

## ● CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

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

9 July 2012

Our ref 11276/80133959

Dear Ms Cooke

**Hot rolled coil steel exported from the Republic of Korea, Taiwan, Japan and Malaysia**

We act for Nippon Steel Corporation (**Nippon Steel**). We refer to the Australian Customs and Border Protection Service (**Customs**) investigation into alleged dumping of hot rolled coil steel (**HRC**) exported from the Republic of Korea, Taiwan, Japan and Malaysia following an application lodged by BlueScope Steel Limited (**the Applicant**).

The purpose of this submission is to demonstrate that:

- (a) the application submitted by the Applicant is inadequate and suffers from a substantial number of procedural defects, including a failure to provide adequate non-confidential information; and
- (b) the Applicant has failed to adequately address (let alone prove to an adequate evidential standard) the issue of causation and material injury in its application.

Notwithstanding (b) above, a detailed submission on material injury will be submitted in due course.

**1. Contentions**

1.1 Our client contends that the Applicant has failed to:

- (a) provide sufficient information rendering Nippon Steel unable to adequately defend its interests; and
- (b) properly address the causal link between imports by our client such that there can be no determination of material injury.

**2. Background**

2.1 On 10 May 2012, the Applicant lodged an application requesting that the Minister for Home Affairs publish a dumping duty notice in respect of HRC exported to Australia from the Republic of Korea, Taiwan, Japan and Malaysia.

2.2 The Applicant alleges that Australian industry has suffered material injury, as a result of HRC being exported to Australia from the nominated countries at dumped prices. The Applicant claims that material injury commenced during 2010/2011 and that the industry has suffered injury in the form of:

- (a) price depression;
- (b) price suppression;
- (c) reduced profits;
- (d) reduced profitability;
- (e) reduced revenues;
- (f) reduced employment;
- (g) reduced wages expense; and
- (h) reduced return on investment.

2.3 In response to the Consideration Report No 188, published on 14 June 2012, Nippon Steel, as an interested party, makes these submissions.

### 3. Failure to provide adequate non-confidential summaries

3.1 Nippon Steel considers that the Applicant's application fails to provide adequate non-confidential summaries in relation to its key claim on injury and causation.

3.2 The dumping authority has the responsibility of determining the issue of confidentiality. This is illustrated by the very recent Panel decision in *China- Countervailing and Anti Dumping Duties on Grain Orientated Flat Rolled Electrical Steel From the United States*. In that case the Panel stated:

The obligations in Articles 12.4.1 of the SCM Agreement and 6.5.1 of the Anti-Dumping Agreement fall upon the investigating authorities. The Appellate Body agreed with this interpretation in *EC – Fasteners (China)*. The Appellate Body found that in respect of information treated as confidential under Article 6.5, Article 6.5.1 imposes an obligation on the investigating authority to require that a non-confidential summary of the information be furnished.

The Appellate Body noted that this accommodates the concerns of confidentiality, transparency and due process.

Where "exceptional circumstances" exist, such that non-confidential information is not susceptible of summary, Article 6.5.1 requires that the party identify the exceptional circumstances and provide a statement explaining why summarization is not possible. The investigating authority must scrutinize such statements to determine whether they establish "exceptional circumstances".

3.3 While the application does provide an index, separating confidential from non-confidential information, the mere inclusion of an index does not fulfil the obligation to provide an adequate non-confidential version of the application. Transparency and due process (an Americanism for natural justice in Australia) is a cornerstone of the legal system under which we operate.