



EXEMPTION INQUIRY

CERTAIN HOT ROLLED COIL STEEL EXPORTED TO AUSTRALIA FROM JAPAN, THE REPUBLIC OF KOREA, MALAYSIA AND TAIWAN

REPORT TO THE MINISTER

REPORT EX 7

NIPPON STEEL & SUMITOMO METAL CORPORATION

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PUBLIC RECORD

Exemption Inquiry 7 – Hot Rolled Coil Steel

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2 Summary and recommendations

2.1 Introduction

This inquiry is in response to an application by Nippon Steel & Sumitomo Metal Corporation (Nippon Steel) requesting an exemption for certain goods from dumping duty (the measures) applicable to exports of hot rolled coil steel exported to Australia from Japan, the Republic of Korea (Korea), Malaysia and Taiwan.

Nippon Steel has applied for the exemption from the measures for the goods that it exports under section 8 of the *Customs Tariff (Anti-Dumping) Act 1975*¹ (the Dumping Duty Act).

Subsection 8(7) of the Dumping Duty Act set out, *inter alia*, the matters to be considered by the Minister for Industry (the Minister) in deciding whether to use his discretion to exempt goods from dumping duties.

An examination of Nippon Steel's exemption application indicates Tariff Concession Orders (TCOs) are in place for some of the goods subject to the application. These goods are therefore eligible to be exempt under subsection 8(7)(b) of the Dumping Duty Act, on the basis that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force. A list of these goods is at **confidential attachment 1**.

For the remaining goods subject to the exemption application, Nippon Steel is seeking an exemption under subsection 8(7)(a) of the Dumping Duty Act, on the basis 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. A list of these goods is at **confidential attachment 2**.

2.2 Recommendation

The Anti-Dumping Commission (the Commission) has found that for certain goods (as listed in confidential attachment 1) the subject of Nippon Steel's application TCOs are in force. Therefore, the conditions of subsection 8(7)(b) of the Dumping Duty Act are satisfied in regards to these goods. The Commission recommends that the Minister sign the instrument at **attachment 3** to exempt hot rolled coil steel from the measures for which the following TCOs are in force:

- TC 1349331
- TC 1349332
- TC 1349335

The Commission recommends to the Minister that Nippon Steel's application in respect of an exemption from the measures for the remainder of the goods listed in the application (as listed in confidential attachment 2), under paragraph 8(7)(a) of the Dumping Duty Act, be denied. Therefore, the Commission recommends that the Minister does not take any action in respect of these goods.

2.3 Findings and conclusions

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

The Commission has found that BlueScope Steel Limited (BlueScope), the sole Australian manufacturer of HRC, has applied for and was subsequently granted TCOs for several types of HRC subject to Nippon Steel's exemption application.

For other types of HRC subject to Nippon Steel's application for exemption, the Commission cannot be satisfied that like or directly competitive goods are not offered for sale in Australia on competitive terms because:

- the specifications of HRC for which an exemption was sought was kept confidential and therefore the Commission could not verify with the Australian industry whether it produced like goods; and
- Nippon Steel's customers and end users did not participate and therefore the Commission could not verify the competitive nature of the imported goods and those produced by the Australian industry.

3 Background

3.1 Original investigation

In November 2012, the Commission completed an investigation into the alleged dumping of HRC exported to Australia from Japan, the Republic of Korea (Korea), Malaysia and Taiwan.

On 4 December 2012 the Minister accepted the Commission's recommendations and found that HRC from Japan, Korea, Malaysia and Taiwan had been dumped and that that dumping had caused material injury to the Australian industry. A dumping duty notice was published notifying of this decision on 20 December 2012.

The reasons for the Minister's decision in this case are contained in International Trade Remedies Report No.188 (REP 188) which is available on the Commission's website at www.adcommission.gov.au.

3.2 Exemption application

On 30 October 2012, Nippon Steel wrote to the Minister requesting an exemption from measures in relation to exports of pickled and oiled HRC from Japan. Further detailed descriptions of the particular HRC requested to be exempt were provided on 30 January 2013 (**confidential attachment 3**). They did not specify under what provision of the Dumping Duty Act they were applying for exemption under.

Nippon Steel's letter outlined the following grounds in support of its application for an exemption from measures;

- a. The Australian industry is not able to supply the goods imported from Nippon Steel; and
- b. Nippon Steel's imports of the goods could not be causing injury to the Australian industry as the original investigation found that imports to this sector were non-injurious.

3.3 Exemption inquiry

In addition to the letter dated 30 January 2013, Nippon Steel provided two additional non-confidential submissions dated 12 March 2013 and 19 March 2013. BlueScope also provided a submission dated 13 March 2013. Non-confidential versions of these submissions are available on the electronic public record.

Nippon Steel also provided a fourth submission but a non-confidential version of this submission was provided.

The Commission's examination of Nippon Steel's application indicated that they were seeking an exemption on the basis of paragraph 8(7)(a) of the Dumping Duty Act. That is:

“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”

For the purposes of assessing the application for exemption from measures is that the term “like or directly competitive goods” involves a comparison of the imported

and domestically produced goods, where the domestically produced goods are either:

- alike in all respects, or where not alike in all respects have characteristics closely resembling those of the imported goods; or
- a competitive commercial relationship exists between the goods in the marketplace having regard to the commercial uses of the products.

In examining the custom and usage of trade, the Commission takes into account:

- the actual existence of a custom or usage that will justify the implication of a term into a contract;
- evidence that custom or usage relied upon is so well-known and acquiesced in that everyone making a contract in that situation can reasonably be presumed to have imported the term into the contract. However, the custom need not be universally accepted; and
- A person may be bound by a custom notwithstanding the fact that he or she had no knowledge of it.

During the inquiry period, the Commission found that BlueScope steel applied for TCOs which covered some of the goods included in Nippon Steel's exemption application. Therefore, the Commission also examined whether goods should be exempt on the basis of paragraph 8(7)(b) of the Dumping Duty Act. That is:

“that a Tariff Concession Order under Part XVA of the Customs Act 1901 in respect of the goods is in force”

3.4 Previous cases

There have been no previous exemption inquiries concerning HRC.

4 The “goods subject to measures” and the “goods subject to the application for exemption”

4.1 The goods subject to measures

The goods exported from Japan covered by the current dumping duty notices are:

Hot rolled coil (including in sheet form), a flat rolled product of iron or non-alloy steel, not clad, plated or coated (other than oil coated).

Goods excluded from this application are hot rolled products that have patterns in relief (known as checker plate) and plate products.

4.2 Tariff classification

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

Tariff Classification	Statistical class code
7208.25.00	32
7208.26.00	33
7208.27.00	34
7208.36.00	35
7208.37.00	36
7208.38.00	37
7208.39.00	38
7208.53.00	42
7208.54.00	43
7208.90.00	30
7211.14.00	40
7211.19.00	41

The rate of duty for the goods from Japan is 5%.

4.3 Goods subject to the application for exemption

Nippon Steel as requested an exemption for HRC that meet any of the following criteria:

- grades of pickled and oiled HRC that are produced by the domestic producer, BlueScope, but that are not approved by its clients;
- grades of pickled and oiled HRC that BlueScope produces but for which its clients have expressed quality concern; or
- grades and dimensions of pickled and oiled HRC not produced by BlueScope.

Nippon Steel provided a confidential list of the specific grades and dimensions of HRC it exported to Australia.

5 Australian industry's capacity to produce "like or directly competitive" goods

5.1 Claims by Nippon Steel

Nippon Steel claims that the HRC that meet any of the three criteria described above should be exempt from the measures as it does not consider that these goods can be considered like or directly competitive to those produced by the Australian industry.

Nippon Steel claims that during the HRC investigation, interested parties demonstrated that BlueScope could not produce certain dimensions and grades of HRC. Specifically, Nippon Steel argues that BlueScope cannot produce pickled and oiled HRC in the following dimensions:

- less than 1.6mm thick;
- more than 6mm thick; and
- more than 1550mm wide.

Additionally, Nippon Steel argued that its customers provided submissions to the HRC investigation stating that BlueScope could not manufacture specific grades of HRC they required. Nippon Steel considers that these grades and dimensions should also be exempt from measures on the basis that the Australian industry does not produce like goods.

Nippon Steel also argue that are quality differences between the product it imports and that produced by the Australian industry. It again references several submissions from the HRC investigation to argue that Japanese HRC is of superior quality. Nippon Steel also notes that in several cases where its product is used, the customer has not approved BlueScope's product for use. Nippon Steel argues that where this is the case, the imported HRC is not directly competitive with the Australian made HRC.

Nippon Steel also argues that its goods and BlueScope's goods are not directly competitive because:

- there are long term supply arrangements in place for HRC to the sector into which it sells; and
- purchasing and prices are negotiated on a regional basis.

Nippon Steel considers that the grades and dimensions of HRC it exports to Australia are confidential on the basis that it is specific and proprietary information. Nippon Steel set out in a confidential attachment the specifications of HRC that it supplies to its customers and whether:

- BlueScope produces the product;
- BlueScope's corresponding product is approved for use by its customers; or
- there are quality issues with the corresponding product produced by BlueScope.

Nippon Steel requested that BlueScope confirmed its manufacturing capabilities for the purpose of establishing exemptions and prove that:

- it produces identical specifications to that exported by Nippon Steel;
- it produces product that is approved for use by its customers; and
- it is immediately able to supply HRC to its customers.

Nippon Steel provided a submission dated 12 March 2013 which noted that BlueScope had applied for TCOs on several products that were subject to its Ministerial Exemption application. Nippon Steel considers that in doing so, BlueScope has conceded that it does not produce and sell like or directly competitive goods to those goods.

5.2 Response by the Australian industry

BlueScope is opposed to such a broad exemption such as that described by Nippon Steel and states that because all details of the actual grades of imported goods have been redacted, it has not had the opportunity to assess the claims made.

BlueScope does not consider that goods qualify for an exemption on the basis that BlueScope is not an 'approved' supplier of the goods and that there are quality concerns with the Australian made goods.

BlueScope did not provide any comment in regard to the specific specifications provided by Nippon Steel including pickled and oil HRC with a thickness of less than 1.6mm, more than 6mm and a width of more than 1550mm.

5.3 The Commission's assessment

The Commission has found on 18 March 2013, three TCO's came into effect following an application from BlueScope that related to several of the specific grades and dimensions of HRC exported to Australia by Nippon Steel. The Commission will therefore recommend that the Minister exempt these goods from interim dumping duty under paragraph 8(7)(b) of the Dumping Duty Act on the basis that TCOs in respect of the goods is in force. The relevant TCOs and tariff classifications are:

- TC 1349331 (7208.27.00)
- TC 1349332 (7208.27.00)
- TC 1349335 (7208.28.00)

The Commission also examined Nippon Steel's claims for exemption for the remaining goods. During the exemption inquiry, the Commission informed Nippon Steel that while there was no legislative requirement to provide a non-confidential version of the goods for which an exemption was being sought, to not do so would impede the Commission's ability to discuss the issues raised with interested parties and determine whether the Australian industry produced 'like or directly competitive' goods.

Nippon Steel did not provide a non-confidential list of its imports to Australia and the Commission was unable seek BlueScope's view as to whether it produced and sold like goods to those imported by Nippon Steel. Similarly, the grades that Nippon Steel considered were produced by the Australian industry but were not approved and/or not of sufficient quality were also kept confidential. As a result, the Commission could not confirm with BlueScope if this was the case.

In addition, in the inquiry Nippon Steel's customers did not participate and therefore the Commission was unable to seek further information regarding:

- the substitutability or competitive nature of the imports with the Australian industry's product;
- the nature of the quality differences between the HRC produced by BlueScope and the imports; and
- the nature of the approval process employed by Nippon Steel's customers in order to have grades certified for use could also not be confirmed.

Accordingly, the Commission did not have sufficient information to be satisfied that like or directly competitive goods are not produced and sold by the Australian industry.

The Commission notes that Nippon Steel did make public the following specifications for pickled and oiled HRC for which an exemption was sought:

- less than 1.6mm thick;
- more than 6mm thick; and
- more than 1550mm wide.

In the original investigation, BlueScope stated that it can produce HRC in a thickness range of 1.5mm to 12.7mm. It also confirmed that it was unable to produce HRC of a width greater than 1550mm following the closure of its Western Port hot strip mill². In response to Nippon Steel's exemption inquiry BlueScope did not provide any comment on these specifications or provide evidence to suggest that HRC with these dimensions were not like or directly competitive to its own HRC. However, the Commission considers that in the absence of information from the actual end users of these products that are in the best position to demonstrate the likeness or directly competitive nature of HRC, it cannot be satisfied of Nippon Steel's claims.

The Commission notes that in the course of the HRC investigation, several interested parties provided submissions which stated that:

- BlueScope could not produce certain types of HRC;
- certain grades of HRC produced by BlueScope was not of the quality required by end users; or
- certain grades of HRC produced by BlueScope was not approved for use by certain end users.

However, these comments when made in relation to specific grades generally relate to grades and specifications of HRC exported by Nippon Steel that are covered by the TCOs.

No information was provided by Nippon Steel regarding whether the goods are offered for sale in Australia to all purchases in equal terms having regard to the custom and usage of trade.

5.4 Conclusion

The Commission will recommend to the Minister that the goods the subject of Nippon Steel's exemption application which are covered by a TCO may be exempt under paragraph 8(7)(b) of the Dumping Duty Act.

The Commission will recommend in relation to the other grades and specifications of HRC subject to Nippon Steel's exemption application that the Minister cannot be satisfied that like or directly competitive goods and produced and sold in Australia on competitive terms under paragraph 8(7)(a) of the Dumping Duty Act. Therefore, the Commission recommends that the Minister not exempt these goods.

² REP188, pg 17.