

Ms Lydia Cooke
Manager, Operations 1
International Trade Remedies Branch
Australian Customs and Border Protection
Service
5 Constitution Avenue
CANBERRA ACT 2600

30 January 2013

Our ref 11276/80133959

Dear Ms Cooke

Application for Ministerial Exemption under section 8(7) of the Customs Tariff (Anti-Dumping) Act 1975 (the Act)

Applicant: Nippon Steel & Sumitomo Metal Corporation

Exempted Product: Hot rolled coil steel exported from Japan for use by [REDACTED] Industry.

1. We act for Nippon Steel & Sumitomo Metal Corporation (formerly Nippon Steel Corporation) (**Nippon Steel**), a Japanese entity, and refer to your letter dated 20 December 2012.
2. We consider that the Minister ought to exempt exports of our client's pickled and oiled hot rolled coil (**HRC**) for use by the [industry], [clients] if they satisfy any of the descriptions below:
 - (a) the specific grade of pickled and oiled HRC produced by the domestic producer, BlueScope, is not approved by [the client(s)];
 - (b) [The client(s)] has expressed a quality concern with the pickled and oiled HRC that BlueScope makes;
 - (c) the specific grade of pickled and oiled HRC is not produced by BlueScope (including because of width and thickness limitations).

In our submission, all pickled and oiled HRC that answers the [Specifications of steel] grade, meet the above descriptions. Greater detail addressing the above matters is dealt with more fully below.

Background and Customs Report to the Minister Number 188

3. In our letter to you dated 13 November 2012, we indicated that there was no evidence that the domestic producer of HRC had suffered any material injury in the HRC market in so far as that market related to the [industry] resulting from exports of pickled and oiled HRC imported from Japan. Accordingly, we urged you to:
 - (a) *exclude* Japanese pickled and oiled HRC from any Dumping Duty Notice; and
 - (b) *exempt* Japanese pickled and oiled HRC from any anti-dumping measures.

4. The Report to the Minister, the Hon Jason Clare MP, issued publicly on 20 December 2012 (**Report to Minister**), records findings of very significant implications for this exemption application. Those findings include:
- (a) the export price for pickled and oiled HRC from Japan is a non injurious price;¹
 - (b) BlueScope does not produce the entire *specification* range of [industry] steel;
 - (c) BlueScope does not produce HRC of greater than 1550 millimetres in width;
 - (d) BlueScope's reduced sales to the [industry] sector is not due:
 - (i) to dumped or increased competition from imports,
 - (ii) contracts lost to the exporters from Japan;
 - (e) there is no evidence that BlueScope's profits have declined in relation to the [industry] sector;⁴
 - (f) pickled and oiled exports of HRC from Japan went entirely to the [industry] industry and BlueScope's sales to the [industry] sector were not impacted by dumped exports

Reply to Customs Letter

5. In your requisition letter dated 20 December 2012, you indicate that there are issues concerning the description of the goods and, in particular, that our client's desire to exempt pickled and oiled HRC exported from Japan is too broadly described. You have requested that our client *further define* the goods to be exempted and explain why the goods are *not like* or *directly competitive* to those produced by Australian industry.
6. The term '*like goods*' is defined in s.269T of the *Customs Act 1901* (Cth) as follows:
- "in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration".
7. In contrast, the *Customs Tariff (Anti Dumping) Act 1975* (Cth) (**CT(AD) Act**) neither defines the word 'like', the word 'good' nor the term 'like goods'. The wide and expansive definition that Customs utilises to determine that imported goods are 'like goods' for the purposes of a

¹ Page 10 of Report to Minister.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

dumping investigation cannot always be readily adapted and used for the purposes of determining an exemption application under s.8(7) of the CT(AD) Act. Customs should not assume that the term 'like' as used in s.8(7) of the CT(AD) Act is always precisely the same as the one it found in its investigation. In our opinion, the word 'like' in s.8(7), in the context of this case and as impliedly conceded in the Report to the Minister, is narrower. The reasons for this conclusion are set out more fully below.

8. At paragraph 4.3 of the Report to Minister, Customs set out its general approach to determining when goods are *like goods*. That approach rested on the following foundations or questions being asked:
 - (a) are the goods identical?
 - (b) if the imported and locally made goods are not identical or, to use the words in paragraph 4.3 of the report itself, *not alike in all respects*, do the goods exhibit physical, commercial, functional and production likeness?
9. Having assessed the above questions, Customs found that, although the locally produced and imported goods are not identical, based on a *global consideration* rather than an individual import comparison, the imported product was a like good.⁶
10. It is notable that at paragraph 8.6, 8.7 and, importantly from our client's point of view, 8.8 of the Report to Minister, Customs undertook a *micro analysis* of 3 market segments⁷ - the 'pipe and tube', 'distribution and manufacturing' and 'automotive' sector. The micro analysis was necessary because, as Customs accepted, there were:
 - (a) different market segments which demanded different types of HRC;
 - (b) significant qualitative differences inherent in the steel which made the HRC destined for different market segments not alike.
11. Another telling factor is that Customs resorted to a micro analysis because the description of the goods forming the application, "*Hot Rolled Coil...of iron or non-iron alloy steel, not clad, plated or coated (other than oil coated)*",⁸ is so broad that any finding made by Customs that ignored reality and the market segmentation for HRC in Australia would lead to a distortion of which goods were truly alike.
12. One additional matter of construction which should be addressed is that the Minister only needs to be satisfied that like **or** directly competitive goods are not produced by Australian industry. As a result the Minister may grant an exemption under s.8(7) upon satisfaction of either of those limbs.

⁶ See clause 4.5 of Report to Minister at page 18.

⁷ See pages 50 to 61 of Report to Minister.

⁸ Clause 4.2 of Report to Minister at page 14.

- (iv) the purchasing mechanics of [client] in the Asia region, namely [redacted] [client] have not changed significantly in many years and are locked in with the price paid for HRC being negotiated on a regional basis by [client]
14. It follows that there can be no argument that Australian industry does not produce a *like good* of any HRC product that meets any of the descriptions in paragraph 13(a)(i)-(iii) above. In consequence, all Japanese pickled and oiled HRC that is less than 1.6 millimetres thick; more than 6 millimetres thick; or more than 1550 millimetres wide qualify for immediate exemption.
15. In so far as direct competition is concerned, our client supplies [clients] Each of them has made submissions relevant to the issue of exemption including the matters recited at paragraph 13(b)(i)-(iv) above.
16. To our knowledge, [client] has indicated that it purchases [redacted] grades of steel from our client, namely, [specifications] [redacted] It is the fact, confirmed by [redacted] [purchaser] that Australian industry does:
- (a) not produce [specification] equivalent steel in the required [redacted] thickness;
 - (b) not produce [specification] equivalent steel;
 - (c) not produce [specification] equivalent steel in the required [redacted] thickness;
 - (d) produce an equivalent to [specification] steel but it is not approved.
17. Again, it must follow that all Japanese pickled and oiled HRC that is [specification] grade steel of [redacted] grade steel, [specification] grade steel of or less than [redacted] thickness and [specification] grade steel qualify for exemption. For your convenience, we have set out in **Attachment A** the grade and specifications of pickled and oiled HRC supplied by Nippon Steel to [client] detailing the relevant product to be exempted with reference to width, thickness, whether the product is approved by [client] quality issues and whether the relevant product is produced by BlueScope.
18. In relation to [client] our client supplies it with [specification] [redacted] and [specification] grade pickled and oiled HRC. Importantly, [client] has requested that the Automotive industry be exempt from measures [redacted] It did so on various bases and Customs was provided with information by [client] detailing:
- (a) the size exemptions of HRC that it seeks;
 - (b) the quality issues with BlueScope HRC;
 - (c) the number of *grades/sizes* [of HRC] that BSL cannot produce.

[redacted]

[redacted]

19. [client] went on to state that BlueScope ought to confirm its manufacturing capability for the purpose of establishing exemptions. This is a view our client shares. Our client should not have to prove what BlueScope does not produce. Our client and the trading houses to whom it sells HRC product have provided information to Customs as to the grades of [industry] pickled and oiled HRC steel supplied. In our opinion, BlueScope should prove to Customs that:
- (a) the grades of steel that [clients] purchase from our client is made by it (in identical sizes, width, quality etc);
 - (b) [Clients] have approved or validated BlueScope's grade of (alleged) identical pickled and oiled [industry] steel; and
 - (c) it is immediately able to supply pickled and oiled HRC to the [industry] sector in that it is not excluded from doing so given that the [industry] manufacturers lock in the imported HRC for [time].
20. Our client confirms that BlueScope is unable to meet the grades of pickled and oiled HRC required by [client] as BlueScope does:
- (a) not produce [specification] equivalent steel in the required [] thickness;
 - (b) not produce [specification] equivalent steel with [] and [] millimetre thickness to an approved standard;
 - (c) not produce [specification] equivalent steel to an approved standard; and
 - (d) not, in any event, produce a directly equivalent product.
21. For your convenience, we have set out in **Attachment B** the grade and specifications of pickled and oiled HRC supplied by Nippon Steel to [client] detailing the relevant product to be exempted with reference to width, thickness, whether the product is approved by [client] quality issues and whether the relevant product is produced by BlueScope.

Direct Competition

22. It is difficult to accept the proposition that Australian Industry can be said to be in *direct competition* with our client's import of pickled and oiled HRC as used by the [] industry when:
- (a) the Australian industry does not produce the required product;
 - (b) the Australian industry's equivalent product is not validated or approved for use by the [] industry;

[]

- (c) the [redacted] industry does not purchase the particular grades of Australian industry HRC because it is [redacted] and does not meet their precise and onerous quality requirements; and
 - (d) the supply arrangement of Japanese pickled and oiled HRC to the [redacted] [industry] sector lasts for the product of cycle of the model of car concerned (namely 5 years).
23. In our opinion, no amount of theoretical cross elasticity analysis can have any bearing on the above matters. Assertions to the contrary should be proved by BlueScope. No such proof flows from information already on the public file.
24. As Customs and the Minister will appreciate, the manufacture of [redacted] is a highly specialised, engineered and technical endeavour. [redacted] manufacturing is a precise process and involves rigorous metallurgical and design testing of each steel part [redacted]. The local product has not met that standard. [redacted] [Clients] have each given evidence about this very fact. Any assessment of direct competition therefore must take into account the actual realities of [redacted] manufacturing. The evidence in this respect is clear:
- (a) the local product is [redacted];
 - (b) the local product does not cater for many of the specifications required by the [redacted] industry;
 - (c) the long term supply arrangements mean that the local product cannot be substituted into [redacted] being produced.
25. This means that no direct competition exists between Japanese pickled and oiled HRC utilised in the local manufacture of [redacted] and the HRC produced by Australian industry.
26. The public interest requires that Japanese pickled and oiled HRC be exempt from duty. The manufacture of [redacted] is a globally competitive industry and [redacted] [clients] employ many thousands of Australians. An exemption from duty would help sustain the Australian [redacted] industry.
27. We trust that this application sufficiently answers your request. If it does not do so or you would like additional information, please contact us.

Yours sincerely

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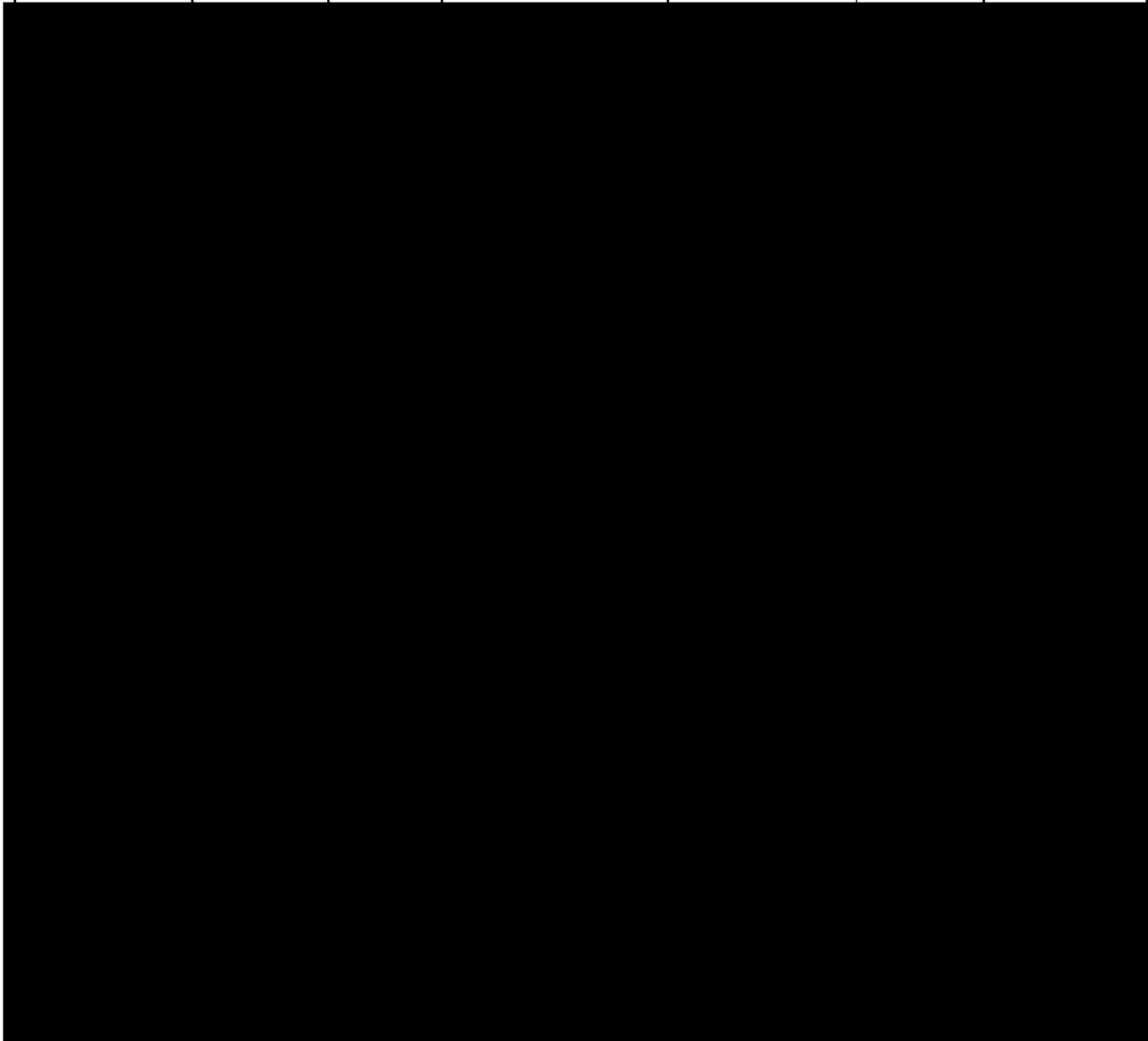
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[redacted]

ATTACHMENT A



NIPPON STEEL:		BLUESCOPE EQUIVALENT:				
Grade of Pickled and Oiled HRC	Thickness (mm)	Width (mm)			Quality Issues	Not Produced



ATTACHMENT B



NIPPON STEEL:			BLUESCOPE EQUIVALENT:			
Grade of Pickled and Oiled HRC	Thickness (mm)	Width (mm)	[REDACTED]	[REDACTED]	Quality Issues	Not Produced

