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Australian Government
Anti-Dumping Commission

EXEMPTION INQUIRY EX0019

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

**APPLICANT:
ADSTEEL BROKERS PTY LTD**

DECEMBER 2014

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Exemption Inquiry EX0019 – Plate steel from China, Indonesia, Japan, Korea and Taiwan

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1 SUMMARY AND RECOMMENDATIONS

This report sets out the Anti-Dumping Commission's (the Commission's) findings in response to an application by Adsteel Brokers Pty Ltd (Adsteel) 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 (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 (the Parliamentary Secretary)² on whether to exempt goods from measures.

1.1 Recommendation

The Commission has found that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions. The Commission considers the conditions of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption are satisfied having regard to the custom and usage of trade of the goods.

The Commissioner recommends to the Parliamentary Secretary that Adsteel's application in respect of the exemption from anti-dumping measures of plate steel, being plate steel specified to the ASTM International A516-70 standard with a thickness equal to or greater than 105mm, exported from China, Korea, Japan and Indonesia to Australia be granted.

1.2 Application of law to facts

1.2.1 Application

On 15 January 2014, Adsteel wrote to the Commission requesting an exemption from measures in relation to its imports of plate steel. Adsteel has applied for an exemption under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

1.2.2 Authority to make the 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 and countervailing duty.

1.2.3 Initiation of inquiry

After examining the application the Commission was satisfied that:

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 enquiry.

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- the claims put forward in the application warranted further inquiry;
- an exemption inquiry should commence; and
- a final report and recommendation to the Parliamentary Secretary be prepared presenting evidence on which the Parliamentary Secretary may rely to exercise his discretion under subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

1.3 Findings and conclusions

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

- there is no Australian industry producing like or directly substitutable goods;
- the Australian industry, BlueScope, does not object to the granting of the exemption, provided the exemption only applies to goods with a thickness equal to or greater than 105mm; and
- the applicant, Adsteel, accepts BlueScope's request to more narrowly define the exemption to apply only to goods with a thickness equal to or greater than 105mm.

Based on these findings the Commissioner recommends to the Parliamentary Secretary that Adsteel's application in respect of the exemption from anti-dumping measures be granted, subject to a modification of the description of the goods covered by the exemption.

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2 BACKGROUND TO 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 related to the following exporters and Taiwan as a whole, was published:

- Hyundai Steel Company (Korea);
- POSCO (Korea); and
- 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 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 15 January 2014, Adsteel wrote to the Commission requesting an exemption from measures in relation to its imports of plate steel (**Confidential Attachment 1**).

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

BlueScope, the sole Australian manufacture of plate steel, does not supply the goods described in Adsteel's application.

3.2 Exemption inquiry

The Commission accepted Adsteel's letter as an application for an exemption of measures. On 10 April 2014, the Commissioner initiated an exemption inquiry, by publishing Anti-Dumping Notice (ADN) 2014/29. ADN 2014/29 advises that an 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 Adsteel's application on 11 April 2014, by completing the 'Response to Exemption Application' questionnaire (the questionnaire) and requested that responses be received no later than 2 May 2014.

A completed response from BlueScope to the questionnaire (**Confidential Attachment 2**) was received on 5 May 2014. BlueScope does not object to the granting of the exemption, provided the exemption only applies to the exemption goods with a thickness greater than 105mm.

3.3 Goods subject to the application for exemption

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

plate steel specified to the ASTM International A516-70 standard (the applicant asserts that ASTM International A516 standard correlates to Australian Industry Standard AS1548) with a thickness of a 100mm or greater (hereafter referred to 'the exemption goods').

3.4 Claims made in the application

In support of its claim that BlueScope does not supply the exemption goods, Adsteel provided evidence in the form of data specification sheets published by BlueScope to demonstrate that BlueScope only offers the exemption goods up to a thickness of 100mm.

3.5 Legislative requirements for an exemption

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

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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;

...

Adsteel requests the Parliamentary Secretary 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.

3.6 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 *WTO 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.’³ This definition closely reflects the definition of ‘like goods’ found in subsection 269T(1) of the *Customs Act 1901*.

³ 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 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.’⁴ 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 the:

- a. competitive commercial relationship between goods in the marketplace;⁵
- b. interchangeability and substitutability, or whether the goods provide “alternative ways of satisfying a particular need or taste”;⁶
- c. commercially interchangeability of products;⁷

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.’⁸

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’⁹ 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. competitive commercial relationship exists between the goods in the marketplace having regard to the commercial uses of the products.

⁴ WTO, Appellate Body, *Japan – Taxes on Alcoholic Beverages* (DS 8).

⁵ *Korea — Alcoholic Beverages* (WT/DS75/AB/R, WT/DS84/AB/R) at 114.

⁶ *Korea — Alcoholic Beverages* (WT/DS75/AB/R, WT/DS84/AB/R) at 115.

⁷ *US — Cotton Yarn*, (WT/DS192/AB/R) at 96-98.

⁸ *Korea — Alcoholic Beverages* (WT/DS75/AB/R, WT/DS84/AB/R).

⁹ *Japan – Taxes on Alcoholic Beverages* at 6.22.

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3.7 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 in Australia to all purchasers on equal terms under like conditions having regard to the ‘custom and usage of trade’.

The term ‘customs 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. Within 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 efficacy¹⁰. In considering what is in the custom and usage of trade, the Courts have considered the following factors:¹¹

- 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.

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

¹¹ *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 Australian industry capacity to produce

BlueScope, in its response to the questionnaire, claims that it can accept orders for Australian standard AS1548-PT490N grade plate steel up to and including 105mm in thickness. BlueScope indicated in its response that AS 1548-PT 490N is an alternative/ substitutable product to the exemption goods (ASTM A516 GR70).

BlueScope stated that it would not object to an exemption for the exemption goods (ASTM A516-GR70) or its Australian equivalent AS1548 PT-490N with a thickness equal to or greater than 105mm.

BlueScope did not provide any evidence of its capacity to produce AS1548-PT490N. The Commission notes from Adsteel's application that BlueScope publishes data specification sheets for AS1548-PT490N which indicates that BlueScope makes a regular offer of this product with a thickness up to 100mm.

In an email accompanying its questionnaire response, BlueScope explained that it was concerned that an exemption applying to steel plate with a thickness greater than 100mm would potentially circumvent the effect of the measures. BlueScope expressed concern that an exemption for steel plate greater than 100mm would encourage imports of steel plate with a thickness of 100.5mm or 101mm which would be a substitute for a 100mm product which BlueScope offers to the market.

4.2 Adsteel's response

On 16 May 2014, Adsteel stated that it does not object to BlueScope proposal. Adsteel is willing to modify the exemption request so that an exemption, if granted, would apply only to steel plate specified to ASTM A516-GR70 or the AS1548 standard with a thickness equal to or greater than 105mm.

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5 THE COMMISSION'S ASSESSMENT

5.1 Finding

The Commission finds 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. Accordingly the conditions of subsections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption are satisfied.

5.2 Like or directly competitive goods offered for sale in Australia

The Commission has examined the evidence presented in the application and in the Australian industry questionnaire response and considers the Australian industry has not demonstrated that it produces like or directly competitive goods to the exemption goods with a thickness greater than 105mm.

The Commission accepts BlueScope's published data specification sheets for AS1548-PT490N as evidence that it produces and offers for sale the Australian Industry standard equivalent of the exemption goods with a thickness up to 100mm. Notwithstanding BlueScope's statement that it can produce AS1548-PT490N up to 105mm in thickness, the Commission considers that the Australian industry has not provided evidence that it is able to offer for sale the exemption goods with a thickness above 100mm.

However, the Commission accepts the claims of the Australian industry that imported plate steel specified to ASTM A516-GR70 (the exemption goods) or its Australian grade equivalent AS1548-PT490N with a thickness slightly greater than 100mm may be substitutable for a 100mm thick AS1548-PT490N steel plate which the Australian industry offers for sale.

The Commission considers that a tolerance of 5mm as submitted by BlueScope is reasonable and sufficient to alleviate concerns of substitution, such that the exemption goods with a thickness equal to or above 105mm are not considered like or directly competitive to Australian produced AS1548-PT490N plate steel. The Commission notes in this context the applicant's willingness to modify the exemption to apply only to the exemption goods with a thickness equal to or above 105mm, and considers this as evidence of the reasonableness of a 5mm tolerance.

Accordingly, the Commission finds that the Australian industry does not offer for sale like or directly competitive goods to the exemption goods with a thickness equal to or above 105mm.

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

The Commission considers that the 'like or directly competitive goods' with a thickness equal to or above 105mm are not offered for sale in Australia, and therefore has not examined whether the exemption goods are offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

6 RECOMMENDATION

Based on the Commission's examination of the application and submissions made to the inquiry, the Commissioner considers that like or directly competitive goods to the exemption goods (with a thickness equal to or greater than 105mm) are not offered for sale in Australia.

Accordingly, the Commissioner recommends that the Parliamentary Secretary exercise his discretion to exempt the goods, being plate steel specified to the ASTM International A516-GR70 standard with a thickness equal to or greater than 105mm from interim dumping duty and dumping duty in accordance with 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.

6.1 Effective date of exemption

Adsteel's application for exemption, examined in this report, was made on 15 January 2014.

The timing in relation to the granting of an exemption is at the discretion of the Parliamentary Secretary. It is the Commission's policy to recommend that an exemption is backdated to the date of the application, that is, to 15 January 2014.

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7 ATTACHMENTS

Attachment 1	Exemption Application
Attachment 2	Australian industry questionnaire response
Attachment 3	Adsteel's submission in response to BlueScope's questionnaire

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