

16 May 2013

Mr Geoffrey Gleeson  
Director, Operations 3  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

Dear Mr Gleeson

**Public File**

**Reinvestigation inquiry - Hot Rolled Coil exported from Japan, Korea, Malaysia and Taiwan**

Basis for reinvestigation

By Australian Customs Dumping Notice ("ACDN") No. 2013/30 it was announced that the Minister for Home Affairs ("the Minister") had accepted the recommendations of the Trade Measures Review Officer ("the Review Officer") for certain matters to be reinvestigated into the dumping of Hot Rolled Coil ("HRC") Steel exported to Australia from Japan, the Republic of Korea, ("Korea"), Malaysia and Taiwan.

The decision the subject of the review by the Review Officer is contained in International Trade Remedies Report No. 188.

The Chief Executive Officer ("CEO") of Customs and Border protection has been directed to reinvestigate the following findings in relation to the decision to publish a dumping duty notice:

1. The calculation of the dumping margin for Hyundai Steel, in order to correct apparent errors in it;
2. Whether there were in fact sufficient grounds to warrant setting the measures by reference to prices other than those in the investigation period and, if so, the preferable methodology for adjustment to those prices;
3. Whether it would be preferable to structure the conditions attaching to the imposition of dumping duties on imports for the automotive industry in such a way that imports that are acknowledged by Customs and Border Protection not to be causing or likely to cause injury to BlueScope are not liable to duty under the dumping duty notice in the first instance (and only exempt if subsequently exempted under Section 8(7) of the *Customs Tariff (Anti-Dumping) Act 1975*; and
4. Why pickled and oiled HRC from countries Korea, Malaysia and Taiwan sold and used in the automotive sector should not be treated in the same manner as Japanese imports of pickled and oiled HRC for the automotive sector.

ACDN No. 2013/30 indicates that the CEO of Customs and Border Protection must report back to the Minister the results of the reinvestigation by 13 June 2013. Submissions to the reinvestigation are required by 17 May 2013.

## BlueScope's comments

BlueScope Steel Limited ("BlueScope") provides the following comments in respect of the identified areas for reinvestigation by the CEO of Customs and Border Protection.

### 1. The calculation of the dumping margin for Hyundai

It is not necessary to re-state the grounds for arriving at the determined dumping margin for Hyundai of 2.6 per cent. This is adequately outlined in the Review Officer's Report at paragraphs 29 to 34. The Review Officer did not consider that Customs and Border Protection had erred in its re-calculation of Hyundai's dumping margin that resulted in a revision of the margin from 1.9 per cent to ultimately 2.6 per cent. Hyundai, however, has indicated that the inclusion of non-identical goods in the normal value basket upon which the dumping margin is based has had an adverse impact on the margin determined.

The Review Officer did not want to affirm a decision that could potentially be in error according to the grounds upon which Hyundai is concerned – that is, the inclusion of non-identical goods in the basket of goods considered for normal value determination. The Review Officer did indicate that Hyundai should be permitted to make representations as to what goods should be included or excluded from the normal value goods coverage.

It is BlueScope's view that the goods that are included in the category of 'like goods' – that is, goods for which normal values will be based upon includes:

- (i) identical goods; and
- (ii) goods that, although not identical, have characteristics closely resembling those goods.

BlueScope agrees with the Review Officer that for the purposes of normal value coverage, the "basket" of goods to be included in the normal value includes not only like goods but also goods that although are not alike, have characteristics closely resembling.

On the basis of the extended coverage of the relevant basket of goods to be included in the normal value calculation, Hyundai's dumping margins should be revised from 2.6 per cent to either 2.7 or 2.8 per cent (contingent upon the goods covered within the normal value classification of goods).

### 2. Reference to prices outside the investigation period

The Review Officer has recommended two grounds for re-investigation concerning the reference to prices outside the investigation period upon which the dumping measures apply. These are:

- (i) whether there were in fact sufficient grounds to warrant setting the measures by reference to prices other than those in the investigation period; and
- (ii) if so, the preferable methodology for adjustment of those prices.

Firstly, BlueScope considers it appropriate to consider the Review Officer's comments concerning whether sufficient consideration was given to the "*reliance solely on the prices within the investigation period*" and whether these could sufficiently "*redress the level of dumping going forward.*" It was the Review Officer's opinion that the level of consideration on this issue was "insufficient".

BlueScope agrees with the additional view of the Review Officer that given the volatility of raw material prices over the injury period *“that this should have alerted Customs to the risk that any reduction in prices post the investigation period would likely not be sustained”*.

Raw material prices for the production of liquid steel across the injury period were available to Customs and Border Protection during the investigation. The Review Officer commented that it did not appear that *“any pricing volatility over an extended period of time”* was conducted prior to the Report passing to the Minister. The only analysis related to raw material pricing during, and post, the investigation period. The Review Officer’s comments thereafter are persuasive:

*“This was, I believe, **too short a period to allow a sound view to be formed** about whether or not price levels as they existed in September/October 2012 were likely to be sustained or otherwise reflective of ongoing price levels”* (emphasis added).

BlueScope wholly concurs with the Review Officer’s assessment. A limited six or seven month period immediately following the investigation period is an insufficient time in a volatile market to predicate likely future movements in prices (including for any short, medium or long-term outlook). The determination of measures based upon a six or seven month window of pricing that potentially could apply for a five-year period following imposition, would seem inappropriate in a volatile market.

It is BlueScope’s considered view that it is entirely inappropriate to adjust a variable factor determined for the investigation period based upon a short window of pricing immediately thereafter (i.e. in this instance a six or seven month period). The anti-dumping provisions include mechanisms for the review of measures that provide an appropriate means by which changes in one or more of the variable factors may be reviewed post the Minister’s decision to apply the measures. Furthermore, it is BlueScope’s view that by ignoring the existing anti-dumping mechanisms for the ongoing review of measures post the Minister’s decision, has the added consequence of adding further uncertainty to the Australian industry and diminishes the effectiveness of the anti-dumping system.

The effect of the adjustment to the ascertained export prices by a factor based upon a fall in raw material prices over a short period of time post the investigation period did not permit a reasonable basis upon which Customs and Border Protection could reliably predict the likely future trend of export prices from exporters the subject of the measures. BlueScope submits that the measures should have been based solely on the variable factors determined for the investigation period without any adjustment based upon information post the investigation period.

As it is considered by BlueScope that the six or seven month period post the investigation period was insufficient a period to reliably predict future price movements of raw materials used in steelmaking, BlueScope does not consider that the Minister should consider an adjustment to the variable factors determined during the investigation period. Therefore, the issue of a ‘preferable methodology’ for the adjustment of prices from the investigation period is inappropriate - given the short period of time for which prices were available immediately following the investigation period.

### 3. Possible exemptions from measures for HRC used in the automotive industry

BlueScope notes the Review Officer’s interpretation of s.269TG(1) and s.269TG(2) and the application of measures that is in disagreement with POSCO’s proposition that the provisions *“only permit the imposition of measures on goods that are found to be dumped with resultant injury and that, if a subset of goods was found not to be causing injury, measures could not extend to that subset”*.

The Review Officer confirmed that the measures extend to the “full range of like goods”.

The Review Officer has also indicated that the legislation does not include an express provision limiting the application of s.269TG and opined that the Section 33(3A) of the Acts Interpretation Act (Cth) (“AI Act”) could apply. The Review Officer concluded “*it is open to the Minister to exercise discretion to not impose measures on imports for the automotive industry*”.

The relevant exemption is available under Section 8(7) of the Customs Tariff (Anti-Dumping) Act 1975. The recent requests for exemption from measures for certain goods that may be used in specific end-uses appear to be pre-emptive and are a significant drain on the available timeframe and resources available to Customs and Border Protection during the conduct of an investigation. BlueScope does not consider that requests for exemption should be considered prior to the Minister’s decision to apply measures under s.269TG. It is only after the measures have been applied that an exemption should realistically be considered. Consideration beforehand could be irrelevant if the Minister did not impose measures.

Requests for exemption from measures could be considered post the completion of the 155-day investigation period. This would permit the consideration of the exemption request outside the legislated timeframe and not divert resources from the investigation process.

It is BlueScope’s view that the exemption provisions of Section 8(7) of the Customs Tariff (Anti-Dumping) Act operate sufficiently where it can be demonstrated certain like goods are not available from local supply. BlueScope does not consider that exemption applications should be considered in the context of a full investigation prior to the Minister’s decision to impose measures.

#### 4. Pickled and oiled HRC from Korea, Malaysia and Taiwan

POSCO has asserted that the application of measures against its exports of pickled and oiled HRC to the automotive industry in Australia was incorrect. This is asserted on the grounds that Customs and Border Protection did not find injury to the Australian industry from pickled and oiled exports from Japan.

BlueScope submits that it could not evidence examples of injurious dumping of pickled and oiled HRC exported to Australia from Japan during the investigation period. This is not to say that injury was not caused in periods outside the investigation period. BlueScope also submits that it did evidence injury from Korean exports of pickled and oiled HRC to the automotive Australian domestic industry during the investigation period. BlueScope further evidenced that HRC (including pickled and oiled) exported from Korea could be used across a number of industry sectors, including pipe and tube, manufacturing and automotive.

BlueScope does not consider that Korean exports of pickled and oiled HRC to Australia for use in the automotive industry should be exempted from anti-dumping measures. BlueScope has competed directly with Korean exports for sales in the automotive industry and has experienced injury from the dumped exports from this source.

## Conclusions

BlueScope agrees with the Review Officer's assessment that the inclusion of goods that are not identical within Hyundai's normal value calculations will likely lead (in the Review Officer's assessment) to an increase in Hyundai's calculated dumping margin.

BlueScope welcomes the view of the Review Officer that the six or seven month period post the investigation period was too short a period of time to establish likely future price trends as a basis for adjusting measures on HRC. BlueScope does not support the adjustment to the ascertained export price by indices outside the investigation period.

BlueScope is of the view that the exemption provisions of Section 8(7) of the Customs Tariff (Anti-Dumping) Act operate sufficiently to afford exemptions from anti-dumping measures post the Minister's decision to apply measures. BlueScope is opposed to the consideration of requests for exemption during the conduct of an investigation as Customs and Border Protection's resources are diverted from undertaking the key dumping, injury and causal link assessments.

BlueScope does not support exempting pickled and oiled HRC exported from Korea from anti-dumping measures as it was demonstrated that dumped Korean exports were a source of injury to the Australian industry.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4275 3859.

Yours sincerely



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