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Australian Government
Anti-Dumping Commission

EXEMPTION INQUIRY EX0014

**HOT ROLLED PLATE STEEL
EXPORTED TO AUSTRALIA FROM THE
PEOPLE'S REPUBLIC OF CHINA, KOREA,
JAPAN, AND INDONESIA**

**APPLICANT:
BALCOMBE ENGINEERING PTY LTD**

DECEMBER 2014

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Exemption Inquiry EX0014 – Plate steel exported from China, Indonesia, Japan, Korea and Taiwan 1

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1 Summary and recommendations

This report sets out the Anti-Dumping Commission's (the Commission) findings in response to an application by Balcombe Engineering Pty Ltd (Balcombe) requesting an exemption from dumping duty and countervailing duty (collectively, the measures) under subsections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*¹ (the *Dumping Duty Act*) in relation to the export of hot rolled plate steel (plate steel) from the People's Republic of China (China), the Republic of Korea, Japan and Indonesia.

This report sets out the Commission's findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied on to make a recommendation to the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary)² on whether to exempt goods from measures.

1.1 Recommendation

The Commission has found that like or directly competitive goods are offered for sale in Australia to all purchasers on equal terms under like conditions. The Commission considers that the conditions of sections 8 and 10 of the *Dumping Duty Act* for granting an exemption are not satisfied having regard to the 'custom and usage of trade' of the goods.

The Commissioner recommends to the Parliamentary Secretary that Balcombe's application in respect of the exemption from measures of plate steel exported from China, Korea, Japan and Indonesia to Australia be denied.

1.2 Application of law to facts

1.2.1 Application

On 28 November 2013, Balcombe wrote to the Commission requesting an exemption from measures in relation to its imports of plate steel. Balcombe has applied for an exemption under subsection 8(7)(a) and 10(8)(a) of the *Dumping Duty Act*.

1.2.2 Authority to make decision

Subsections 8(7) and 10(8) of the *Dumping Duty Act* set out, *inter alia*, the matters to be considered by the Parliamentary Secretary in deciding whether to exercise his discretion to exempt goods from dumping duty and countervailing duty.

1.2.3 Initiation of inquiry

After examining the application the Commission was satisfied that:

- the claims put forward in the application warranted further inquiry;
- an exemption inquiry should commence; and

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.

² In December 2013 the Minister for Industry delegated responsibility for anti-dumping matters to the Parliamentary Secretary to the Minister for Industry. Accordingly, the Parliamentary Secretary is the relevant decision maker with respect to this exemption inquiry.

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- that a final report and recommendation to the Parliamentary Secretary be prepared presenting evidence on which the Parliamentary Secretary may rely to exercise their discretion under sections 8 and 10 of the Act.

The Commission initiated an exemption inquiry on 12 March 2014.

1.3 Findings and conclusions

The Commission has made the following findings and conclusions based on information provided by the sole Australian manufacturer of plate steel, BlueScope Steel Limited (BlueScope):

- there is an Australian industry producing 'like or directly competitive goods'; and
- the 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.

Based on these findings the Commissioner recommends to the Parliamentary Secretary that Balcombe's application in respect of the exemption from anti-dumping measures be denied.

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2 Background to the measures

2.1 Original investigation

On 16 September 2013, the Commission completed an investigation into the alleged dumping and subsidisation of plate steel exported to Australia from China, Taiwan, Indonesia, Japan and Korea.

The Minister for Industry accepted the Commissioner's recommendations and found that plate steel from China, Korea, Japan and Indonesia had been dumped and subsidised and that that dumping and subsidisation had caused material injury to the Australian industry. Dumping and countervailing duty notices were published on 19 December 2013.

On 10 September 2013 the Commissioner's decision to terminate the case in so far as it relates to the following exporters and Taiwan as a whole, was published:

- Hyundai Steel Company (Korea);
- POSCO (Korea);
- Shandong Iron and Steel, Jinan Company (China).

The reasons for the Minister's decision in this case are contained in Anti-Dumping Commission Report 198 (REP 198).

2.2 The goods subject to measures

The goods exported from China, Korea, Japan and Indonesia, covered by the current dumping duty and countervailing duty notices 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 investigation:

- 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.

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2.3 Tariff classification

The goods may be classified to 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.

The general rate of duty is currently 5 per cent for goods imported from Japan and free for imports from China, Indonesia and Korea for the following tariff subheadings:

- 7208.40.00 statistical code 39;
- 7208.51.00 statistical code 40; and
- 7208.52.00 statistical code 41.

For goods imported under the tariff subheading 7225.40.00 statistical codes 22 and 24, the general rate of duty for goods imported from Japan and Korea is 5 per cent and 4 per cent for imports from China and Indonesia.

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3 Exemption Inquiry

3.1 Exemption application

On 28 November 2013, Balcombe wrote to the Commission requesting an exemption from measures in relation to its imports of plate steel (**Confidential Attachment 1**).

Balcombe's letter outlined the following grounds in support of its application for an exemption from measures:

- a. in the last 12 months, no enterprises have produced or sold, in Australia, goods that are identical in all respects to the goods described in section 4.2 of this report; and
- b. in the last 12 months, no enterprises have produced or sold, in Australia goods that are like or directly competitive to the goods described in section 4.2 of this report.

3.2 Exemption inquiry

The Commission accepted Balcombe's letter as an application for an exemption of measures. As the plate steel investigation had been completed at the time the Commission received the application but the Minister's decision had not been published, the Commission advised Balcombe that it would not be able to consider its application until after the Minister's decision had been published. The Minister's decision was published on 19 December 2013.

On 12 March 2014, the Commissioner initiated an exemption inquiry based on Balcombe's application made on 28 November 2013, by publishing Anti-Dumping Notice (ADN) 2014/19. ADN 2014/19 advises that the exemption inquiry has been initiated, details the goods subject to the inquiry and outlines the procedures to be followed during the inquiry.

The Commission sent the sole Australian plate steel industry member, BlueScope, an invitation to respond to Balcombe's application on 21 February 2014, by completing the 'Response to Exemption Application' questionnaire and requested that responses be received no later than 7 March 2014.

A completed response from BlueScope (**Confidential Attachment 2**) was received on 6 March 2014. BlueScope objects to the granting of an exemption for the goods subject to Balcombe's application.

3.3 Goods subject to the application for exemption

The goods subject to Balcombe's application for exemption are described as follows:

plate steel produced to ASTM International standard A516 GR70³ exported to Australia from China, Korea, Japan and Indonesia (hereafter referred to as 'the exemption goods').

³ The metric equivalent is A516 GR485

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3.4 Legislative requirements for an exemption

Balcombe 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 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;

Balcombe requests the Parliamentary Secretary to exercise his discretion to exempt goods from dumping and countervailing duties on the basis that they are unable to purchase like or directly competitive goods from the Australian industry.

3.5 Definition of ‘like or directly competitive goods’

Although not expressly defined by the *Dumping Duty Act*, the term ‘like or directly competitive goods’ has been interpreted in the context of safeguards measures under Article 2 of the *World Trade Organisation Agreement on Safeguards* (Safeguards Agreement). Guidance on the interpretation of ‘like or directly competitive goods’ in the context of safeguards may offer assistance to the interpretation of ‘like or directly competitive goods’ as it appears in subsections 8(7)(a) and (8)(a) of the *Dumping Duty Act*.

The Productivity Commission (PC) examined the meaning of ‘like or directly competitive goods’ in the context of its 2008 *Safeguards Inquiry into the Import of Pigmeat*.

In that inquiry, the PC looked to the definition of ‘like goods’ provided in the context of the general procedures for safeguard inquiries issued by the Australian Government. Those procedures provided that, ‘like product means a product which is identical, i.e. alike in all respects to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.’⁴ This definition closely reflects the definition of ‘like goods’ found in subsection 269T(1) of the *Customs Act 1901*.

⁴ Commonwealth of Australia Special Gazette, No. S 297, 1998 cited by Productivity Commission *Safeguards Inquiry into the Import of Pigmeat*.

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The term ‘directly competitive’ was considered separately by the PC. Citing the World Trade Organisation (WTO) Appellate Body, the PC found that ‘directly competitive has been interpreted as encompassing goods with distinct physical characteristics, provided they compete for the same market.’⁵ Having regard to the WTO jurisprudence, the term ‘like or directly competitive goods’ was considered by the WTO Appellate Body in a number of cases. The primary characteristics of goods to which the Appellate Body had regard in these cases include:

- c. competitive commercial relationship between goods in the marketplace;⁶
- d. interchangeability and substitutability, or whether the goods provide “alternative ways of satisfying a particular need or taste”;⁷ and
- e. commercially interchangeability of products;⁸

In the matter of *Korea — Alcoholic Beverages*, the prevailing view of the Appellate Body was that:

‘The term “directly competitive or substitutable” describes a particular type of relationship between two products, one imported and the other domestic. It is evident from the wording of the term that the essence of that relationship is that the products are in competition. This much is clear both from the word “competitive” which means “characterized by competition”, and from the word “substitutable” which means “able to be substituted”. The context of the competitive relationship is necessarily the marketplace.’⁹

In the matter of *Japan – Taxes on Alcoholic Beverages*, the Appellate Body expressed the view that a comparison of the ‘commercial uses of the products, not of their characteristics’¹⁰ is central to the determination of their competitive nature in assessing whether products are ‘directly competitive.’

For the purposes of assessing the application for exemption from measures, the term ‘like or directly competitive goods’ involves a comparison of the imported and domestically produced goods, where the domestically produced goods are either:

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

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 measures in circumstances where the ‘like or directly competitive goods’ are not offered for sale

⁵ WTO, Appellate Body, *Japan – Taxes on Alcoholic Beverages* (DS 8).

⁶ *Korea — Alcoholic Beverages* (WT/DS75/AB/R, WT/DS84/AB/R) at 114.

⁷ *ibid* at 115.

⁸ *US — Cotton Yarn*, (WT/DS192/AB/R) at 96-9.8

⁹ *Korea — Alcoholic Beverages* (WT/DS75/AB/R, WT/DS84/AB/R).

¹⁰ *Japan – Taxes on Alcoholic Beverages* at 6.22.

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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. However, it is a term used in common law in the interpretation of implied terms in contracts. In this category are contracts within a particular trade or industry where it may be possible to say that custom or trade usage dictates that a particular term is implied in each transaction in that particular trade or industry. In such cases, a term in the 'custom and usage of trade' may be implied where it is necessary to give the contract business efficacy¹¹. In considering what is in the 'custom and usage of trade', the Courts have considered the following factors:¹²

- a. the actual existence of a custom or usage that will justify the implication of a term into a contract;
- b. 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
- c. a person may be bound by a custom notwithstanding the fact that he or she had no knowledge of it.

¹¹ *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468, Sup Ct NSW Court of Appeal

¹² *Con-Stan Industries of Australia Pty. Ltd v. Norwich Winterthur Insurance (Australia) Ltd.* (1986) 160 CLR 226, High Court of Australia

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

4.1 Balcombe's claims

Balcombe stated in its application that the goods manufactured and supplied by the Australian industry are not like or directly competitive to the exemption goods. To demonstrate this, Balcombe provided in its application details of the goods produced by the Australian industry that it considers most comparable to the exemption goods, being plate steel produced to the Australian Standard 1548-PT460N (NR). Balcombe included technical data sheets from BlueScope and standards information in respect of plate steel grade AS 1548-PT460N (NR) to support its claim.

Balcombe also provided as part of its application an [REDACTED] to further demonstrate the difference in the two standards (**Confidential Attachment 3**).

BlueScope claims that the goods most closely resembling the exemption goods (ASTM A516 GR70) are plate steel produced to the Australian Standard AS1548 – Grades PT490NR and PT490N, not AS 1548-PT460N (NR). Balcombe provided submissions in response to this claim, asserting that AS 1548 PT490NR and PT490N are also not 'like or directly competitive' to the exemption goods (these submissions form **Attachment 4**).

Balcombe outlined, in its submission, the following grounds in support of its assertion that the Australian standard AS 1548 PT490NR and PT490N are also not like or directly competitive to the exemption goods:

Physical likeness – the Australian standard allows for a higher level of manganese content of up to 1.7 per cent compared to the exemption goods, which stipulates a maximum tolerance of manganese of 1.2 per cent. Balcombe claims this results in the AS 1548 PT490NR and PT490N plate steel being considered a high manganese steel plate which is not suitable for projects for which Balcombe customers use the exempt goods.

Balcombe emphasised in its submission that BlueScope's specification datasheets for grades AS 1548 PT490NR and PT490N do not identify under the heading 'nearest overseas specifications' the exemption goods (ASTM A516 GR70). Balcombe also highlighted that the AS 1548 and ASTM 516 standards do not reference each other.

Commercial/ functional likeness - Balcombe asserts that its customers specifically request the exemption goods (ASTM A516 GR70) as per their project specifications and it is not open to Balcombe to substitute goods meeting a different standard. Therefore, Balcombe reasons, the AS 1548 PT490NR and PT490N plate steel grades do not share characteristics of commercial or functional likeness to the exemption goods.

Balcombe supplied as part of its application [REDACTED]

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[REDACTED]
(Confidential Attachment 5).

4.2 BlueScope's response to exemption application

BlueScope in its response to the questionnaire stated that it produces and offers for sale the exemption goods (ASTM A516-GR485 (metric equivalent GR70)). In addition, BlueScope asserts that it produces and offers for sale goods produced to the Australian standard (being AS1548 –PT490NR and PT490N) which are 'like or directly competitive' to the exemption goods. These claims are detailed below.

ASTM A516-GR485

BlueScope stated that it manufactures and sells ASTM A516-GR485 (metric equivalent GR70) up to a thickness of 76mm. For product thicker than 76mm, BlueScope advised that it manufactures and sells 'like or directly competitive' goods in the form of AS1548 –PT490NR and PT490N plate steel.

In support of BlueScope's claim that it has manufactured and sold the exemption goods (ASTM A516-GR70), BlueScope provided a commercial invoice and dispatch advice for ASTM A516-GR485 plate steel sold in February 2014 to [REDACTED] (these documents form part of Confidential Attachment 2).

BlueScope also supplied the Commission with a test certificate in respect of this sale to [REDACTED], demonstrating that the exemption goods (ASTM A516-GR70) were manufactured by BlueScope's steel mill in Australia (**Confidential Attachment 6**).

AS1548 – PT490NR and PT490N

In addition to submitting that it makes and sells goods that are identical in all respects to the exemption goods, BlueScope also addressed Balcombe's claims regarding 'like or directly competitive goods'.

BlueScope asserted that Balcombe had incorrectly identified AS 1548-PT460N (NR) as the most comparable Australian standard steel plate grade to the exemption goods. BlueScope claimed that AS1548 – PT490NR and PT490N grade plate steel are the most comparable grades to the exemption goods. BlueScope referred to Table A3.1b in International Trade Remedies Report 198 as evidence to support its claims of this comparison.

BlueScope provided a comparison of 'like or directly competitive goods' to the exemptions using AS1548 – PT490NR and PT490N, as follows:

Physical likeness – two tables were provided in BlueScope's questionnaire response demonstrating that the chemistry and mechanical properties of the exemption goods and AS 1548-PT490 grade product closely resemble each other (these tables are extracted in section 6.2 of this report).

Commercial likeness – BlueScope advised that customers can source the product direct from BlueScope or via the aligned distribution channel. Imported ASTM A516 GR70 product can also be sourced direct from the

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exporting mill or from the importer distribution channel. Both the exemption goods and the AS 1548-PT490 products are manufactured to the specific end use requirements (or their relevant standard) for steel to be used in the manufacture of pressure vessels.

Functional likeness – BlueScope claims that the exemption goods and AS 1548-PT490 products are capable of being substituted and both perform a similar function, which is for use in the process of fabrication of pressure vessels.

Production likeness – BlueScope advised that the exemption goods and AS 1548-PT490 products are manufactured using the same or similar production process.

4.3 Summary of International and Australian plate steel standards and grades compared in this inquiry

Exemption goods	Balcombe's claimed most comparable Australian grades	BlueScope claimed most comparable Australian grades
International Standard ASTM A516 GR70 (metric equivalent GR485)	Australian Standard AS 1548-PT460N (NR)	Australian Standard AS 1548-PT490NR and PT490N

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5 The Commission's assessment – like or directly competitive goods offered for sale in Australia

5.1 Finding

The Commission has examined the evidence presented in the application as well as submissions made to the inquiry and considers the Australian industry has demonstrated that it has produced and sold goods that are alike in all respects to the goods the subject of the application, in the form of ASTM A516-GR485, and are therefore 'like or directly competitive goods'. The Commission is also satisfied that plate steel AS1548 – Grades PT490NR and PT490N are 'like or directly competitive' to the exemption goods.

5.2 'Like or directly competitive goods' offered for sale in Australia

The Commission has found that the Australian industry has produced and sold the exemption goods (ASTM A516-GR485). However, as discussed in section 7, the Commission considers that it does not have sufficient evidence to determine whether the exemption goods (ASTM A516 GR70) manufactured by BlueScope are available to all purchasers on equal terms under like conditions, or within the 'custom and usage of trade' of the industry.

For this reason the Commission has gone on to examine whether plate steel specified to AS1548 – Grades PT490NR and PT490N are 'like and directly competitive' goods to the exemption goods (ASTM A516-G70), to determine whether sales of these goods do not satisfy the conditions of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for the granting an exemption.

5.3 ASTM A516- GR485

The Commission considers the commercial invoice, dispatch advice and mill test certificate provided by BlueScope in respect of a sale of ASTM A516-GR485 (metric equivalent GR70) plate steel [REDACTED] demonstrates that goods which are identical in all respects to the exemption goods have been produced and sold in Australia by the Australian industry manufacturing plate steel.

5.4 AS1548 – PT490NR and PT490N

As discussed in section 5.2 of this report, BlueScope claimed that in addition to its sales of the exemption goods (ASTM A516-GR485), BlueScope has sold in the Australian market plate steel specified to AS1548 – PT490NR and PT490N, which BlueScope contends are like or directly competitive goods to the exemption goods.

The Commission notes that Balcombe, in its application, compared the exemption goods to BlueScope's AS1548-PT460N (NR) plate steel. BlueScope has claimed that this is an incorrect comparison, and that plate steel specified to AS1548 – Grades PT490NR and PT490N are the most comparable Australian standard grades to the exemption goods. The Commission observes that [REDACTED] as part of its application compares ASTM 516-GR70 to AS1548-PT490 (Confidential Attachment 3). The Commission therefore considers it reasonable to make its assessment of 'like or directly

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competitive goods' by comparing AS1548 – PT490NR and PT490N to the exemption goods (ASTM A516-GR70).

As discussed in section 4.5 of this report, the assessment of whether AS1548 – PT490NR and PT490N plate steel are 'like or directly competitive' to the exemption goods involves determining whether the goods are either:

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

As plate steel specified to AS1548 – PT490NR and PT490N and the exemption goods are not alike in all respects, the Commission has assessed whether they have characteristics closely resembling each other against the following considerations:

- a. physical likeness;
- b. functional likeness;
- c. commercial likeness; and
- d. production likeness.

a. Physical likeness

The Commission observes that there are chemical composition and mechanical property differences between AS1548 – PT490NR and PT490N grade plate steel and the exemption goods (ASTM A516-GR70), these are summarised in the tables below. These tables were extracted from BlueScope's questionnaire response. The Commission is satisfied that the information contained in the tables corresponds to the tolerances set out in the two standards and also aligns with the information submitted by Balcombe.

Grade	Chemical Elements (%)										
	C max	Mn min	Mn max	Si min	Si max	P max	S max	Nb min	Nb max	Al max	Ti max
A516 Grade 70	0.27 – 0.31* depending on thickness	0.85	1.2	0.15	0.4	0.035	0.035	-	-	-	-
AS 1548 – PT490	0.2	0.9	1.7	-	0.6	0.04	0.03	0.1	0.05	0.1	0.04

Table 1: Chemical composition comparison, extracted from the BlueScope's questionnaire response.

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Notably, the exemption goods standard (ASTM A516-GR70) has lower maximum manganese limits (1.2 per cent) compared to the Australian standard AS 1548 PT490 at 1.7 per cent. Balcombe claims that the Australian standard is considered to be a high manganese plate steel and that projects for which Balcombe's customers uses the exemption goods require low manganese plate steel. The Commission notes that no evidence was provided to substantiate this claim.

The [REDACTED]

[REDACTED]. The Commission notes that technical differences with regards to the manganese and silicon level content in the AS1548 standard may lead to these goods not being substitutable in all applications.

The other notable chemical composition difference between AS 1548 PT490 grades products and the exemption goods is the maximum carbon content allowed by the standards. BlueScope asserts that the Australian standard allows for micro alloying which is used to obtain the same properties with lower carbon content and this is a technical enhancement that improves the weldability of the steel.

Grade	Yield Strength (Mpa)				Tensile strength (Mpa)	Elongation
	≤ 16mm	>16 ≤40mm	> 40 ≤80mm	>80 ≤150mm		
A516 Grade 70	260	260	260	260	485-620	17% (200mm GL)
AS 1548 – PT490	360	340	330	320	490-610	20% $5.65\sqrt{S_0}$

Table 2: Mechanical property comparison, extracted from the BlueScope questionnaire response.

The Commission observes from the above table that the AS 1548 PT490 grades exceed the yield strength requirements and share a similar tensile strength and elongation range to the ASTM A516-GR70 standard.

Other physical characteristics of note include the thickness range and supply conditions of the steel plate. BlueScope's data specification sheets for the AS 1548 PT490NR offer a thickness range of 10-60mm and PT490N provides for a thickness range of 10-100mm. The exemption goods standard (ASTM A516 – GR70) provides for a maximum thickness of 205mm. The AS1548 standard does not specify a thickness limit. The Commission notes that the permissible variation in thickness tolerances of plate specified by the two standards is similar, the AS 1548 standards allow 0.3mm while the ASTM A516 is set to 0.25mm.

The ASTM 516 standard requires the exemption goods with a thickness greater than 40mm to be supplied in a normalised condition.

[REDACTED]

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The Commission considers that although there are some chemical composition and mechanical property differences, notably the manganese content variations between plate steel specified to AS1548 – PT490NR and PT490N and the exemption goods, taken as a whole steel plate specified to AS1548 – PT490NR and PT490N has physical characteristics closely resembling those of the exemption goods.

b. Functional likeness

The Commission observes that both the ASTM 516 and AS1548 standards apply to pressure vessel applications. The title of the ASTM 516 standard is '*Pressure Vessel Plates, Carbon Steel, for Moderate and Lower Temperature*'. The standard states that it covers carbon steel plates intended primarily for service in welded pressure vessels where improved notch toughness is important. The AS1548 standard is entitled '*Specification for steel plates for pressure equipment*'. BlueScope's specification datasheets for AS1548 – PT490NR and PT490N describe the goods as 'fully killed, micro alloyed, fine grained steel for boiler and pressure vessel applications'.

BlueScope asserts that both the exemption goods and the AS 1548-PT490 grade products are manufactured to the specific end use requirements (or their relevant standard) for steel to be used in the manufacture of pressure vessels. Balcombe acknowledges that there is some overlap in the functionality of AS1548 –PT490NR and PT490N grade plate steel and the exemption goods (ASTM A516-GR70) in that both standards may generally be used in the manufacture of pressure vessels. However, Balcombe asserts the plate steel made to the Australian standards cannot be substituted for a specific pressure vessel if the customer has not specified it. Balcombe asserts that its

[REDACTED]

[REDACTED] As noted in section 4.1 of this report, [REDACTED].

Balcombe claims that there are some end uses, in particular made to order capital goods for petrochemical projects delivered to international customers, for which the Australian standard goods could not be used. Balcombe asserts that this is because its customer's projects impose specific standard requirements that cannot be substituted with goods meeting a different standard and because its international customers will not redesign or respecify their engineered and proven plants to accommodate capital goods made from Australian standard plate steel.

The Commission acknowledges that there may be applications to which the AS1548-PT490 grades are not substitutable because of a customer's specifications requiring only the use of the exemption goods (ASTM A516 GR70). However at point of importation it would not be possible to differentiate plate steel specified to ASTM A516 GR70 destined for use in the general manufacture of pressure vessels (i.e. which could be substituted with AS1548 PT490 grades) and plate steel destined for applications specified by customer orders.

The Commission finds that AS1548 – PT490NR and PT490N and the exemption goods (ASTM A516-GR70) have closely resembling characteristics such that they may be functionally substitutable in the general manufacture of pressure vessels, notwithstanding that there may be specific applications within the manufacture of

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pressure vessels to which AS1548 – PT490NR and PT490N grade plate steel is not substitutable because of customer specifications.

c. Commercial Likeness

BlueScope in its questionnaire response stated that both AS1548 – PT490NR and PT490N plate products and the exemption goods (ASTM A516-GR70) are manufactured to the specific end use requirements (of their relevant standard) to be used in the manufacture of pressure vessels. Similarly, Balcombe has emphasised in its submissions that its customer's end use requirements of the exempt goods as prescribed in project specifications are what determines the goods supplied. Balcombe stated that it is not open to the market to substitute goods meeting a non-identical, but 'closely resembling' specification, such as plate steel produced to the AS1548 standard. The Commission accepts that the exemption goods and AS1548 – PT490NR and PT490N grade plate steel are supplied to meet the customer's end use requirements and therefore the goods may not share characteristics of commercial likeness where a customer specifies supply of only the ASTM A516 GR70 standard plate steel.

BlueScope claims that the pricing of its range of AS1548 products is based on maintaining a competitive market and price offering against import competition. BlueScope included its published price lists as part of its questionnaire response. BlueScope did not provide evidence of import prices or what imported products were benchmarked against AS1548 PT490NR and PT490N plate steel to determine its pricing. The Commission considers that it does not have sufficient information to determine that there is a competitive pricing relationship between the exemption goods (ASTM 516 GR70) and the Australian standard AS1548 PT490NR and PT490N grade products.

The Commission considers that the exemption goods and Australian standard AS1548 PT490NR and PT490N grade plate steel share similar distribution channels in that they can be sourced directly from BlueScope or via the aligned distribution channel. Imported A516 GR70 product can also be sourced direct from the exporting mill or from the importer distribution channel.

Balcombe claims that BlueScope does not market its AS1548 PT490NR and PT490N grades as an alternative to the exemption goods (ASTM A516 GR70), as evidenced by its published datasheets. The Commission observes that BlueScope's specification datasheets identify the nearest overseas specifications. The AS 1548 PT490NR or PT490N datasheets identify as comparable overseas specifications the ASTM A537 and ASTM A737 standards (along with other comparable international specifications). However these datasheets do not mention the exemption goods ASTM 516 standard.

Balcombe questioned why BlueScope, if it produces the exemption goods, would duplicate its product offering if the exemption goods (ASTM A516 G70) and AS1548 –PT490NR and PT490N grade plate steel were in fact commercially or functionally substitutable.

The Commission finds that the exemption goods and AS1548 PT490NR and PT490N grade plate steel do not share characteristics of commercial likeness. The Commission finds that the AS1548 PT490NR and PT490N grade plate steel are not marketed as an alternative to the exemption goods (ASTM A516 GR70) and the fact that BlueScope does produce ASTM A516 GR70 indicates that there is a separate

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market for this standard. The Commission further considers that the market for these goods is dictated by the customers' requirements, which Balcombe has demonstrated for



d. Production Likeness

Balcombe and BlueScope both acknowledge that plate steel manufactured to either standard is produced by the same or similar manufacturing process.

The Commission therefore finds that the exemption goods and AS1548 – PT490NT and PT490N grade plate steel share closely resembling production characteristics.

5.5 Conclusion

Notwithstanding the finding that the exemption goods and AS1548 PT490NR and PT 49N do not share characteristics of commercial likeness, the findings with regard to physical likeness, functional likeness and production likeness above lead to the conclusion that AS1548 –PT490NR and PT490N grade plate steel, while not identical, have characteristics closely resembling those of the exemption goods.

Accordingly, the Commission finds that there is an Australian industry capable of producing 'like or directly competitive goods' in the form of AS1548 – PT490NR and PT490N grade plate steel.

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

6.1 Balcombe's claims

Balcombe submits that if BlueScope has produced the exemption goods, these goods are not offered for sale to all purchasers, and hence the requirements of the subsection 8(7)(a) and 10(8)(a) of the Dumping Duty Act for an exemption are satisfied.

Balcombe's application included a request for quotation demonstrating that it had sought supply of the exemption goods from BlueScope. The email response from BlueScope does not provide reasons why this request for quotation was rejected, beyond stating that that

[REDACTED] (this request for quotation forms Confidential Attachment 7).

Balcombe allowed BlueScope an opportunity to comment on this request for quotation as part of the inquiry. As discussed in section 6.2 of this report, BlueScope claimed that the request is for the supply of finished goods [REDACTED], not hot rolled steel plate, subject to the anti-dumping measures.

In response to BlueScope's claim Balcombe stated that the request for quotation referred to in Confidential Attachment 7 was for discs and annulus cut from ASTM A516 GR70 plate steel. Balcombe asserts that the ASTM A516 GR70 is a plate steel specification and it is not applicable to [REDACTED].

Balcombe contends that the request for quotation contained in Confidential Attachment 7 was for the exemption goods (ASTM A516 GR70) and the refusal to supply the exempt goods by BlueScope or its related agents and representatives (i.e. BlueScope Distribution) is evidence that 'like or directly competitive goods' are not offered for sale in Australia to all purchasers.

6.2 BlueScope's response to exemption application

ASTM A516-GR485 (GR70)


In respect of its production and sale of ASTM A516-GR485 plate steel, BlueScope indicated that these sales were subject to its standard commercial terms. BlueScope did not comment directly on whether the exemption goods (ASTM A516-GR485) were available to all purchasers, on equal terms under like conditions.

As noted above, in the course of this inquiry BlueScope was given an opportunity to comment on Balcombe's Confidential Attachment 7, that is, the request for quotation for the supply of the exemption goods (ASTM A516 GR70) from BlueScope.

BlueScope's submission stated that Balcombe's Confidential Attachment 7, is a request to

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BlueScope submits that this evidence supplied by Balcombe in support of their exemption request is not relevant to the products to which the hot rolled plate steel measures apply, and as such the Commission should disregard this evidence.

AS1548 – PT490NR and PT490N

In respect of its production and sale of AS1548 – PT490NR and PT490N plate steel, which BlueScope contends are 'like or directly competitive' goods to the exemption goods, BlueScope advised that it publishes a monthly pricelist for plate steel products that includes the standard terms and conditions of BlueScope product sales. All sales are made on equal terms to all customers.

BlueScope provided the Commission with invoices, published price lists and technical data sheets demonstrating that these products are offered to the market (these documents form part of **Confidential Attachment 2**).

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7 The Commission's assessment – 'to all purchasers on equal terms under like conditions having regard to the custom and usage of trade'

7.1 Finding

The Commission finds that the 'like or directly competitive goods' in the form of AS1548-PT490NR and PT490N grade plate steel are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the 'custom and usage of trade'.

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

The Commission is not satisfied that it has sufficient evidence to determine whether the exemption goods (ASTM A516 GR70) manufactured by BlueScope are available to all purchasers on equal terms under like conditions, or within the 'custom and usage of trade' of the industry.

As the Commission has found that plate steel specified to AS1548 - PT490NR and PT490N are also 'like or directly competitive' to the exemption goods (as discussed in section 5 of this report), the Commission has gone on to examine whether AS1548 - PT490NR and PT490N plate steel is offered to all purchasers on equal terms under like conditions having regard to the 'custom and usage of trade'.

7.3 ASTM A516 GR70

Balcombe submitted evidence in the form of a request for quotation for the supply of the exemption goods from BlueScope that was refused, to support its assertion that if the Australian industry does sell the exemption goods, these goods are not available to all purchasers.

BlueScope responded to Balcombe's evidence stating the request was for the supply of a [REDACTED] made from ASTM A516-GR70 plate steel and this evidence should be disregarded because the request for quotation relates to goods not covered by the hot rolled plate anti-dumping measures. Balcombe responded by clarifying that the request for quotation was for the supply of discs and annulus cut from ASTM A516 GR70 plate steel.

The Commission has examined the request for supply and is satisfied that the goods described are discs, annulus or other shapes cut from ASTM A516 GR70 plate steel. The Commission is further satisfied that discs, annulus or shapes cut from plate steel are not covered by the hot rolled plate steel measures. As set out in Australian Customs Dumping Notice No. 2013/20 the goods subject to hot rolled plate steel measures are plate steel not further worked than hot rolled. The Commission considers that plate steel which is cut to specified shapes is further worked and therefore not covered by the measures. Because the Commission considers that the request for quotation is not for the exemption goods subject to the hot rolled plate steel measures, the Commission does not consider that BlueScope's refusal to

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provide a quotation is direct evidence that the exemption goods are not available to all purchasers.

The Commission does note however that the response from BlueScope in respect of the request for quotation states that

[REDACTED]. While this may indicate that BlueScope does not offer the ASTM A516 GR70 grade plate steel generally, the Commission is cautious in making this conclusion given that the request for quotation was for shapes cut from ASTM A516 GR70 plate steel not the exemption goods (ASTM A516 GR70) plate steel itself.

As discussed in section 6.2 of this report, BlueScope has not commented directly on whether the exemption goods are offered to all purchasers, beyond stating that its sale to [REDACTED] was subject to its standard commercial terms. The Commission further notes that in responding to Balcombe's evidence that the exemption goods are not available to all purchasers, BlueScope disputed Balcombe's evidence as discussed above but does not directly state or provide evidence that the exemption goods supplied to [REDACTED] were available to all purchasers.

While the applicant has not demonstrated with evidence that the exemption goods (ASTM A516 GR70) are not available to all purchasers, the Commission is not in possession of positive evidence that BlueScope's production of the exemption goods (ASTM A516 GR70) is available to all purchasers. Due to the lack of evidence the Commission is unable to determine whether the exemption goods (ASTM A516 G70) manufactured by BlueScope are available to all purchasers on equal terms under like conditions, or within the 'custom and usage of trade' of the industry.

7.4 AS1548 – PT490NR and PT490N

The Commission is satisfied that evidence presented by BlueScope in the form of invoices, published price lists and technical data sheets demonstrates that plate steel produced to the AS1548 – PT490NR and PT490N standard is offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

7.5 Conclusion

The Commission finds that 'like or directly competitive' goods (in the form of plate steel specified to AS1548 - PT490NR and PT490N) are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the 'custom and usage of trade'. Accordingly the conditions of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption are not satisfied.

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8 RECOMMENDATION

Based on the Commission's examination of the application to exempt goods from interim dumping duty and dumping duty under subsection 8(7)(a) of the Dumping Duty Act, and interim countervailing duty and countervailing duty under subsection 10(8)(a) of the Dumping Duty Act, the Commission considers that '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'.

Accordingly, the Commission recommends that the Parliamentary Secretary not exempt the goods the subject of this application from interim dumping duty and countervailing duty.

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9 ATTACHMENTS

Confidential Attachment 1	Exemption application
Confidential Attachment 2	BlueScope's response to exemption application
Confidential Attachment 3	[REDACTED]
Attachment 4	Balcombe's submission responding to BlueScope's response to exemption application
Confidential Attachment 5	[REDACTED]
Confidential Attachment 6	Mill test certificate
Confidential Attachment 7	[REDACTED]

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