



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

---

## **Exemption Inquiry Report: EX0050**

**Hot rolled plate steel exported to Australia from  
the People's Republic of China, the Republic of  
Indonesia, Japan and the Republic of Korea**

**Applicant:  
Bao Australia Pty Ltd**

**June 2017**

# Table of contents

<b>Abbreviations .....</b>	<b>3</b>
<b>1. Summary and recommendations .....</b>	<b>4</b>
1.1 Background.....	4
1.2 Authority to make a decision .....	4
1.3 Initiation of inquiry .....	4
1.4 Findings .....	4
1.5 Recommendation.....	4
<b>2. Background to measures.....</b>	<b>5</b>
2.1 Original investigation.....	5
2.2 The goods subject to measures .....	5
2.3 Tariff classification .....	6
<b>3. Exemption inquiry .....</b>	<b>7</b>
3.1 Exemption application.....	7
3.2 Exemption inquiry .....	7
3.3 The exemption goods .....	7
3.4 Legislative requirements for an exemption.....	7
3.5 Definition of “like or directly competitive goods”.....	8
3.6 Definition of “custom and usage of trade”.....	9
<b>4. Australian industry’s offer for sale of ‘like’ or ‘directly competitive’ goods .....</b>	<b>11</b>
<b>5. The Commission’s assessment .....</b>	<b>13</b>
<b>6. Recommendations .....</b>	<b>14</b>
6.1 Commissioner’s recommendation .....	14
6.2 Effective date of exemption.....	14
<b>7. Attachments.....</b>	<b>15</b>

# Abbreviations

Abbreviations/short form	Full reference
ADN	Anti-Dumping Notice
the applicant or Bao Australia	Bao Australia Pty Ltd
BlueScope	BlueScope Steel Limited
Commission	the Anti-Dumping Commission
Commissioner	the Commissioner of the Anti-Dumping Commission
the Act	the <i>Customs Act 1901</i>
China	the People's Republic of China
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
the duties	interim dumping duty, dumping duty, interim countervailing duty and countervailing duty
the exemption goods	the goods that are the subject of the application as described in section 3.3 of this report
Indonesia	the Republic of Indonesia
Korea	the Republic of Korea
Mpa	Mega Pascals
Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
plate steel	certain hot rolled plate steel as described at section 2.2
Q&T	Quenched and Tempered
REP 198	<i>Anti-Dumping Commission Report No. 198</i>

# 1. Summary and recommendations

## 1.1 Background

This report has been prepared in response to an application by Bao Australia Pty Ltd ('the applicant' or 'Bao Australia') received on 17 November 2016. The application requests an exemption from interim dumping duty, dumping duty, interim countervailing duty and countervailing duty (the duties) under subsections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*<sup>1</sup> (the Dumping Duty Act) in relation to the export of certain hot rolled plate steel (the exemption goods)<sup>2</sup> from the People's Republic of China (China), the Republic of Indonesia (Indonesia), Japan and the Republic of Korea (Korea).

This report sets out the Anti-Dumping Commission's (the Commission) findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied to make a recommendation to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)<sup>3</sup> on whether or not to exempt the exemption goods from the duties.

## 1.2 Authority to make a decision

Subsections 8(7) and 10(8) of the Dumping Duty Act set out, amongst other things, the matters to be considered by the Parliamentary Secretary in deciding whether to exercise their discretion to exempt goods from the duties.

## 1.3 Initiation of inquiry

After examining the application, the Commission initiated an inquiry on 13 December 2016. The details of the initiation are contained in Anti-Dumping Notice (ADN) No. 2016/127.<sup>4</sup>

## 1.4 Findings

Based on the application, information provided by BlueScope Steel Limited ('BlueScope'), the only Australian producer of certain hot rolled plate steel (plate steel), and BlueScope's website, the Commission has found that there is no Australian industry producing like or directly competitive goods offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

## 1.5 Recommendation

Based on the Commission's findings as outlined above, the Commissioner recommends to the Parliamentary Secretary that the exemption goods be exempted from the duties, effective from the date of application, being 17 November 2016.

---

<sup>1</sup> All legislative references in this report are to the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

<sup>2</sup> The exemption goods are described further below in section 3.3.

<sup>3</sup> On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this exemption inquiry the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

<sup>4</sup> All ADN's and past reports referenced in this report are available on the electronic public record at [www.adcommission.gov.au](http://www.adcommission.gov.au).

## 2. Background to measures

### 2.1 Original investigation

On 16 September 2013, the Commissioner completed:

- a dumping investigation into plate steel exported to Australia from China, Indonesia, Japan, Korea and Taiwan; and
- a countervailing investigation into plate steel exported to Australia from China.

The investigation followed an application by BlueScope.

The then Minister for Industry accepted the Commissioner's findings and recommendations following consideration of *Anti-Dumping Commission Report No. 198* (REP 198).

On 19 December 2013, anti-dumping measures were imposed, in the form of:

- a dumping duty notice in respect of all exporters of plate steel to Australia from China, Indonesia, Japan and Korea with the exclusion of Hyundai Steel Company and POSCO Steel from Korea and Shandong Iron and Steel, Jinan Company from China;<sup>5</sup> and
- a countervailing duty notice in respect of all exporters of plate steel exported to Australia from China.

### 2.2 The goods subject to measures

The goods exported to Australia from China, Indonesia, Japan and Korea covered by the current anti-dumping measures are:

*Flat rolled products of:*

- *iron;*
- *non-alloy steel; or*
- *non-heat treated alloy steel of a kind commonly referred to as Quench and Tempered (Q&T) Green Feed:*

*of a width greater than 600mm, with a thickness equal to or greater than 4.75mm, not further worked than hot rolled, not in coils, with or without patterns in relief.*

The following goods were excluded from the notices:

- 250 megapascal (MPa) yield strength grades of plate steel with a thickness greater than 150mm;
- 350 MPa yield strength grades of plate steel with a thickness greater than 100mm;
- Q&T Green Feed grades of plate steel with a thickness greater than 105mm; and
- heat treated Q&T grades of plate steel.

---

<sup>5</sup> The investigation was terminated against all exporters from Taiwan. Further details of the findings of the investigation are available in ADN No. 2013/72, REP 198 and *Anti-Dumping Commission Termination Report No. 198*.

In accordance with *Ministerial Exemption Instrument Nos. 8 of 2014*,<sup>6</sup> *9 of 2014*<sup>7</sup> and *1 of 2015*,<sup>8</sup> the following goods are exempt from the duties:

- plate steel specified by Japanese Industry Standard G4051-S45C (Australian Standard AS3678/K1042) with a thickness equal to or greater than 105mm;
- plate steel specified to the ASTM International A516-GR70 standard with a thickness equal to or greater than 105mm; and
- goods subject to Tariff Concession Order TC1413674.

## 2.3 Tariff classification

The goods subject to measures may be classified under the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

- 7208.40.00 statistical code 39;
- 7208.51.00 statistical code 40;
- 7208.52.00 statistical code 41; and
- 7225.40.00 statistical codes 22 and 24.

---

<sup>6</sup> Available on the Commonwealth gazette at:  
<https://www.legislation.gov.au/Details/C2015G00324>

<sup>7</sup> Available on the Commonwealth gazette at:  
<https://www.legislation.gov.au/Details/C2015G00325>

<sup>8</sup> Available on the Commonwealth gazette at:  
<https://www.legislation.gov.au/Details/C2015G01399>

## 3. Exemption inquiry

### 3.1 Exemption application

On 17 November 2016, Bao Australia wrote a letter to the Commissioner requesting an exemption from the duties in relation to its imports of the exemption goods.<sup>9</sup>

In summary, Bao Australia's application was based on there being no Australian producer of like or directly competitive goods in Australia.

### 3.2 Exemption inquiry

The Commissioner accepted Bao Australia's letter as an application for an exemption from the duties. On 13 December 2016, the Commissioner initiated an exemption inquiry, by publishing ADN No. 2016/127. ADN No. 2016/127 advised that an exemption inquiry had been initiated, provided details of the exemption goods and outlined the procedures to be followed during the inquiry.

Following initiation, the Commission sent BlueScope an invitation to respond to Bao Australia's application, by completing a questionnaire.

The Commission received a completed questionnaire response from BlueScope on 17 January 2017.<sup>10</sup>

No other submissions to this inquiry were received from interested parties.

### 3.3 The exemption goods

The exemption goods are:

*Steel, Hot Rolled micro alloyed non-heat treated steel sheet:*

- conforming to steel grades BS700MCK2 and BS700MCK4,
- with a yield strength NOT less than 680 Mpa, and
- of a thickness NOT less than 2.5mm and NOT greater than 16mm, and
- a Carbon Equivalent Value (CEQ) of less than or equal to 0.50.

In its application, Bao Australia stated that the relevant tariff classification for the exemption goods is 7225.40.00, statistical code 22. It also provided a product catalogue which included technical characteristics of the exemption goods.

### 3.4 Legislative requirements for an exemption

Bao Australia has applied for an exemption under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Subsection 8(7) provides:

- (7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:
  - (a) that like or directly competitive goods are not offered for sale in

---

<sup>9</sup> Electronic public record number EX0050 item no. 001

<sup>10</sup> Electronic public record number EX0050 item no. 003

Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

[...]

Subsection 10(8) provides:

- (8) The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:
  - (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;

[...]

Bao Australia requests that the Parliamentary Secretary exercise their discretion to exempt the exemption goods from the duties on the basis that like or directly competitive goods are not offered for sale in Australia.

### **3.5 Definition of “like or directly competitive goods”**

#### Like goods

The term “like goods” is defined in subsection 269T(1) of the *Customs Act 1901* (the Act). Section 6 of the Dumping Duty Act provides that the Act is incorporated and shall be read as one with the Dumping Duty Act. Accordingly, the definition of “like goods” in the Act is applicable to the Commission’s assessment of whether the exemption goods are ‘like goods’ under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Subsection 269T(1) of the Act defines “like goods” as:

*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.*

Chapter 2 of the Dumping and Subsidy Manual<sup>11</sup> sets out the Commission’s established policy and practice in relation to like goods. Where two goods are identical they are automatically regarded as like goods. Where two goods are not alike in all respects the Commission will assess whether they have characteristics closely resembling each other. This assessment will include assessing their physical likeness, commercial likeness, functional likeness and production likeness.

#### Directly competitive goods

The term ‘directly competitive’ is not defined in the Dumping Duty Act or the Act and has not been the subject of judicial consideration by Australian courts.

Accordingly, assistance in understanding this term can be derived by having recourse to relevant dictionary definitions and case law. Case law suggests an assessment of a ‘direct’ relationship is a question of fact and degree.<sup>12</sup> Drawing on the *Macquarie Dictionary* and case law, the Commission defines ‘directly’ as:

---

<sup>11</sup> Available on the Commission’s website.

<sup>12</sup> *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].



*excluding that which is indirect or remote;*<sup>13</sup> *absolutely; exactly; precisely.*

The *Macquarie Dictionary* also defines 'competitive' as:

*of, relating to, involving, or decided by competition; and  
having a feature comparable or superior to that of a commercial rival.*

The phrase 'directly competitive' can therefore be taken to refer to goods with comparable features that rival each other in a commercial market. The assessment will be one of fact and degree.

#### Satisfying the test within subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act

If there are no like or directly competitive goods offered for sale in Australia, then the requirements of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act are met (and the discretion to grant the exemption arises).

If there are like or directly competitive goods then it is necessary to consider whether these like or directly competitive goods are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

### **3.6 Definition of “custom and usage of trade”**

Although the domestically produced goods may be 'like or directly competitive goods', the Parliamentary Secretary may still grant an exemption to duties in circumstances where the 'like or directly competitive goods' produced in Australia 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'.

The term 'custom and usage of trade' is not defined in the Dumping Duty Act or the Act. The *Macquarie Dictionary* defines 'custom' as:

*a habitual practice; the usual way of acting in given circumstance; and  
habits or usages collectively; convention.*

The *Macquarie Dictionary* defines 'usage' as:

*customary way of doing; a custom or practice;  
the body of rules or customs followed by a particular set of people; and  
usual conduct or behaviour.*

As custom can only be inferred from a large number of individual acts, the existence of a custom and usage of trade must involve:

*the multiplication or aggregation of a great number of particular instances; but these instances must not be miscellaneous in character, but must have a principle of unity running through their variety, and that unity must show a certain course of business and an established understanding respecting it.*<sup>14</sup>

Custom or usage of trade is a term used in common law in the interpretation of implied terms in contracts within a particular trade or industry.<sup>15</sup> When considering what is 'custom or trade usage' the courts have concluded that:

---

<sup>13</sup> *ibid.*

<sup>14</sup> *Anderson v Wade* (1899) 20 N.S.W.R. 412 at p. 417.

<sup>15</sup> *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.

1. Custom or usage is established mercantile usage or professional practice;<sup>16</sup> and
2. Evidence of actual market practices is crucial to the existence of a custom or usage. However, universal acceptance is not necessary.<sup>17</sup>

---

<sup>16</sup> *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410 at [440]

<sup>17</sup> *Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur Insurance (Australia) Ltd* (1986) 160 CLR 226

## 4. Australian industry's offer for sale of 'like' or 'directly competitive' goods

Bao Australia's claims	Australian industry's response
<p>Bao Australia claims that:</p> <ul style="list-style-type: none"> <li>the Australian industry does not produce or offer for sale goods that are like or directly competitive to the exemption goods. In particular, Bao Australia claims that there is no Australian producer of hot rolled steel sheets with a yield strength exceeding 680 Mpa; and</li> <li>it had contacted and sought comment from the Australian industry (BlueScope) and that BlueScope do not object to the granting of an exemption of the duties applicable to the exemption goods.</li> </ul>	<p>The Australian industry stated in its questionnaire response that it:</p> <ul style="list-style-type: none"> <li>does not oppose the request for exemption;</li> <li>does not produce goods that are identical in all respect to the goods described in the application;</li> <li>does not produce and sell goods that are like or directly competitive to the exemption goods; and</li> <li>is not capable of producing goods that are like or directly competitive to the exemption goods.</li> </ul>

In addition, Bao Australia also stated that, following the Commission's like goods framework, the exemption goods are not alike to BlueScope's goods in terms of physical likeness, commercial likeness and functional likeness. Bao Australia's claims in this regard are summarised below.

### Physical likeness:

- the high strength steel which comprises the exemption goods is used specifically in applications requiring increased strength and durability properties for increased payloads, such as heavy load truck chassis, cranes and earthmoving machines;
- to deliver the high strength properties required, the key physical characteristic of the relevant hot rolled steel is the yield strength (measured in Mpa). To that end, the yield strength ranges from a minimum of 680 Mpa to 960 Mpa and above; and
- by contrast, the closest locally manufactured product is BlueScope's 'Xtraform 500' which has a minimum yield strength of 480 Mpa and is typically used in automotive componentry. The lower yield strength of this product provides a significant and critical difference in the physical characteristics of the various products.

### Commercial likeness:

- BlueScope's Xtraform 500 is primarily utilised by the automotive industry in the manufacture of automotive components as noted in BlueScope's Xtraform 500 datasheet. By contrast, the exemption goods are sold into and used by the construction industry in demanding load-bearing structures; and
- given that the minimum yield strength is critical to the durability of the steel in the end-use application, there is no willingness of participants to switch between the high strength steel requested to be exempt, and the substantially lower strength steel produced by BlueScope.

### Functional likeness

- the key characteristic of yield strength of structural steels has a significant impact on their end use;
- the exemption goods and locally produced steel products are not reasonably able to perform the same functions in their respective end use applications. For example, the high strength steel requested to be exempt does not possess the required formability of BlueScope's Xtraform 500 to be used in automotive componentry; and
- structural steels as discussed in the application are not affected by consumer preferences.

In its application, Bao Australia referred to BlueScope's website and included BlueScope's technical datasheets and Australian Standard information to support the above claims. In its questionnaire response, BlueScope made no additional comments on Bao Australia's claims in relation to physical, commercial and functional likeness.

## 5. The Commission's assessment

The Commission has examined the evidence presented in the application, BlueScope's questionnaire response and BlueScope's website and considers that:

- identical goods to the exemption goods are not offered for sale in Australia;
- although goods are offered for sale in Australia which share similar characteristics and share common features to the exemption goods, there are specific attributes of the exemption goods which are unique and distinguish them from the goods offered for sale in Australia in terms of physical, commercial and functional likeness.<sup>18</sup> This includes that the exemption goods have a different content and are of a higher yield strength that is more suitable in certain end uses as compared to goods offered for sale in Australia; and
- no goods are offered for sale in Australia that closely resemble or directly compete with the exemption goods, being goods that would rival the exemption goods in a competitive market or that are commercially interchangeable or perform the range of functions<sup>19</sup> required of the exemption goods.

As a result, the Commission considers that like or directly competitive goods to the exemption goods are not offered for sale in Australia. Accordingly, like or directly competitive goods could not be offered for sale to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

---

<sup>18</sup> The Commission notes that Bao Australia made no claims in its application in relation to production likeness as per the Commission's like goods framework, e.g. whether there are differences in terms of production processes of the exemption goods and goods offered for sale in Australia. The Commission has not examined the relevant production costs or undertaken verification visits as part of this exemption inquiry to examine the relevant production processes. However, notwithstanding, the Commission considers that the physical, commercial and functional differences observed are sufficient in this instance to make an assessment in relation to this exemption inquiry.

<sup>19</sup> The Commission also notes that the exemptions goods and goods offered for sale in Australia are marketed differently in terms of the suggested end use applications.

## **6. Recommendations**

### **6.1 Commissioner's recommendation**

Based on the information available, and the Commission's findings at chapter 5, the Commissioner recommends that the Parliamentary Secretary exercise their discretion to exempt the exemption goods, from the duties in accordance with subsection 8(7)(a) and subsection 10(8)(a) of the Dumping Duty Act.

### **6.2 Effective date of exemption**

The applicant's application, examined in this report, was made on 17 November 2017.

The timing for granting an exemption is at the discretion of the Parliamentary Secretary. It is the Commission's policy, generally, to recommend that an exemption is backdated to the date of the application.<sup>20</sup>

The Commission recommends that the exemption is backdated to the date of application, that is, 17 November 2016.

---

<sup>20</sup> Subsections 8(8A) and 10(9A) of the Dumping Duty Act provide that an exemption takes effect on the day specified in the instrument, which may be earlier or later than the day an instrument is made, but, if an exemption is given because of an application for exemption, the exemption must not be earlier than the day the application is made.

## 7. Attachments

Attachments	Confidentiality	Title
Attachment 1	Non-confidential	Exemption Instrument 7 of 2017