted average normal value was then calculated.

##### ***Adjustments claimed by the Exporter to its normal value***

The Exporter claimed the following adjustments to the normal value (the adjustments were not verified):

##### ***Discount***

The average discount per ton for the normal value was calculated as a weighted average for the total sales in Aus \$ / ton during the investigation period.

##### ***Rebate***

The weighted average rebate per ton was calculated in Aus \$.

##### ***Claim rebate***

The claim rebates were calculated from all claim rebates as a weighted average value per ton in Aus \$ for the investigation period.

The Commission decided not to allow the adjustments since the exporter had not properly cooperated and the adjustments could not be verified.



#### **4.3.2 Export prices**

**Export price calculated on information provided by the importer and exporter.**

Since the Importer is a full subsidiary of the Exporter the importer provided the fob prices of all export transactions during the investigation period. The fob costs from Australia to the first independent buyer in SACU were also provided. The weighted average export price in Aus\$/ton was calculated from all sales of Colorbond to SACU.

***Adjustments to the export price on information collected at the Importer***

During the importer verification it was found that the cost of credit to the first independent buyer was not included in the submission. The importer, however, provided Australian prime rates received by the exporter. The payment terms cost was subsequently calculated from the average terms and the interest per annum.

***Ex-factory export price after adjustments calculated on information provided by the Importer and Exporter***

The Commission determined the export price per ton after adjustments on the same level of trade as the normal value.

#### **6.3.2 Margin of dumping**

##### **4.6.3.1 BHP Steel Australia**

The margin of dumping was calculated by subtracting the weighted average export price from the normal value:

**Dumping margins calculated on information supplied by the  
Exporter and Importer**

Description	Margin of dumping %
Margin of dumping expressed as a % of the fob price/ton	79%

**4.7 SUMMARY – DUMPING**

From the information received it is evident that dumping is taking place. On the information provided, the Commission decided to use the information of the Exporter and Importer, without the adjustments to determine dumping margin. The dumping margin was determined to be 79%.

## **5 . MATERIAL INJURY**

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### **5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY**

Article 3 of the *Anti-Dumping Agreement* is entitled "Determination of injury". Footnote 9 of Article 3 of the *Anti-Dumping Agreement* to the word "injury" provides as follows:

"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."

### **5.2 GENERAL**

Article 3.1 of the *Anti-Dumping Agreement* provides as follows:

"A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both.

- (a) the volume of the dumped imports and the effects of the dumped imports on the prices in the domestic market for the like products, and
- (b) the consequent impact of these imports on domestic producers of such products".

Article 4.1 of the *Anti-Dumping Agreement* further provides as follows:

"For purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic industry as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products,...".

Isco stated that 1999 was an abnormal year as it was affected by the worst decline in international steel selling prices on record following the crisis in South East Asia, Russia and South America. This was accompanied by a significant decline in domestic activity and demand for steel products in SACU following the sharp increase in interest rates. At the same time the plant making the like product focussed on a re-engineering programme, which was directed at achieving world best practices in all operating areas. While the re-engineering savings were realised, these were largely offset by once-off costs associated with the process. These factors resulted in the relative low profit margin vis-à-vis other years.

With regard to the allegations regarding injury and causality, the importer cleared not only the subject product Colorbond, but also another product, known as Zinalume, under tariff subheading 7210.70. The importer and exporter responded to the material injury allegations in the Petition and indicated that as Zinalume was cleared under the subject product tariff sub-heading 7210.70, there could be no injury to the SACU industry, as the import volumes of the product under investigation were too low to cause material injury.

The Petitioner submitted sufficient evidence of alleged dumped imports and the injury caused by the imports of Colorbond to initiate the investigation. All evidence adduced was substantiated by means of properly audited financial records and was verified by the Commission.

In its response to the petition the importer referred the Commission to the

*Mexico - High Fructose Corn Syrup* WTO Panel ruling with regard to injury. In that case Mexico lodged an anti-dumping action against potential imports of high fructose corn syrup from the United States, which allegedly threatened the Mexican sugar industry. The Commission found that the matter referred to could be distinguished from the current investigation as that case was based on a threat of injury, whereas the colour coated steel investigation is based on actual material injury. The Commission, in accordance with a paper entitled "Negotiating Anti-dumping and Setting Priorities Among Outstanding implementation Issues in the Post-Doha Scenario" (UNCTAD/TCD/TSB/Misc.72), found that while the decisions of WTO panels and the Appellate Body provide guidance, they do not bind investigating authorities not party to the proceedings.

The following injury analysis relates to the Petitioner, which constitutes 80% of the total domestic production of the subject product. This constitutes "a major proportion" of the total domestic production, in accordance with Article 4.1 of the *Anti-Dumping Agreement*.

### **5.3 IMPORT VOLUMES AND EFFECT ON PRICES**

#### **5.3.1 Import volumes**

With reference to Article 3.1(a) of the *Anti-Dumping Agreement* and Article 3.2 of the *Anti-Dumping Agreement* provides as follows:

"With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member."

In any anti-dumping investigation, the Commission uses audited import statistics from SARS to determine the volume of the subject product entering the SACU from the countries under investigation and other

countries. It considers these statistics to be the most reliable. The table shows the volume of imports of the subject product since 1999:

**Table 5.3.1(a)**

Tariff Code 7210.70 and Tariff Code 7212.40	IMPORTED FROM		
	Australia	Other Countries	Total
1999 Volume (tonnes)	41	7 268	7 309
% 1999	0.56%	99.44%	100
2000 Volume (tonnes)	2 610	8306	10916
% 2000	23.91%	76.09%	100
2001 Volume (tonnes)	16450	7425	23875
% 2001	68.90%	31.10%	100
2002 Volume (tonnes)	13 790	5439	19229
% 2002	71.71%	28.29%	100

The volume of the dumped imports increased from 41 tons in 1999 to 13 790 tons in 2002. The volume of imports from other countries decreased from 7 268 tons in 1999 to 5 439 tons in 2002 (a decrease of more than 25%), indicating the extent of dumping by Australia.

During a verification at Safintra an importer it was established that this importer also imported and cleared the subject product under tariff sub-heading 7210.90.

The Commission decided to include these imports in its injury analysis, but to exclude imports of Zinalume, which was found not to be a like product.

**Table 5.3.1(c)**

<b>Tariff sub-headings 7210.70 &amp; 7212. 40</b>	<b>Australia: Colorbond &amp; Zinalume</b>	<b>Australia: Color- bond only</b>	<b>Other countries</b>	<b>All countries</b>
<b>1999 (tonnes)</b>	41	41	7268	7309
<b>% 1999</b>	0.56	0.56	99.44	100
<b>2000 (tonnes)</b>	2610	972	8306	10916
<b>%2000</b>	23.91	8.9	76.09	100
<b>2001 (tonnes)</b>	16450	9535	7425	23875
<b>% 2001</b>	68.90	39.94	31.10	100
<b>2002 (tonnes)</b>	13790	9450	5439	19229
<b>% 2002</b>	71.71	49.14	28.29	100

The imports of the subject product increased from 41 tons in 1999 to 9 450 tons. When the subject product cleared under subheading 7210.90 is added the imports increased further.

### **6.3 Affect on Domestic Prices**

With reference to Article 3.1(a) of the *Anti-Dumping Agreement*, Article 3.2 of the *Anti-Dumping Agreement* further provides as follows:

"With regard to the effect of the dumped imports on the prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance."

The importer stated that its products sell at a premium on the SACU market when compared to the Petitioners' product because of its superior qualities and that this indicated the absence of injury to the Petitioner. The Commission noted that the prices indicated in the submission were per ton but that contractors buy roof covering per square meter. It therefore

decided to base its price findings on the price per square meter.

#### **5.4.1 Price undercutting**

Price undercutting is the extent to which the landed cost of the imported product is lower than the ex-factory selling price per unit of the SACU product. The Commission decided that the most appropriate way to compare prices was the price per square meter. The Commission considered that the importer sells its product in two thicknesses namely 0.42mm and 0.48mm, while the Petitioner sells 0.50mm, 0.58mm and 0.80mm. The following undercutting margin was calculated by comparing the exporter's average landed cost per square metre with the Petitioner's ex-factory price per square metre for the years 2001 and 2002:

**Table 5.4.1**

Year	2001	2002
Price undercutting %	100	16

From the table above it was evident that the Importer was undercutting the Petitioner's price.

#### **5.4.2 Price depression**

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time. The table below shows the domestic industry's average domestic selling prices after discounts and rebates:

**Table 5.4.2**

Year	1999	2000	2001	2002 Jan-Jun
Price	100	112	120	121

The table is indexed for confidentiality with 1999 as base year



The Petitioner's average prices increased by 20 basis points between 1999 and 2001, but increased only marginally between 2001 and 2002.

#### **5.4.3 Price suppression**

Price suppression is the extent to which increases in the cost of production of the product concerned cannot be recovered in selling prices. To determine price suppression, a comparison is made of the percentage increase in cost with the percentage increase in selling price (if any), and whether or not the selling prices have increased by at least the same margin at which the cost of production increased.

The following table shows the Petitioner's average costs of production and its average selling prices after discounts and rebates for the subject product:

**Table 5.4.3**

	1999	2000	2001	2002
Price as % of cost	100	121	116	92

The table is indexed for confidentiality with 1999 as base year

The information in the table above shows that the Petitioner was not able to recover its increase in production cost in its selling prices. As a result, it experienced price suppression during the investigation period, especially during 2002.

#### **5.5 Consequent Impact of The Dumped Imports on The Industry**

With reference to Article 3.1(b), Article 3.4 of the *Anti-Dumping Agreement* provides the following:

"The examination of the impact of the dumped imports on the domestic industry concerned

shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."

#### 5.5.1 Actual and potential decline in sales

The following table shows the Petitioner's domestic sales volume of the subject product:

**Table 5.5.1**

	1999	2000	2001	2002
<b>Volume (tonnes)</b>	100	99	94	89

The table is indexed for confidentiality with 1999 as base year

There was an 11% decrease in the volume of sales from 1999 to 2002.

#### 5.5.2 Profit

The following table shows the Petitioner's total profit before interest and tax in Rand value:

**Table 5.5.2**

	2000	2001	2002
<b>Profit</b>	100	98	94

The table is indexed for confidentiality with 2000 as base year

The Petitioner's total profit declined by 6% between 2000 and 2002. The Importer BHP SA alleges that according to the Petitioner's Annual Report

the profit on pre-painted steel increased and is likely to increase further, given the cost savings that LNM Holding NV, one of the main shareholders in Iscor, is delivering to the Petitioner. The Petitioner's Annual Report stated that the operating profit on flat products improved by some 83% from 2001.

The Commission found that the 83% increase in operating profit pertained to flat steel products in general whereas that of the subject products amounts to a small portion of the product distribution of flat steel products, despite vast improvements in efficiencies obtained during the investigation period. The Commission also noted that frequent paint batch changes at the Petitioner impacted negatively on the product mixture and the batch sizes for production, thereby affecting the efficiency and ultimately the profitability of the production line.

### **5.5.3 Output**

The following table outlines the Petitioner's domestic production volume of the subject product:

**Table 5.5.3**

<b>Volume tons</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>Domestic</b>	100	99	94	89
<b>Export</b>	100	126	187	173

\*The table is indexed for confidentiality with 1999 as base year

The Petitioner's domestic output decreased by 11% over the investigation period.

#### **5.5.4 Market share**

In the calculation of the market share of the subject product the Zincalume imported from Australia under tariff sub-heading 7210.70 was excluded, but the imports under 7210. 90 were included, together with the information obtained from HH Robertson's.

In the period 1999 to 2002 the SACU producers' market share declined by approximately 10 % whereas the dumped imports increased from virtually 0% to more than 10 %.

In a growing market the market share of the dumped imports increased during the investigation period, while that of the Petitioner decreased.

#### **5.5.5 Productivity**

Using the production and employment figures sourced from the Petitioner, its productivity in respect of the subject product is as follows:

**Table 5.5.5**

<b>Tonnes</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>Unit/employee</b>	100	114	130	141

The table is indexed for confidentiality with 1999 as base year.

The Petitioner's productivity improved by 41%, mainly as a result of retrenchments and the increase in exports.

The Importer alleged that the Petitioner's total down time hours have decreased, but the Petitioner indicated that the importer did not take account of the complexity of the interaction of planned values (plant efficiencies like yield, rolling rate, product mixes, reclassification, etc.)

and the effect thereof on the economical viability of operating the plant effectively. The Commission noted that plant down time as a result of more frequent paint batch changes was one of the factors that influenced plant down time.

The Commission noted that the Petitioner retrenched 37% of its workforce on the paint line from 1998 to 2002 and that this had a marked effect on productivity.

#### **5.5.6 Return on investment**

The Commission measures return on investment as the profit before interest and tax, expressed as a percentage of the net value of assets. The following table provides the Petitioner's return on owner's equity and return on total net assets for the Iscor Vanderbijlpark plant since it could not be broken down for the colour coated plant only:

**Table 5.5.6**

	1999	2000	2001	2002 Jan to Jun
<b>Return on owners equity</b>	100	8	155	115
<b>Return on total net assets</b>	100	45	140	185

The table is indexed for confidentiality with 1999 as base year

The Petitioner's return on net assets improved between 1999 and 2002, but its return on equity decreased significantly between 2001 and 2002.

#### **5.5.7 Utilisation of production capacity**

The following table provides the Petitioner's capacity utilisation for the subject product:

**Table 5.5.7**

Year	1999	2000	2001	2002
Utilisation	100	105	112	122

The table is indexed for confidentiality with 1999 as base year.

The Petitioners production capacity was constant since 1999 while its actual production increased annually since 1999 to 2002 as a result of the increase in exports.

The Commission noted that the Petitioner's rolling rate decreased by between 5% and 10% between 1999 and 2002 as a result of more frequent colour batch changes.

#### **5.5.8 Factors affecting domestic prices**

The Commission found that the total market for the product under investigation increased during the investigation period, but that prices were suppressed due to low priced imports from Australia. No evidence was placed before the Commission to indicate any other factors that affected domestic prices.

#### **5.5.9 The magnitude of the margin of dumping**

In Chapter 4 of this report the Commission found that the subject product was dumped at a margin of between 79% The Commission found this margin to be significant.

#### **5.5.10 Actual and potential negative effects on cash flow**

The Petitioner supplied the Commission with its cash flow for all its Vanderbijlpark products and not only colour coated steel products. The net internal cash flow declined by 78% from 1999 to 2001 but increased in 2002.

#### **5.5.11 Inventories**

The like product is made to order, and the inventories shown in the table below relate to product on the production line and stock not yet delivered at the end of the financial year. The Petitioner provided its inventory level since 1999, for its inventory levels. These figures are listed in the table below:

**Table 5.5.11**

	<b>Des 1999</b>	<b>Des 2000</b>	<b>Des 2001</b>	<b>Jun 2002</b>
<b>Inventory volume/tonne</b>	100	202	138	49

The table is indexed for confidentiality with Des 1999 as base year.

The Commission found that the varying trend in inventory levels could be attributed to requested delivery dates, production fluctuations and levels of imports.

#### **5.5.12 Employment**

The following table shows the Petitioner's employment level:

**Table 5.5.12**

	1999	2000	2001	2002
<b>Employees indirectly related to the production</b>	100	108	91	82

The table is indexed for confidentiality with 1999 as base year.

The Commission found that the decline in units of employment was the result of the re-engineering program that was directed at achieving cost reduction as well as best practice in all areas.

#### **5.5.13 Wages**

The following table provides the Petitioner's wages per employee per month:

**Table 5.5.13**

	1999	2000	2001	2002
<b>Wages/employee</b>	100	99	83	75

The table is indexed for confidentiality with 1999 as base year.

The Commission found that the wages per employee decreased by 25% between 1999 and 2002. The decrease in the average wages was due, at least in part, to a younger workforce.

#### **5.5.14 Growth**

The Commission found that any growth in the SACU market was usurped by the dumped imports and that the Petitioner's sales decreased in a growing market.



#### **5.5.15 Ability to raise capital or investments**

The Commission found that the Petitioner's capital expenditure on flat steel products is financed mainly through internally generated cash flow and that in the long term the negative financial impact resulting from increased imports will negatively effect the Petitioner's Flat Steel products ability to raise capital or draw investments.

#### **5.6 SUMMARY - MATERIAL INJURY**

During the merit assessment the Commission determined that the petitioner provided *prima facie* evidence of material injury. In response to the Petition the Importer and Exporter provided evidence that a second product, Zincalume, was cleared under the one tariff sub-heading of the subject product, and the Commission excluded this information from its injury analysis. The Commission also found that the subject product was imported under a different tariff subheading and included these imports in its injury analysis.

The Commission made a preliminary determination that the SACU industry was experiencing material injury, placing emphasis on the increase in imports, price suppression, price undercutting, the decline in domestic sales and production for domestic sales, the decline in market share, the magnitude of the margin of dumping, the decline in wages, the lack of growth and the Petitioner's impaired ability to attract additional capital and investments.

## **6. CAUSAL LINK**

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### **6.1 GENERAL**

In order for the Commission to initiate an investigation, it must be satisfied that there is sufficient evidence to indicate that the material injury experienced by the SACU industry is as a result of the dumping of the subject products.

Article 3.5 of the *Anti-Dumping Agreement* provides the following:

"It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities."

### **6.2 VOLUME OF IMPORTS AND MARKET SHARE**

An indication of causality is the extent of the increase in dumped imports and the extent to which the market share of the domestic industry has decreased. The market share table in paragraph 5.3.3.4 of this report shows the market share for the subject product since 1999.

The information with regard to the volume of imports shows an increase in the volume of the allegedly dumped imports from 41 tons in 1999 to 12 350 tonnes in 2002. The volume of imports from other countries decreased from 8 306 tons in 1999 to 5 439 tons in 2002. The information with regard to market share shows that the allegedly dumped imports significantly gained market share during the investigation period.

### **6.3 EFFECT OF DUMPED IMPORTS ON PRICES**

It has already been shown in chapter 5 of this submission that there was price suppression and undercutting. The Commission found that these injury indicators could be causally linked to the dumping.

### **6.4 CONSEQUENT IMPACT OF DUMPED IMPORTS**

The dumped imports obtained a significant market share in a market that grew by 28% between 1999 and 2002. The dumped imports also impacted on the domestic sales, production and profit margins.

### **6.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY**

Article 3.5 of the *Anti-Dumping Agreement* provides the following:

"The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry."

#### **6.5.1 The volume and price of imports not sold at dumping prices**

The following table shows the volume of dumped imports and imports from other countries:

**Table 6.5.1**

<b>Volume of imports in tons</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
<b>Imports from other countries</b>	7 268	8 306	7 425	5 439
<b>Imports from Australia Colorbond &amp; subject product cleared under 7210.90</b>	41	1 308	11 198	12 350

The imports from other countries increased from 1999 to 2000 and thereafter decreased, while the volume imports of the product from Australia increased from 1999 to 2002.

#### **6.5.2 Competition between domestic producers**

The Commission found that HH Robertson, the only other SACU producer of the like product, increased its production capacity during the investigation period for injury and that its output increased as follows:

**Table 6.5.2**

	1999	2000	2001	2002
<b>Sales volume in tons</b>	100	105	101	133

The table is indexed for confidentiality with 1999 as base year

#### **6.5.3 Developments in technology**

The Importer stated that the subject product is superior to the Petitioner's product because of the substrate used that is more corrosive resistant. The Commission found that the products were interchangeable.

#### **6.5.4 Contraction in demand or changes in the patterns of consumption**

The Commission found a change in the consumption pattern as demand shifted towards thinner gauge material. This shift resulted in the consumption figure of the subject product increasing when measured by the area covered, while decreasing by weight. It also had an effect on the Petitioner's volume of sales by weight.

#### **6.5.5 Export performance**

The Petitioner's like product exports increased by more than 70% between 1999 and 2002.

#### **6.5.6 Competition between foreign and domestic producers**

The Importer submitted that its product sells at a premium compared to the Petitioners product and should not therefore be seen as direct competition. The Commission, however, found price undercutting when comparing the products on the basis of price per square metre.

#### **6.5.7 Trade restrictive practices**

No information on trade restrictive trade practices was placed before the Commission.

#### **6.5.8 Productivity of the domestic industry**

The Petitioner improved productivity in nearly every area of its Flat Steel Products division through focused efforts and retrenchments. On a cost of production basis the Petitioner is rated as the third-lowest cost steel producer in the world. The productivity, measured as units per employee, improved by more than 40% between 1999 and 2002. Retrenchments of the staff at the colour coated plant contributed to this increase.

### **6.6 SUMMARY ON CAUSAL LINK**

After consideration of all the factors the Commission, having regard to the increase in the volume of dumped imports, price undercutting, price suppression, profits, the decline in domestic sales and production for domestic sales, the decline in market share, the magnitude of the margin of dumping, the decline in employment, the lack of growth and the Petitioner's inability to attract additional capital and investments, found that there was a causal link between the material injury experienced by the SACU industry and the dumped imports. The Commission considered known factors, other than dumped imports, causing injury, but found these did not detract from the causal link.

## **7 PROVISIONAL PAYMENTS**

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### **7.1 General**

Article 9.1 of the *Anti-Dumping Agreement* provides as follows:

"The decision whether or not to impose an anti-dumping or a countervailing duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping and/or countervailing duty to be imposed shall be the full margin of dumping or the full amount of the subsidy, or less, are decisions to be made by the authorities of the importing member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty and/or the amount of the subsidy shall be less than the margin and/or the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry."

### **7.2 Calculation of duty**

In accordance with Article 9.1 of the *Anti-Dumping Agreement* the provisional payment should be less than the dumping margin if such lesser duty would be adequate to remove the injury to the domestic industry. The provisional payment should therefore not be more than the amount of the price disadvantage experienced by the SACU industry. If this is lower than the dumping margin it can be considered to be the amount of duty required to prevent further injury to the SACU industry as a result of dumping.

### **7.3 Price disadvantage**

The Commission's policy is to apply the lesser duty rule only in cases where both the exporter and the importer fully cooperated in the investigation. In this investigation the Commission found that the exporter had submitted neither the required information on domestic sales, nor the requested cost information and that its cooperation was therefore deficient. Accordingly, the Commission decided not to consider the lesser duty rule during its preliminary determination.

## 8. DETERMINATION

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The Commission made a preliminary determination that:

- the subject products were imported from Australia at dumped prices;
- the SACU industry is experienced material injury; and
- there was causal link between the dumping of the subject products and the material injury.

As the Commission found that the SACU industry was likely to suffer further material injury during the course of the investigation if provisional payments were not imposed in accordance with Article 7.1 of the *Anti-dumping Agreement* it decided to request the Commissioner for the South African Revenue Service to impose a provisional payment of 79% on the subject product, classifiable under tariff subheadings 7210.70 and 7212.40 for a period of twenty six weeks (excluding the Zincalume covered with a resin and presently cleared under tariff sub-heading 7210.70 ).

Interested parties will be invited to submit comments and make representations on the preliminary determination, which the Commission will consider prior to finalizing its determination and recommendation to the Minister of Trade and Industry.