

**Email**

19 March 2013

Ms Lydia Cooke  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

Our ref 11276/15955/80133959

Dear Ms Cooke

**Application for exemption from interim dumping measures for Nippon Steel's pickled and oiled hot rolled coil**

1. We refer to BlueScope's letter dated 13 March 2013 in response to Nippon Steel & Sumitomo Metal Corporation's (**Nippon Steel**) application made on 30 January 2013 for exemption (**Ministerial Exemption application**) from dumping measures for its pickled and oiled hot rolled coil (**HRC**).
2. BlueScope's submission does not engage with the arguments advanced by our client in the Ministerial Exemption application. Nor does BlueScope seek to engage or address the findings of fact, each of which supports Nippon Steel's Ministerial Exemption application as set out in the report to the Minister, the Hon Jason Clare MP (**Ministerial Report**) issued publicly on 20 December 2012.
3. In particular, BlueScope does not, in its 13 March 2013 letter, address the particular findings of fact referred to in paragraph 4 of the Ministerial Exemption application. Those findings, which have very significant implications for the Ministerial Exemption application, include:
  - (a) the export price for pickled and oiled HRC from Japan is a non-injurious price;<sup>1</sup>
  - (b) BlueScope does not produce the entire *specification* range of automotive steel;<sup>2</sup>
  - (c) BlueScope does not produce HRC of greater than 1550mm in width;<sup>3</sup>
  - (d) BlueScope's reduced sales to the automotive sector is not due:
    - (i) to dumped or increased competition from imports,

---

<sup>1</sup> Page 10 of Report to Minister.

<sup>2</sup> *ibid* at page 17.

<sup>3</sup> *ibid* at page 17.

- (ii) contracts lost to the exporters from Japan;
  - (e) there is no evidence that BlueScope's profits have declined in relation to the automotive sector;<sup>4</sup>
  - (f) pickled and oiled exports of HRC from Japan went entirely to the automotive industry and BlueScope's sales to the automotive sector were not impacted by dumped exports.<sup>5</sup>
4. Moreover, BlueScope lodged tariff concession applications which cover product the subject of the Ministerial Exemption application. While Nippon Steel acknowledges that a claim for a tariff concession order is a different application to that of an exemption application, BlueScope's tariff concession order application is, undoubtedly, highly relevant in this case. It is an acknowledgement by BlueScope that it does not produce certain product including some that are the subject of the Ministerial Exemption application. In such circumstances, the evidential burden (if any were imposed on our client as to what Australian industry produces) has been satisfied. In simple terms it is now clear that BlueScope does not produce any product the subject of its tariff concession applications.
5. Nippon Steel submits that BlueScope's failure to address in any meaningful way the substance of the Ministerial Exemption application and its tariff concession application means that there is no basis for it to resist the grant of the exemption being sought by Nippon Steel in its Ministerial Exemption application.
6. In addressing some remnant issues raised by BlueScope, so that our client is not said to acquiesce in them, we state the following:
- (a) as a matter of law, our client is not required to provide a public file version of its Ministerial Exemption application. In the interests of openness and transparency it allowed Customs to publicly post its correspondence on this issue. In doing so, Nippon Steel followed the guidelines set out in the Customs Dumping and Subsidy manual that apply to the provision of a public version of a submission in respect of an actual investigation;
  - (b) our client has made known to Customs in the clearest terms the HRC that it requests be exempted;
  - (c) BlueScope's claim of inadequate disclosure rings hollow. During the actual investigation we noted that BlueScope was obliged to provide a non-confidential summary of various documents including its alleged import parity price policy. Such documents were never produced or made public;
  - (d) it is all the more bewildering that BlueScope makes a claim that the exemption application process should be open and transparent. We would refer to our client's

---

<sup>4</sup> ibid at page 60.

<sup>5</sup> ibid at page 70.

Sydney

Melbourne

Brisbane

Perth

Canberra

Darwin

Hong Kong

Ms Lydia Cooke, Australian Customs and Border Protection Service

19 March 2013

submissions, all of which are available on the public file and are dated 9 July 2012, 23 July 2012 and 23 October 2012. The claim is otherwise without any merit because as BlueScope knows the steel grades that our client supplies to its Australian customers is specific and proprietary information;

- (e) finally, it is a matter of public record that specific grades of BlueScope HRC is not approved or is not fit for use as adjudged by the automotive manufacturer end user. In this way they are not substitutable.

7. Please do not hesitate to contact us if you require any further information to assist you in making a decision on the Ministerial Exemption application.

Yours sincerely



**Zac Chami, Partner**  
+61 2 6279 4744  
zchami@claytonutz.com

**Michael Mulgrew, Consultant**  
+61 2 6279 4054  
mmulgrew@claytonutz.com