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APPLICATION FOR MINISTERIAL EXEMPTION FROM ANTI-DUMPING AND COUNTERVAILING DUTIES  
UNDER THE *DUMPING DUTY ACT*

PLATE STEEL PRODUCED TO ASTM INTERNATIONAL STANDARD A516 GR70 (the Exempt Goods)

BALCOMBE ENGINEERING PTY LTD (the Applicant)

BLUESCOPE STEEL LIMITED (the Domestic Industry)

**APPLICANT'S SUBMISSION TO THE DOMESTIC INDUSTRY'S RESPONSE TO APPLICATION**

**Summary**

The applicant importer, Balcombe Engineering Pty Ltd (**Balcombe**) for Ministerial exemption from anti-dumping and countervailing measures in relation to plate steel produced to ASTM International Standard A 516 GR70 (**the exempt goods**), has reviewed the response to application submitted by the Bluescope Steel Limited (**the domestic industry**) dated 6 March 2014.

In response to the submission of the domestic industry, Balcombe, in summary, submits the following:

1. The domestic industry does not produce in Australia identical goods to the exempt goods;
2. In the alternative, even if the domestic industry has produced the exempt goods in Australia, which is expressly denied, the domestic industry failed to offer the exempt goods for sale to Balcombe (refer **CONFIDENTIAL ATTACHMENT B-1.4**, to the *Exemption Application*);
3. Plate steel produced by the domestic industry to Australian Standards AS 1548 Grades PT 490NR and PT 490N are not like or directly competitive goods to the exempt goods, as the degrees of physical likeness are limited by the manganese content of the goods, and there are no degrees of commercial or functional likeness between the goods, as the AS1548 Grades are not acceptable to the engineering specifications prescribed by Balcombe's end-user customers;
4. Further, the domestic industry does not treat the AS1548 Grades as substitutable to the exempt goods in its marketing and product information materials.

**Sections C-1 & C-2 "Like or directly competitive goods"**

Balcombe challenges the domestic industry's assertion that it manufactures and sells identical goods to the exempt goods. The evidence in support of this assertion is, understandably, suppressed on confidentiality grounds. However, the specification (in terms of 485 MPa) on the confidential invoice, causes Balcombe to suspect that the goods the subject of the alleged transaction between the domestic industry and Kawasaki Heavy Industries (Kawasaki) are from imported source. To assist Balcombe better understand the nature of goods alleged to be identical to the exempt goods, Balcombe seeks a copy of the mill certificate, together with clear identification of origin of the goods the subject of the transaction.

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In any event, Balcombe notes that the domestic industry admits that any “identical” goods produced by it in Australia, are produced up to a thickness of (up to) 76 mm; and that beyond this thickness, only the non-identical, but claimed “like or directly competitive goods” should be considered (AS1548 Grades PT490NR and PT490N). On this point, Balcombe does not accept that goods manufactured to the AS 1548 Grades are directly competitive to the exempt goods (refer *response to section D-1*, below).

### **Section C-3**     **“Equal Terms”**

Although Balcombe is unable to comment on the “equality” of terms between the sale to Kawasaki, and sales generally (as evidenced in the confidential attachments to domestic industry’s original application), Balcombe submits that the question for the Commission is a far broader one.

The test under paragraph (a) of subsection 8(7) of the *Customs Tariff (Anti Dumping) Act 1975 (the Dumping Duty Act)* provides for the exemption of goods from interim dumping duty, and subsection 10(8) applies similar provisions for the exemption from interim countervailing (anti-subsidy) duties, where the Minister is satisfied, inter alia:

- “(a) that like or directly competitive goods *are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade*; “...

In this case, Balcombe referred to evidence from the domestic industry denying it the supply of the exempt goods (plate steel produced to ASTM A516 GR70), refer **CONFIDENTIAL ATTACHMENT B-1.4**. Therefore, Balcombe submits that even if evidence is accepted that the domestic industry offered for sale in Australia domestically produced identical goods to the exempt goods (pursuant to the Kawasaki transaction), then the requirement of the Dumping Duty Act have still not be satisfied : as the “like of directly competitive goods”, in this case allegedly identical goods, were **not** offered for sale to **all** purchasers on equal terms, or at all, as a sale was denied to the importer applicant altogether.

### **Section D-1**     **“Like or directly competitive goods”**

Even if the domestic industry’s assertion that it produces (in Australia) plate steel to grade ASTM A516 GR 70 up to 76 mm thickness, is accepted, then Balcombe finds it curious that the so called “directly competitive goods” (AS1548 Grades PT490N and NR) also cover this field, i.e. are produced to thicknesses of 10 - 100 mm and 10 - 60 mm, respectively (refer “Xlerplate Datasheet” attached to Bluescope Steel’s *Response to Application* dated 6 March 2014). Specifically, Balcombe fails to understand why the domestic industry would duplicate the product offering for thicknesses below 76mm, if the ASTM A516M Grade 70 (485MPa) and AS1548 Grades PT490N and NR, are in fact commercially or functionally substitutable. Balcombe submits that either ASTM A516M Grade 70 (485MPa) is not produced in Australia, or it is not “like or directly competitive” to AS1548 Grades PT490N and NR.

Balcombe agrees that the reference in the *Dumping Duty Act* to “like or directly competitive goods” should be interpreted in a manner that is consistent with the term “like goods” as defined by section 269T(1) of the *Customs Act 1901 (the Customs Act)* , and interpreted by the *Dumping and Subsidy*

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*Manual* (December 2013), specifically, “where goods are not alike in all respects, ...[the Anti-Dumping Commission] will assess whether they have characteristics close resembling each other”.

The domestic industry has pointed to the physical, commercial and functional likeness of the AS1548 Grades. As identified in Balcombe’s application, the issue of commercial and functional likeness is the relevant consideration of whether any Australian produced goods are “like or directly competitive” to the exempt goods. This is because of the need to meet the customer, end-user’s project specifications. As outline in its application, Balcombe identified the exempt goods as prescribed in the project specifications. Therefore it is not open to the market to substitute goods meeting a non-identical, but “closely resembling” specification, such as the plate steel produced to AS1548 Grades.

Therefore, it is not open to the domestic industry to point to “closely resembling” chemistry and mechanical properties between the exempt goods and the plate steel produced to AS 1548 Grades. Although both the exempt goods and the AS1548 Grades may, generally, be used in the “manufacture of pressure vessels”, they cannot necessarily be substituted for a specific pressure vessel, if the customer has not so specified it. As evidenced in its application, it is not open to Balcombe to substitute the exempt goods (ASTM A516 GR70) with AS 1548 Grades. Therefore, the locally produced goods do not share characteristics of commercial or functional likeness to the exempt goods.

One element of the chemistry of the exempt goods and the AS1548 Grades is the manganese content. The projects for which Balcombe uses the exempt goods require low manganese plate steel. This is why Balcombe’s customers specifically require it to use the exempt goods. The maximum manganese content of the exempt goods is 1.2%. The Australian produced AS1548 Grades are considered high manganese steel plate (manganese max=1.7%). For this reason, the plate steel produced to ASTM A516-70, and the AS1548 Grades are simply not substitutable. As outlined in its original application, it would be a breach of its customer’s engineering specifications for Balcombe to substitute the exempt goods with the AS1548 Grades.

Further, Balcombe notes that the domestic industry does not specify ASTM A516 Gr70 as one of the “nearest overseas specifications” on the *Xlerplate Datasheets*. If the domestic industry’s “closely resembling” product was in fact a viable alternative, then the Commission should expect it to be marketed as such.

Additionally, it is not open to the domestic industry to argue that the AS1548 Grades are direct equivalent standard to ASTM A516 Gr70. There is a body of quality assurance that supports each standard. To be specific A516 refers to other standards in particular A20 and also A435, A577, A578. AS1548 is aligned with the ISO and EN standards. Neither standard references the other.

### ***Section D-1.3 Supply chain of “closely resembling goods”***

Balcombe advises that the domestic industry’s “aligned distribution channel” supplies the “closely resembling” grades in 20 tonne minimum orders. This does not suggest that the goods are held in stock and must be produced to order.