



**Australian Government**  
**Australian Customs and  
Border Protection Service**

**R E P O R T**

***CUSTOMS ACT 1901 - PART XVB***

**INTERNATIONAL TRADE REMEDIES BRANCH  
REPORT TO THE MINISTER No. 209**

**REINVESTIGATION OF CERTAIN FINDINGS IN REPORT  
No. 188**

**HOT ROLLED COIL STEEL**

**EXPORTED TO AUSTRALIA FROM  
JAPAN, THE REPUBLIC OF KOREA, MALAYSIA AND  
TAIWAN**

13 JUNE 2013

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# 1 SUMMARY AND RECOMMENDATIONS

This report provides the results of the reinvestigation by the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) of certain findings in Trade Measures Report No. 188 (REP 188), which resulted in the imposition of anti-dumping measures for hot rolled coil steel (HRC) exported to Australia from Japan, the Republic of Korea (Korea), Malaysia and Taiwan.

## 1.1 Recommendation

The delegate of the CEO (the delegate) recommends that, in accordance with s.269ZZM(3)(b) of the *Customs Act 1901* (the Act), the Minister for Home Affairs (the Minister) vary the dumping duty notice in respect of HRC exported to Australia from Japan, Korea, Malaysia and Taiwan.

## 1.2 Reasons

Division 9 of Part XVB of the Act sets out procedures for review by the Trade Measures Review Officer (TMRO) of certain decisions made by the Minister.

### 1.2.1 The role of Customs and Border Protection

Where the Minister has accepted a recommendation by the TMRO that a finding or findings should be reinvestigated, the Minister must, in writing, require the CEO of Customs and Border Protection to reinvestigate a finding or findings.<sup>1</sup>

Customs and Border Protection is required to:

- make further investigation of the finding or findings, having regard only to the information and conclusions to which the TMRO was permitted to have regard;
- report the result of the further investigation to the Minister within a specified period; and
- set out any new finding or findings and the evidence or other material on which the new finding or findings are based and the reasons for that decision.

### 1.2.2 The role of the Minister

Division 9 empowers the Minister, after receiving Customs and Border Protection's reinvestigation report, to:

- affirm the reviewable decision concerned; or
- revoke that decision and substitute a new decision.

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<sup>1</sup> Under s.269ZZL(2)(a)

The Minister may<sup>2</sup>:

- publish a dumping duty notice or countervailing duty notice; or
- vary a dumping duty notice or countervailing duty notice; or
- revoke a dumping duty notice or countervailing duty notice and substitute another dumping or countervailing duty notice (as the case requires).

### **1.2.3 The reviewable decision**

In the original investigation, REP 188, Customs and Border Protection found that dumping of HRC exported to Australia from Japan, Korea, Malaysia and Taiwan caused material injury to the Australian industry producing like goods. Customs and Border Protection therefore recommended that the Minister publish a dumping duty notice<sup>3</sup> in respect of HRC exported to Australia from Japan, Korea, Malaysia and Taiwan.

The Minister accepted the recommendations contained in REP 188, including the reasons for the recommendations, the material findings of fact on which the recommendations were based and the evidence relied on to support those findings. To give effect to these recommendations, a dumping duty notice was published on 20 December 2012 imposing dumping duties on HRC exported to Australia from Japan, Korea, Malaysia and Taiwan.

The Minister's decision to publish a dumping duty notice is the reviewable decision.

### **1.2.4 What must be reinvestigated**

On 14 April 2013, the Minister directed the CEO to reinvestigate certain findings<sup>4</sup> made in REP 188 and to report the results of the reinvestigation by 13 June 2013.

As a result of the TMRO's recommendations, the CEO has been directed to reinvestigate certain findings in relation to the decision to publish a dumping duty notice:

- 1) the calculation of the dumping margin for Hyundai Steel Company (Hyundai), 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 of those prices;
- 3) whether it would be preferable to structure the conditions attached 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

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<sup>2</sup> Under s.269ZZM(3)

<sup>3</sup> Under s.269TG(2)

<sup>4</sup> Section 269ZX of the *Customs Act 1901* defines findings as 'a finding on a material question of fact or on a conclusion based on that fact in relation to reviewable decisions under Subdivision 3 [Review of Ministerial decisions]'

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 subsection 8(7) of the *Customs Tariff (Anti-Dumping) Act 1975*; and

- 4) why pickled and oiled HRC from countries Korea, Malaysia and Taiwan sold to 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.

Customs and Border Protection must therefore limit its reinvestigation to these issues.

### **1.2.5 Reinvestigation findings and conclusions**

Customs and Border Protection has considered all relevant information and conclusions.<sup>5</sup>

Customs and Border Protection is of the view that the Minister should vary the dumping duty notice in respect of HRC exported to Australia from Japan, Korea, Malaysia and Taiwan.

In reaching this conclusion, Customs and Border Protection made the following findings:

#### **Finding 1 – Hyundai Steel Dumping Margin**

The delegate recommends that the Minister vary the findings of the original investigation in regards to a finding of the dumping margin for Hyundai. The delegate considers that the finding of the dumping margin for Hyundai included errors that were identified within the evidence gathered by Customs and Border Protection during the investigation, which the CEO had regard to in making his decision. The delegate considers that there are sufficient grounds to revise the dumping margin for Hyundai. After correcting errors, the dumping margin for Hyundai remains 2.6%.

The reasons for this finding are set out in section 3 below.

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<sup>5</sup> Under s.269ZZL(2)(a)(i) the reinvestigation can only have regard to the information and conclusions to which the TMRO was permitted to have regard. Section 269ZZK(4) states that the TMRO 'must only have regard to the relevant information [as defined] and conclusions based on relevant information that are contained in the application for the [TMRO] review, or in any submissions received from interested parties within 30 days' of the publication of the dumping duty notice. Section 269ZZK(6)(a) defines relevant information '...as the information to which the CEO has had regard, or was...required to have regard, when making findings set out in the report...to the Minister in relation to the making of the reviewable decision'. The 'conclusions' which the TMRO could consider were set out in the application for review to the TMRO and submissions to the review.

## **Finding 2 – Reference to Prices Outside the Investigation Period**

The delegate recommends that the Minister affirm the findings of the original investigation in the respect that there were sufficient grounds to warrant setting the measures by reference to prices other than those within the investigation period.

However, the delegate also recommends that the Minister vary the methodology for calculating the relevant variable factors.

The reasons for this finding are set out in section 4 below.

## **Finding 3 – Structuring of the Conditions attached to Imposition of the Measures**

The delegate recommends that the Minister affirm the finding of the original investigation that it is not appropriate to structure the conditions attached to the imposition of dumping duties for the automotive industry in such a way that imports that were not found to be causing injury during the investigation period are not liable for duty under the dumping duty notice.

The reasons for this finding are set out in section 5 below.

## **Finding 4 – Treatment of Pickled and Oiled HRC from Korea, Malaysia and Taiwan**

The delegate recommends that the Minister affirm the finding of the original investigation that a lesser duty should only apply to Japanese exports of pickled and oiled HRC and not to exports of pickled and oiled exports from other countries.

The reasons for this finding are set out in section 6 below.

## 2 BACKGROUND

### 2.1 Original Investigation – Investigation 188

#### 2.1.1 The application

Following an examination of an application<sup>6</sup> made by BlueScope Steel (BlueScope), an investigation into the alleged dumping of HRC exported to Australia from Japan, Korea, Malaysia and Taiwan was initiated on 15 June 2012. Public notification<sup>7</sup> of initiation of investigation 188 was made in *The Australian* newspaper on 15 June 2012 and Australian Customs Dumping Notice No. 2010/30 was issued on the same day.

#### 2.1.2 The goods under consideration

The goods the subject of the application are described as:

*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.*

There are a number of relevant international standards for HRC that cover the range of HRC products via specific grade designations, including the recommended or guaranteed properties of each of these product grades. The relevant Australian Standard is AS/NZS 1594.

Hot rolled sheet that is 3/16<sup>th</sup> of an inch (4.75mm) thick or more is considered to be plate and therefore excluded from the investigation. Hot rolled sheet that is below this thickness is included in the investigation.

#### 2.1.3 Tariff classification

The tariff classifications and statistical class codes in Schedule 3 to the *Customs Tariff Act 1995* and relevant rates of duty for HRC are shown below.

Tariff Classification	Statistical class code	Rate of duty - Japan	Rate of duty - Korea	Rate of duty - Malaysia	Rate of duty - Taiwan
7208.25.00	32	5%	0%	0%	0%
7208.26.00	33	5%	0%	0%	0%
7208.27.00	34	5%	0%	0%	0%
7208.36.00	35	5%	0%	0%	0%

<sup>6</sup> Lodged under s.269TB(1)

<sup>7</sup> Under s.269TC(4)



7208.37.00	36	5%	0%	0%	0%
7208.38.00	37	5%	0%	0%	0%
7208.39.00	38	5%	0%	0%	0%
7208.53.00	42	5%	0%	0%	0%
7208.54.00	43	5%	0%	0%	0%
7208.90.00	30	5%	5%	4%	5%
7211.14.00	40	5%	0%	0%	0%
7211.19.00	41	5%	0%	0%	0%

#### **2.1.4 Exporters**

At the commencement of the investigation, Customs and Border Protection identified a large number of potential exporters of HRC from the nominated countries and territory. Within this group were a number of trading companies. Customs and Border Protection forwarded questionnaires to all known exporters from the nominated countries, with a view to investigating their exportations.

When Customs and Border Protection received responses to the exporter questionnaires, it determined that verification of responses provided by trading companies was not necessary. Customs and Border Protection considered that the manufacturers, and not the trading companies, are the exporters for the purpose of determining whether dumping has occurred.

Customs and Border Protection assessed the level of verification required for all exporters from each of the countries that satisfactorily completed the exporter questionnaire. Individual dumping margins for all known exporters were calculated based on the verified information of each cooperating exporter.

In addition, Nippon Steel Corporation (Nippon Steel) and JFE Steel Corporation (JFE Steel) provided limited information required by the exporter questionnaire. Both parties also refused access to Customs and Border Protection for verification purposes. Therefore, Customs and Border Protection determined that these exporters had not cooperated with the investigation. Given that Nippon Steel and JFE Steel are the only manufacturers of HRC in Japan that were identified in the investigation, a country wide dumping margin was determined for exports of HRC from Japan to Australia during the investigation period based on all relevant information, including information contained in the application.

#### **2.1.5 Investigation period**

The period 1 April 2011 to 31 March 2012 was used to examine exports from Japan, Korea, Malaysia and Taiwan to determine whether dumping had occurred.

### **2.1.6 Injury analysis period**

Customs and Border Protection examined the Australian market and the economic condition of the industry from 1 April 2008 for the purpose of injury analysis.

### **2.1.7 Statement of essential facts**

On 3 October 2012, Customs and Border Protection published the Statement of Essential Facts No. 188 (SEF88). The report set out the facts on which Customs and Border Protection proposed to base its recommendation to the Minister.

### **2.1.8 Report to the Minister**

On 19 November 2012, Customs and Border Protection made its final report (REP 188) and recommendations to the Minister. In that report, in relation to dumping, Customs and Border Protection concluded that:

- HRC exported from Japan to Australia was dumped with a margin of 7.5%;
- HRC exported from Korea to Australia was dumped with margins ranging from 2.6% to 11.8%;
- HRC exported from Malaysia to Australia was dumped at a margin of 15.4%;
- HRC exported from Taiwan to Australia was dumped with margins ranging from 2.6% to 8.2%;
- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

### **2.1.9 The Minister's decision**

The Minister accepted the recommendations contained in REP 188 including the reasons for the recommendations, the material findings of fact on which the recommendations were based and the evidence relied on to support those findings.

The Minister published a dumping duty notice<sup>8</sup> in *The Gazette* and *The Australian* newspaper on 20 December 2012 imposing dumping duties on the goods exported to Australia from Japan, Korea, Malaysia and Taiwan.

## **2.2 Review of a Ministerial decision by the TMRO**

The TMRO may review certain decisions by the Minister, including decisions to publish a dumping duty notice.<sup>9</sup> These reviews are conducted only as a result of an application from relevant interested parties.<sup>10</sup>

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<sup>8</sup> Under s.269TG(2).

<sup>9</sup> Under s.269TG(2).

<sup>10</sup> As defined in s.269ZX.

In making a recommendation to the Minister, the TMRO is only to have regard to 'relevant information,' which is information to which the CEO had regard or was required to have regard, when making the findings set out in the report to the Minister<sup>11</sup>, and any conclusions based on the relevant information that were contained the applications for the review or in any submissions received from interested parties within 30 days of the publication of a notice in relation to the review.<sup>12</sup>

### **2.2.1 Applications to the TMRO**

Interested parties had until 19 January 2013 to lodge an application for review of the Minister's decision with the TMRO. The TMRO received applications for review from the following parties:

- BlueScope;
- GM Holden Limited (Holden);
- Hyundai;
- OneSteel Australia Tube Mills Pty Ltd (OneSteel); and
- POSCO.

### **2.2.2 TMRO review process and decision**

On 2 February 2013, the TMRO published a notice in *The Australian* newspaper advising that he would conduct a review and inviting interested parties to make submissions to the review within 30 days from that notification.

The TMRO received submissions from BlueScope, Hyundai and POSCO within this time.

After completing the review, the TMRO recommended that certain findings in REP 188 be reinvestigated.

A finding<sup>13</sup> in relation to a reviewable decision means a finding on a material question of fact or on a conclusion based on that fact.

Copies of the TMRO's report and public versions of the applications and submissions to the review are available from the TMRO. The TMRO's report is available on the TMRO's website, [www.tmro.gov.au](http://www.tmro.gov.au).

On 14 April 2013, the Minister accepted the TMRO's recommendations and directed Customs and Border Protection to reinvestigate certain findings in REP 188 and to report by 13 June 2013.

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<sup>11</sup> Under s.269ZZK(6).

<sup>12</sup> Under s.269ZZK(4).

<sup>13</sup> As defined under s.269ZX.

On 2 May 2013, a notice was published in *The Australian* newspaper advising of the Minister's acceptance of the TMRO's recommendations and the reinvestigation requirements.

## **2.3 Reinvestigation by Customs and Border Protection**

ACDN 2013/30 was published on 7 May 2013. The ACDN advised that:

- the reinvestigation could only have regard to the information and conclusions to which the TMRO was permitted to have regard;
- no new information or conclusions could be considered in a reinvestigation;
- all relevant information was in the public domain and available to interested parties through the public record of the original investigation or the public record of the review maintained by the TMRO; and
- the report of the reinvestigation had to be provided to the Minister by 13 June 2013.

### **2.3.1 The reviewable decision**

The reviewable decision is the Minister's decision to publish a dumping duty notice<sup>14</sup>.

## **2.4 The Reinvestigation report**

The following sections of this report set out:

- the reinvestigation methodology;
- further investigation of the information and conclusions to which the TMRO was permitted to have regard;
- reinvestigation of the findings as directed by the TMRO;
- conclusions on whether the original findings should be affirmed or new findings be made;
- evidence or other material on which the findings of the reinvestigation are based; and
- reasons for the recommendation to the Minister in relation to the reviewable decision.

## **2.5 The Reinvestigation Framework**

In conducting a reinvestigation, Customs and Border Protection must have regard only to information and conclusions to which the TMRO was permitted to have regard.<sup>15</sup> That is, relevant information and conclusions based on relevant information.

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<sup>14</sup> Under s.269TG(2)

<sup>15</sup> s.269ZZL(2)(a)(i)

Relevant information is from the original investigation and comprises information such as the original application, submissions to the original investigation, visit reports, SEF 188, submissions to SEF 188 and REP 188.

Conclusions based on relevant information are conclusions based on the relevant information contained in the applications to the TMRO and submissions received by the TMRO within 30 days of notification of the review.

As a result of the TMRO's recommendations, the CEO has been directed to reinvestigate its findings to the limited extent as described in section 1.2.4.

Customs and Border Protection examined the documents from the original investigation (relevant information), applications and submissions to the TMRO received within the specified timeframes (conclusions based on relevant information), and submissions received directly by Customs and Border Protection for the purposes of the reinvestigation.

### **2.5.1 Submissions received**

Customs and Border Protection received the following submissions in regards to the reinvestigation:

- BlueScope;
- Holden;
- Hyundai;
- JFE Steel;
- Nippon Steel;
- Onesteel;
- POSCO;
- Kobe Steel Ltd; and
- Nisshin Steel Co Ltd.

These submissions were taken into account to the extent that they related to the issues under reinvestigation and referred to information and conclusions that the TMRO had regard to. The relevant issues from these submissions are included in each respective chapter.

## **3 HYUNDAI DUMPING MARGIN**

### **3.1 Summary of the reinvestigation findings**

The delegate recommends that the Minister vary the findings of the original investigation in regards to the dumping margin for Hyundai. The reinvestigation considers that the finding of the dumping margin for Hyundai included errors that were identified within the totality of evidence gathered by Customs and Border Protection during the investigation, which the CEO had regard to in making his decision. The delegate considers that there are sufficient grounds to vary the dumping margin for Hyundai. After correcting errors, the dumping margin for Hyundai remains 2.6%.

### **3.2 The original investigation**

Customs and Border Protection wrote to Hyundai advising the company of the initiation of International Trade Remedies (ITR) Investigation 188 and requested co-operation with the investigation.

Hyundai submitted an exporter questionnaire response that was assessed to be sufficient to warrant verification as part of the investigation into the alleged dumping of HRC from Korea. Subsequently a visit team conducted a verification visit to the offices of Hyundai in Seoul to confirm that the data provided was complete, relevant and accurate.

A visit report was prepared by the visit team for the case management team outlining the team's findings in relation to the completeness, relevance and accuracy of the information contained in the exporter questionnaire response. The report also included a preliminary dumping margin calculation which resulted in a de minimis margin of 1.9%.

On review by the case management team, the categories of domestic sales to which export sales would be compared were broadened to include goods with characteristics resembling the exported goods rather than only identical goods to those exported by Hyundai, consistent with s.269TAC(1) of the Act.<sup>16</sup> The final position of Customs and Border Protection in determining Hyundai's dumping margin was published in REP 188.<sup>17</sup> That dumping margin was found to be 2.6%<sup>18</sup> and was accepted by the Minister.

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<sup>16</sup> 'like goods', in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

<sup>17</sup> REP 188 is available in full online at <http://www.customs.gov.au/webdata/resources/files/102-FinalReport-REP188.pdf>

<sup>18</sup> EPR 188/102, p.31.

### **3.3 Issues identified by the TMRO**

#### **3.3.1 Issue 1: Calculation Errors**

During the review by the TMRO of Hyundai's application, Customs and Border Protection advised the TMRO of errors that it had discovered in the dumping margin calculations that appeared in REP 188. These errors were that:

- the export sales for a specific model were made in the first quarter of 2012 (January to March) however the normal value for the second quarter 2012 (April to June) was incorrectly used when assessing dumping calculations; and
- the export handling charge that was applied as an adjustment used an incorrect amount from a previous version of the spreadsheet which had subsequently been revised by the company. The revised export handling charge was higher than the amount used in error in the final report calculations.

Correcting these errors increased the dumping margin for Hyundai to 2.7%. The TMRO noted in his report that 'further investigation of the dumping margin for Hyundai would likely leave it in a worse position than it is at present, with either a 2.7% margin or a 2.8% margin<sup>19</sup>' but that nonetheless any calculation errors should be amended by Customs and Border Protection in the reinvestigation process.

#### **3.3.2 Issue 2: Like goods assessment**

In the application to the TMRO, Hyundai asserted that when comparing normal values and export prices for goods that were identical, its dumping margin was de minimis and therefore no dumping duty notice should have been imposed by the Minister in respect of its exports<sup>20</sup>.

Hyundai further stated that Customs and Border Protection revised the margin to levels in excess of 2% only by broadening the categories of domestic sales with which export prices were compared to include HRC that was not identical to that exported to Australia.

The TMRO considered that Customs and Border Protection was correct, asserting that it is not limited to having regard only to domestic sales of identical goods as s.269TAC of the Act requires consideration of the price for 'like goods'.<sup>21</sup>

The TMRO invited Hyundai to make submissions during Customs and Border Protection's reinvestigation of whether, in REP 188, the like goods assessment for

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<sup>19</sup> TMRO Report, available at [http://www.tmro.gov.au/Site/documents/HRC\\_TMROREPORT\\_2April2013.pdf](http://www.tmro.gov.au/Site/documents/HRC_TMROREPORT_2April2013.pdf) p.9.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

Hyundai had 'broadened the range of comparison of goods so far beyond the identical that they were no longer alike.'<sup>22</sup>

The TMRO acknowledged that while Hyundai had previously objected to the broadening of the categories of domestic sales with which export prices were compared, in light of the errors identified by Customs and Border Protection (section 3.3.1 above) it may now prefer the original comparison as the result may be a more favourable outcome.<sup>23</sup>

### **3.4 Submissions regarding the issues raised by the TMRO**

Two submissions were received by Customs and Border Protection in relation to the two issues identified by the TMRO related to Hyundai's dumping margin. BlueScope, the applicant in ITR 188, made a submission on 17 May 2013, and Hyundai made a submission on 21 May 2013. The submissions are discussed below.

#### **3.4.1 Submissions to issue 1: Calculation errors**

##### **Hyundai Steel Submission**

Hyundai claimed that it had identified an error in Customs and Border Protection's determination of like goods sold in the ordinary course of trade (OCOT). Specifically, Hyundai claimed that for two models, unrecoverable sales were excluded from normal value calculations although the proportion of unrecoverable sales was less than 20%.<sup>24</sup> Hyundai therefore argued that all domestic sales under those product groups should be considered in calculating those product groups' respective normal values.

##### **BlueScope Submission**

BlueScope's submission did not comment on calculation errors.

#### **3.4.2 Submissions to issue 2: Like goods**

##### **Hyundai Steel Submission**

Hyundai claimed that although Customs and Border Protection had grouped certain domestically-sold products together for like goods comparison to export sales, additional products should also be included in those groupings as it considered them to be like goods.

Hyundai submitted that goods in the same 'universe' should be considered together for the purposes of calculating normal value. In particular, Hyundai requested that

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> s.269TAAD(2) of the Act identifies that only when greater than 20% of sales during an investigation period are not profitable and not recoverable, those sales should be taken as *not* made in the ordinary course of trade.



further models be included in normal value calculations on the basis that they were of similar 'grade and thickness'<sup>25</sup> to export models. Hyundai proposed that all sales categorised as 'other' or non-like goods in REP 188 could be distributed amongst the existing model categories provided they were arm's length transactions. It argued that by further increasing the breadth of goods in each model category, this would reduce the dumping margin to 2.5%. A revised spreadsheet with additional sales included was provided to support Hyundai's submission.

### **BlueScope Submission**

BlueScope agreed with the TMRO that like goods should be grouped in the same 'basket' for the purposes of calculating a normal value. It noted that it believed Hyundai's dumping margin would increase to either 2.7% or 2.8% by including additional sales of like goods.

## **3.5 The Reinvestigation**

The Customs and Border Protection *Dumping and Subsidy Manual* states that when determining whether the findings from an original investigation should be affirmed, or revoked and substituted with new findings, a reinvestigation will reconsider the original findings and act within the policy and practice stated in the manual to determine what the correct and preferable decision should be. The reinvestigation has addressed the direction from the Minister being to reinvestigate the Hyundai dumping margin calculation finding to determine that it is correct and preferable.

The 'correct' decision is one that was made according to law and is free from factual errors, while a 'preferable' decision is a decision that was made where, should there be a range of decisions that are correct in law, the decision settled upon is the best that could have been made on the basis of the relevant facts.

### **3.5.1 Issue 1: Calculation errors**

#### **Previously identified calculation corrections**

The two errors identified post investigation but before the release of the TMRO's findings, resulted in an increase of the dumping margin for Hyundai by 0.1% to 2.7%. These errors were identified to the TMRO. In his report, the TMRO considered whether declining to recommend that Customs and Border Protection reinvestigate the errors may avoid a detrimental outcome for Hyundai. However, the TMRO concluded that it would be inappropriate to affirm a decision made on erroneous findings.

The first error identified was the comparison of export prices and normal values from different periods in relation to a particular model. The reinvestigation considers that the evidence available to the CEO at the time of the recommendation to the Minister included data that could have identified this error.

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<sup>25</sup> Hyundai submission to ITR 109, 21 May 2013, p.5

The incorrect quarterly weighted average normal values were compared to export prices in a different period. Thus within the scope of the *Dumping and Subsidy Manual's* practice for substituting a finding where a factual error has been identified the reinvestigation recommends that this error be revised with the correct calculation as shown in **confidential attachment 1**.

The second error identified was the use of an earlier and incorrect export handling charge adjustment in the calculations presented in the final report. The difference between the two handling charges resulted in an increase of the export handling charge adjustment. The revision was provided during the course of the investigation but was mistakenly overlooked during the preparation of the final report.

The correct export handling charge was available to the CEO at the time of the recommendation to the Minister, and both Customs and Border Protection and Hyundai were aware of the correct figure at the time the Minister made his decision. However, an incorrect amount was erroneously applied. In accordance with 269TAC(9), the Minister must make adjustments to ensure the normal value ascertained is properly comparable to the export price of those goods.

Given the incorrect export handling charge is within the scope of the *Dumping and Subsidy Manual's* practice for revoking and substituting a finding where factual error has been identified, the reinvestigation recommends that this error be revoked and substituted with the correct export handling charge as shown in **confidential attachment 1**.

The result of these changes increases the dumping margin for Hyundai to 2.7%.

### **Claimed additional correction**

Hyundai submitted that non-recoverable domestic sales in two product groups had been excluded from normal value calculations in the original investigation despite the proportion of sales outside of OCOT for those product groups being below 20%.

The reinvestigation agrees with the correction identified by Hyundai. Sales made outside of OCOT that comprise less than 20% of sales of a particular model should be included in normal value calculations consistent with s.269TAAD. Thus, within the scope of the *Dumping and Subsidy Manual's* practice for substituting a finding where an error of law has been identified, the reinvestigation recommends that this error be revoked and substituted with the correct calculation as shown in **confidential attachment 1**.

The reinvestigation has applied the necessary corrections to the OCOT calculation. The result of these changes decreases the dumping margin for Hyundai to 2.6%.

### **3.5.2 Issue 2: Like goods assessment**

In its application to the TMRO, Hyundai argued that Customs and Border Protection should have conducted the export and normal value sales comparison using like goods that were identical in all respects to the goods under consideration, rather than comparing like goods that although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

The TMRO questioned whether Customs and Border Protection was not limited by s.269TAC to only have regard to like goods that are identical in all respects to the goods under consideration. Thus in terms of the reinvestigation, the TMRO has not questioned whether the decision in REP 188 to use like goods that, although they were not alike in all respects to the goods under consideration, have characteristics closely resembling those goods under consideration was correct, but whether the decision made was *preferable* and furthermore whether the range of like goods used was appropriate.

The TMRO also noted that once the calculation errors identified in section 3.3.1 above) were rectified, Hyundai may prefer that Customs and Border Protection maintain the position in REP 188 on the way it compared like goods as that would arrive at a more preferable outcome for Hyundai. Although the *Dumping and Subsidy Manual* states that a reinvestigation should consider whether the decision was preferable, it does so in the context of determining which of the available correct decisions in law is objectively the best that could have been made based on the relevant facts, and not that of the most preferable outcome for a particular party.

The reinvestigation considered the relevant facts available that led Customs and Border Protection to recommend that the Minister group like goods that were not identical in all aspects to the goods under consideration, but have characteristics closely resembling those goods under consideration, to determine if that approach was preferable to using like goods that were identical in all respects to the goods under consideration.

The task of the reinvestigation is to reinvestigate whether the methodology used to reach the decision delivered in REP 188 was preferable and thus should be affirmed, or substituted with one of the following alternatives:

- the methodology adopted by Hyundai in its exporter questionnaire response and adopted in the verification visit report; or whether
- the methodology proposed by Hyundai to the reinvestigation is preferable and should be substituted for the decision in REP 188.

## **Like goods**

Like goods in the context of s.269 refers to goods that are '*identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration*<sup>26</sup>.'

The TMRO said that it was open to the original investigation to approach grouping like goods into 'baskets' and did not dispute that this approach was open for Customs and Border Protection to amalgamate a number of individual but comparable products into groupings.

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<sup>26</sup> s.296T of the Act.

## Model comparisons

During the original investigation, two methodologies for comparing export and domestic goods emerged: the groupings used in the visit report, and that settled on by the case team used to determine final dumping margins.

### *Visit report*

The visit report identified several thousand distinct ‘products’ sold by Hyundai that comprised the goods under consideration or like goods. It also found that many of those products were sufficiently similar to each that they may be categorised into fewer than fifty composite groups of models for comparison.

The visit team clarified with Hyundai which characteristics have the greatest effect on the comparability of products, which were reported in the Hyundai verification report as follows:

- 1) *Different standards relate to the metallurgical specifications of products rather than dimensional specifications. That is, GUC [goods under consideration] with a chemical composition satisfying the requirements of a certain standard can be manipulated in a number of ways in relation to its thickness and width, however the standard will be the primary characteristic of the product;*
- 2) *Dimensional characteristics, along with standard specification, relate to the application of the GUC. That is, certain specification of steel are cut to certain thickness and width combinations in accordance with the specific demands of a certain end-use application or industry;*
- 3) *Finishing such as pickling, specific edging and passing relate to specific processes of manufacture and are seen to be significant product characteristics; however*
- 4) *Marginal dimensional differences of thickness and width between product models, within the same product code, do not have a significant bearing on product comparability, CTMS or ultimate sales price.<sup>27</sup>*

The verification visit report has assessed the physical, functional and production likeness of the codification matrix to determine that the normal values that were derived by using that codification system were suitable for use in determining normal values that were comparable with export prices.

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<sup>27</sup> Verification visit report – Hyundai, EPR 188/070, p.20.

## SEF 188 and REP 188

As stated in the TMRO's recommendation to the Minister, the verification report did not have status as an element of the final report and was never decided by the Minister. The verification report cover page contains the following statement advising interested parties of Customs and Border Protection's treatment of the report:

*'This report and the views or recommendations contained therein will be reviewed by the case management team and may not reflect the final position of Customs and Border Protection.'*<sup>28</sup>

Prior to the publication of SEF 188, Customs and Border Protection placed a note for file on the public record 'Exporter – Review of preliminary dumping margins – China Steel Corporation and Hyundai Steel Company' that outlined the case management team's change in views on the methodology used to select like goods for comparison in Hyundai's dumping margin calculations.

In that note for file, the delegate provided an explanation for Customs and Border Protection's revised approach to product grouping:

*Customs and Border Protection considers that 'model' classifications should be based on factors that can be demonstrated to affect price. In the case of Hyundai's exports and domestic sales, Customs and Border Protection has identified the key characteristics that can be seen to affect price. No information was provided by Hyundai to demonstrate whether other factors have impacted prices.'*<sup>29</sup>

As outlined above, the revised approach to product grouping was determined by the delegate in the original investigation to be preferable because it took into account the physical, functional and production likeness of the goods, and additionally treated goods according to the key characteristics that affect price. During the investigation, Hyundai provided Customs and Border Protection with a 'price extras' table which showed factors affecting price of the goods. This was used as a basis for comparing the goods against each factor affecting its price.

The revised product groupings incorporated a larger number of products in each group, resulting in a smaller number of groups overall than referred to in the visit report.

The revised product grouping was used in SEF 188 and REP 188 for determining normal values in terms of section 269TACB(2)(a).

The reinvestigation has examined the methodology of the delegate and considers that the groupings used continue to appropriately reflect categories of like goods suitable for comparisons between export and domestic sales.

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<sup>28</sup> *Ibid* p1

<sup>29</sup> EPR 188/082, p.5.

### *Submissions provided by Hyundai*

The reinvestigation found the information provided by Hyundai regarding the properties and prices of each product was appropriately considered by the original investigation and that the grouping of models used in both the verification visit and final report are correct at law within the definition of s.269TAC although the delegate ultimately showed a preference for one methodology over the other.

Hyundai made submissions to Customs and Border Protection several times over the course of the investigation, and also to the TMRO and reinvestigation, regarding its opinion of like goods.

In its response to the exporter questionnaire, submitted prior to the verification visit, Hyundai grouped a number of models into 'product code' categories. The visit team noted that 'each of the product codes designated by Hyundai comprise a large number of different product models.'<sup>30</sup>

Following publication of SEF 188 on 3 October 2012, Hyundai on 23 October 2012 made a submission, including a 'rebuttal brief', expressing its objection to the changed methodology for grouping goods for comparison between export prices and normal values.<sup>31</sup> Hyundai proposed that the methodology used in the verification visit report was preferable to that used in SEF 188 because it considered those classifications too broad as each product in a given group was 'not identical' and therefore any dumping margin arising from the use of such product comparisons was inaccurate.<sup>32</sup> At that time, the original methodology resulted in a dumping margin of 1.9% for Hyundai, whilst the revised methodology used in the SEF resulted in a higher dumping margin.

Hyundai made submissions to the TMRO to the same effect in its application for administrative review<sup>33</sup> and continued to reiterate that it preferred the methodology used in the verification visit report over that agreed to by the Minister, settled on in SEF 188 and subsequently in REP 188. Taking into account Hyundai's submissions, the TMRO noted in his report that during the reinvestigation '*Hyundai [is] able to make submissions to Customs about whether [Customs] had broadened the range of comparison goods so far beyond the identical that they were no longer alike.*'

Following commencement of the reinvestigation, ITR 209, calculation errors relating to Hyundai's dumping margin (section 3.5.1 refers), were corrected resulting in a dumping margin of 2.7% using the methodology approved by the Minister, and a dumping margin of 2.8% using the methodology of the verification visit.

Hyundai made a submission to the reinvestigation that it now preferred neither the numerous model groupings of the verification visit nor the more consolidated approach to model groupings of REP 188, but instead fewer model groups each containing a much larger number of products, including domestically sold products previously excluded by Customs and Border Protection. It did not make a submission

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<sup>30</sup> EPR 188/070, p.19.

<sup>31</sup> Hyundai submission, EPR 188/073

<sup>32</sup> Ibid. (Confidential version only)

<sup>33</sup> Application for review of a decision whether to publish a dumping duty notice of a countervailing duty notice - Hyundai, ('Hyundai's application to the TMRO').

stating that it considered the broadened range of comparison goods so far beyond the identical that they were no longer alike. It instead submitted that the comparison of goods should extend to goods in the same 'universe' and that the categories of goods should be further broadened.<sup>34</sup> Hyundai noted that if its most-broad categorisation methodology was used,<sup>35</sup> this would result in a lower dumping margin.<sup>36</sup>

### **3.5.3 Conclusion**

Consistent with obligations at law and in policy, the reinvestigation has corrected factual errors and considered whether, where multiple correct options arise, the original investigation recommended the preferred methodology to the Minister.<sup>37</sup>

The reinvestigation agrees with Hyundai and the TMRO on issue 1 and has corrected clear errors of calculation in the dumping margin made during the original investigation. The amendments have resulted in a final dumping margin for Hyundai of 2.6%.

The reinvestigation affirms the decision of the Minister in the original investigation in relation to issue 2. It is not evident to the reinvestigation that returning to the narrower categories of goods used in the visit report would result in a more correct comparison of export and domestic sales, particularly as the exporter has indicated through its submission to the reinvestigation its preference for use of an even broader categorisation of the goods. The reinvestigation affirms the decision of the original investigation and maintains the categorisation of goods presented in REP 188 is appropriate.

While there are many alternative ways to categorise the goods that are correct in law, the reinvestigation does not have a preference for any of the proposed categorisations over that settled on by the delegate in the original investigation. No evidence has been presented during the investigation or reinvestigation to demonstrate that the delegate's chosen methodology for grouping models was incorrect in law or otherwise unreasonable. For these reasons, the reinvestigation will not overturn a correct and reasonable decision of the original delegate, and, in the absence of evidence that it is otherwise, affirms the decision of the Minister on issue 2.

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<sup>34</sup> Hyundai submission to ITR 109, 21 May 2013.

<sup>35</sup> In addition to correcting an error in OCOT sales allocation, discussed at 3.5.1 of this report.

<sup>36</sup> Hyundai submission to ITR 109, 21 May 2013, p.6.

<sup>37</sup> The preferred decision settled upon is, amongst those decisions correct at law, the best that could have been made on the basis of the relevant facts.

## **4 REFERENCE TO PRICES OUTSIDE THE INVESTIGATION PERIOD**

### **4.1 Summary of the reinvestigation findings**

The delegate recommends that the Minister affirm the findings of the original investigation in the respect that there were sufficient grounds to warrant setting the measures by reference to prices other than those within the investigation period. However, the delegate also recommends that the Minister vary the methodology for how the relevant variable factors are calculated.

The reinvestigation considers that the methodology for adjusting the variable factors that was identified within the totality of evidence gathered by Customs and Border Protection during the investigation, which the CEO had regard to in making his recommendation, was not the most preferable methodology and that there are sufficient grounds to revise the methodology used.

### **4.2 The original investigation**

Customs and Border Protection considered the appropriate form that measures should take when recommending that the Minister publish a dumping duty notice in respect of HRC exported to Australia from Japan, Korea, Taiwan and Malaysia. That consideration had regard to the following factors:

- the price of HRC is closely linked to the prices for iron ore and coking coal, the two main raw material inputs to producing steel;
- iron ore and coking coal are commodities and their prices were volatile over the investigation period (1 April 2011 to 31 March 2012);
- the prices of iron ore and coking coal fell considerably in the 6 months following the end of the investigation period and this is reflected in lower global steel prices; and
- the volatility in raw material and HRC steel prices resulted in export prices and normal values found during the investigation period being out dated.

Taking the above into consideration, Customs and Border Protection recommended the Minister impose duties on HRC including both fixed and variable duty components. This was the combination of:

- a fixed proportional rate of duty calculated as a percentage of either the actual export price or the export price as ascertained by the Minister, whichever is the greater; and
- a variable component of duty calculated as the difference between the actual export price and the export price as ascertained by the Minister.

The fixed proportional rates of duty recommended for HRC exports from Korea, Malaysia, Taiwan and dry HRC from Japan were linked to the full margin of dumping in the case of all exporters. The fixed rate takes the form of a percentage of the export price of each importation.



The ascertained export prices are generally taken to be the weighted average export prices over the investigation period. However, to address the impact of changes in raw material input prices on steel prices, Customs and Border Protection recommended that the Minister ascertain contemporary variable factors.

These ascertained variable factors were calculated by indexing variable factors found during the investigation period (1 April 2011 to 31 March 2012) to account for movements in regional HRC prices up until October 2012. This reflected the most current market conditions for HRC at that time. Customs and Border Protection advised at the conclusion of the investigation that, should these conditions change, interested parties may apply for a review of measures 12 months after the publication of the dumping duty notice.

### **4.3 Issue identified by the TMRO**

The TMRO considered BlueScope's application for review, which challenged Customs and Border Protection's approach in adjusting export prices found in the investigation period to make allowance for changes in HRC prices in the six months following the investigation period. The TMRO described BlueScope's challenge as follows:

- 1) *BlueScope was denied an adequate opportunity to be heard in relation to the decision to have regard to information concerning prices outside the investigation period;*
- 2) *Customs and the Minister could not legally have regard to information concerning prices outside the investigation period;*
- 3) *Alternatively, if regard could be legally had to information concerning prices outside the investigation period, Customs and the Minister should not have done so; and*
- 4) *Alternatively, if regard should have been had to information outside the investigation period, Customs and the Minister incorrectly measured the movement in HRC prices outside the investigation period.*

The TMRO dismissed the first challenge, as it was not a basis for challenge within the scope that could be entertained by the TMRO. On the second challenge the TMRO disagreed that Customs and Border Protection could not legally have regard to information concerning prices outside the investigation period, stating:

*'I do not consider that the Customs Act provides an express or implied prohibition on the CEO having regard to information concerning prices outside the investigation period...'*

Having found that Customs and Border Protection could legally have regard to prices from outside the investigation period, the TMRO considered whether Customs and Border Protection should have done so. The TMRO agreed with Customs and Border Protection stating:

*'Customs acted appropriately in considering whether regard should be had to movements in HRC, iron ore and coking coal prices after the investigation period before settling upon the extent of the measure that ought to have been put in*

*place. It is legitimate and proper to consider whether reliance solely on prices within the investigation period would over-(or under) redress the level of dumping going forward.’<sup>38</sup>*

The TMRO however was not satisfied with the level of consideration that Customs and Border Protection gave to this issue.

In considering BlueScope’s final challenge, the TMRO was unable to be satisfied that the price adjustment methodology adopted by Customs and Border Protection was preferable to others that could have been adopted. The TMRO stated that considerably greater analysis was necessary before a state of satisfaction could have been reached in this regard. Thus the TMRO recommended to the Minister, and the Minister agreed, that Customs and Border Protection reinvestigate:

*‘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 of those prices’.*

#### **4.4 Submissions regarding the issues raised by the TMRO**

The following parties made submissions in relation to this aspect of the reinvestigation:

- BlueScope;
- JFE;
- OneSteel;
- Kobe Steel; and
- Nisshin Steel.

##### **4.4.1 BlueScope’s Submission**

In a submission made on 17 May 2013, BlueScope stated that it welcomed the TMRO’s direction for the grounds for reinvestigation and maintained that it considers it to be inappropriate to adjust a variable factor based on a short period after the investigation period, and that due to the volatility of raw material prices over the injury period, Customs and Border Protection should have been alerted *‘to the risk that any reduction in prices post the investigation would likely not be sustained.’<sup>39</sup>*

It noted that existing mechanisms for review of measures were available to interested parties by which variable factors could be changed after the Minister applied measures, and that ignoring these mechanisms created further uncertainty to the Australian industry and *“diminish[ed] the effectiveness of the anti-dumping system.”<sup>40</sup>*

BlueScope maintains that the variable factors should be based solely on prices from the investigation period without adjustment.

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<sup>38</sup> TMRO Report p.17.

<sup>39</sup> Submission – BlueScope Steel 17 May 2013, p .3.

<sup>40</sup> Submission – BlueScope Steel 17 May 2013Ibid.

#### 4.4.2 JFE's Submission

In a submission made on 17 May 2013, JFE supported the TMRO's views that there were no legal grounds prohibiting the CEO or the Minister having regard to prices outside the investigation period when assessing variable factors, and rebutted claims by BlueScope that the duty assessment and review processes '*provide an alternative method for achieving a calibrated dumping regime.*'<sup>41</sup>

The JFE submission noted that it disagreed with the TMRO's assessment that Customs and Border Protection had given insufficient consideration to whether prices outside the investigation period should be used. It stated that '*there is ample evidence in Section 8 of Report 188 that Customs was familiar with and had forensically evaluated pricing data extending back to 2001 and extending forward beyond the investigation period.*'<sup>42</sup>

#### 4.4.3 OneSteel's Submission

In a submission made on 17 May 2013, OneSteel disagreed with the TMRO's assessment that Customs and Border Protection had given insufficient consideration to whether prices outside the investigation period should have been used. The submission stated that:

*'there are clear examples within REP 188 that demonstrate cost and pricing analysis over an extended period of time that justified Customs making a determination that the prices in the 6 months after the investigation period would be more reflective of ongoing levels than prices during the investigation period.'*<sup>43</sup>

The submission compared the SBB East Asia HRC Price and Iron Ore and Coking Coal prices graphs shown in REP 188 and concluded that there was a peak in both graphs during the investigation period when compared to historical prices. The submission also provided details of factors OneSteel considered may have affected this period.

OneSteel concluded by stating that:

*'based on all the information that was available to Customs at the time they made their final recommendations to the Minister, [Customs] acted correctly in referencing prices applying after the investigation period and indexing the movement of HRC prices was an appropriate method.'*<sup>44</sup>

#### 4.4.4 Kobe Steel Ltd and Nisshin Steel Co Ltd Submission

In a joint submission made on 27 May 2013, Kobe Steel and Nisshin Steel provided their support for the submissions made by JFE that '*the CEO should recommend to the Minister that he affirm the original decision to use more contemporaneous data in formulating variable factors.*'<sup>45</sup>

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<sup>41</sup> Submission – JFE Steel Corporation 17 May 2013

<sup>42</sup> Submission – JFE Steel Corporation 17 May 2013, p5

<sup>43</sup> Submission – OneSteel Australian Tube Mills 17 May 2013 p3, paragraph 8

<sup>44</sup> Submission – OneSteel Australian Tube Mills 17 May 2012 p7, paragraph 21

<sup>45</sup> Submission – Minter Ellison on behalf of Nisshin and Kobe

## 4.5 The Reinvestigation

The *Customs and Border Protection Dumping and Subsidy Manual* states that when determining whether the findings from the original investigation should be affirmed or revoked and substituted with new findings, a reinvestigation will reconsider the facts, law and policy aspects of the original decision and determine what the correct and preferable decision should be. The reinvestigation has focused on the two key issues raised in the direction from the Minister being:

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

In its application to the TMRO, BlueScope also appealed on the grounds that the use of prices outside the investigation period was not permitted by law. As the TMRO did not agree with this assertion and instead agreed that Customs and Border Protection had acted appropriately in considering whether regard could be had to prices outside the investigation period, the question of Customs and Border Protection's ability to have such a consideration was not examined as part of the reinvestigation.

### 4.5.1 Sufficient Grounds

The TMRO was not convinced that the level of consideration REP 188 gave to the use of prices outside the investigation period was sufficient to warrant use of those prices in setting measures. The submission by JFE (supported by Kobe and Nisshin Steel) disagreed with the TMRO's assessment stating that they believed Customs and Border Protection had '*forensically evaluated pricing data extending back to 2001 and extending forward beyond the investigation period.*'<sup>46</sup> OneSteel had a similar disagreement with the views of the TMRO in this regard.

The reinvestigation examined information contained within REP 188 to determine whether there were sufficient grounds to warrant the use of prices outside the investigation period. In considering the appropriate form that measures should take, Customs and Border Protection had regard in REP 188 to the following factors:

- *the price of hot-rolled coil steel is closely linked to the price for iron ore and coking coal, the two main raw material inputs to producing steel;*
- *iron ore and coking coal are commodities and their prices were volatile over the investigation period (1 April 2011 to 31 March 2012);*
- *the prices of iron ore and coking coal have fallen considerably in the 6 months since the end of the investigation period and this is reflected in lower global steel prices, and*
- *the volatility in raw material and HRC steel prices has resulted in export prices and normal values found during the investigation period being already out-dated.*

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<sup>46</sup> Ibid, p5

After having regard to the above factors, Customs and Border Protection found in REP 188, as purely *ad valorem* duties<sup>47</sup> were not available at the time of that report, a combination of fixed and variable duty components using indexed variable factors was the most preferable method of applying a measure that did not remedy more than the effects of dumping.

The TMRO stated that the level of analysis conducted to reach this conclusion was insufficient, while BlueScope claimed that Customs and Border Protection did not examine the history of HRC price movements, nor the volatility of the market in reaching this conclusion. The reinvestigation notes that the wording of REP 188 may suggest that Customs and Border Protection had appeared to not consider these aspects, which the reinvestigation aims to clarify.

### **Historical Volatility of Raw Material and HRC Prices**

BlueScope and the TMRO claim that REP 188 appears to have not considered the historical movements of raw material and HRC prices. As highlighted by the submissions by JFE Steel and OneSteel, the reinvestigation considers that REP 188 has considered movements in raw material and HRC prices from 2001 to 2012 which includes a significant period before the investigation period, and approximately six months after the investigation period.

Reproduced from REP 188, the Iron Ore and Hard Coking Coal Prices from 2001 to late 2012 are shown in the graph below that was originally obtained from BlueScope's 2012 financial results presentation.

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<sup>47</sup> Purely *ad valorem* duties are a fixed form of duty rates where the rates are measured only as a percentage of the export price. There is no application of a floor price where, if export prices are below such a floor price, an additional (variable) component of duty would be payable.

### Iron Ore and Hard Coking Coal Prices (FOB)



This graph shows that raw material prices increased relatively consistently between 2001 and 2008, before a short unsustained peak in 2008, returning to a more stable increase from the longer term trend in 2009 before spiking again from mid-2010 to late 2011. The reinvestigation considers that, despite spikes in 2008 and 2010/11 there was an apparent general upwards trend in prices between 2001 and 2012 and that the prices found in 2012 appear to have returned to levels consistent with the longer term trend observed in the data.

Also reproduced from REP 188, the SBB East Asia HRC prices are shown in the graph below between 2001 and 2012. In considering the HRC prices and raw material prices between 2001 and 2012, the reinvestigation considers it was reasonable to conclude that raw material prices impacted the SSB East Asia HRC price.

### East Asia HRC Price (US\$/t) and Indicative Steelmaker HRC Spread (A\$/t)

Spread: SBB East Asia HRC price less cost of 1.5t iron ore fines and 0.7t hard coking coal



Source: SBB, CRU, Platts, TSI, Reserve Bank of Australia, BlueScope Steel calculations

BlueScope claimed that the volatility in prices was not sufficiently examined and that such volatility presented a risk when this pricing data was used to adjust variable factors. The reinvestigation finds, however, that despite some short lived deviations from long term trends experienced in 2008 and 2010/11, there were apparent long term trends that could be observed in the graphs presented in REP 188. One of these short term deviations from the long term trends observed was during the investigation period.

The reinvestigation considers that REP 188 made a reasonable finding that the raw material and HRC prices within the investigation period were higher than historical averages and the long term trend and, that if these prices were used, it may result in measures removing more injury than was caused by dumping.

BlueScope also claimed that there was a risk that in using prices from after the investigation period, the reduction in prices demonstrated would not be sustained. The reinvestigation considers however that the post investigation period prices appear to be close to the longer term trend.

The TMRO notes that:

*'An appropriate case could exist where it was apparent that prices after the investigation period would differ from those within the investigation period on a sustained basis so that it was apparent that ignoring the later prices would mean that anti-dumping measures were set at a level that either under- or over-redressed the dumping that has been found to exist historically and likely to continue prospectively.'*<sup>48</sup>

As the prices found within the investigation period were above those found historically, and higher than the long term trend and, on the data available to REP 188, the prices after the investigation period appeared to return to a more stable and traditional trend, the use of such prices outside of the investigation period could, as the TMRO suggests, be appropriate in this case.

Thus, the reinvestigation concludes that due to the level of raw material and HRC prices during the investigation period exceeding historical levels and the long term trend, determining variable factors from within that period would have set measures that would remedy more than the effects of dumping. As the prices after the investigation appeared to return to levels more consistent with the long term trend in price increases across the period 2001-2012, it would be reasonable to adjust the variable factors based on those prices.

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<sup>48</sup> TMRO Report paragraph 79

## 4.5.2 Preferable Methodology

### Methodology Used

Having affirmed that there were sufficient grounds to consider prices outside the investigation period, the reinvestigation now considers what the preferable methodology would be. REP 188 adjusted the variable factors after considering the reported average SBB East Asia HRC price during the investigation period and the SBB East Asia HRC Price in October 2012. BlueScope and the TMRO believed that the period for which REP 188 observed price fluctuations after the investigation period was too short a period of time to determine if those prices were likely to be sustained.

BlueScope presented information to the TMRO and OneSteel presented information in a submission to this reinvestigation regarding data that has become available after the Minister made his decision, each attempting to support their claims as to whether the conclusions reached in REP 188 were or were not sustained. As this data was not available at the time of the Minister's decision, it is not appropriate to consider such information in the reinvestigation.

Based on the trends observed in the data available in REP 188, the reinvestigation considers that it was appropriate to have regard to the data available for six months after the investigation period, as that period appears to be closer to the longer term average trends than that found during the investigation period. Additionally, given the timeline of conducting an anti-dumping investigation, it would be impossible for Customs and Border Protection to consider data that was not yet available at the time of the investigation. For these reasons, the reinvestigation considers that the investigation correctly relied on the best available information at the time.

However, the reinvestigation also agrees with BlueScope's assertion that comparing a point in time, October 2012, to the average of the investigation period may not be the most preferable option when adjusting the variable factors. During an anti-dumping investigation Customs and Border Protection, where possible, considers a weighted average across a 12 month period to ensure that any seasonal or short term variations do not unduly impact an outcome. To remain consistent with this practice, the reinvestigation considers it would be preferable to compare the average price during the investigation period to the average price in the 12 months up to and including the last data point available, October 2012, when adjusting variable factors.

By using this methodology, the reinvestigation considers that it addresses BlueScope's concerns about using data from a point in time, while also ensuring that variable factors are not unduly influenced by what appeared to be above average prices found during the investigation period that appear to not have been sustained after the investigation period. Customs and Border Protection considers it appropriate on the basis of the facts available for this case, to consider indexing the variable factors.



## Source Data Used

BlueScope claimed in its application to the TMRO that using the SBB East Asia HRC Price was inappropriate because it related to countries that were not subject to the investigation and that those prices may have reflected dumped prices and, if so, the prices could have been dumped by different amounts during and after the investigation period.

Although not used in REP 188, as interested parties have submitted, other index data may have been available to Customs and Border Protection during ITR 188 outside of that provided by SBB. However, the reinvestigation considers that the use of the SBB East Asia HRC Price as a basis for an index was appropriate for the following reasons:

- Customs and Border Protection considers SBB, and their parent company McGraw Hill Financial, to be a reputable provider of industry research, prices, news and events regarding the global steel industry. As Customs and Border Protection has confidence in the accuracy of the data presented by SBB, searching for data from other providers should merely confirm the data provided by SBB;
- the same SBB data that BlueScope have objected to in its submission to the reinvestigation is that which it relied on in its financial presentations to shareholders, indicating BlueScope's confidence in SBB's data in the context of presenting company views; and
- no information has been presented to Customs and Border Protection either in the context of ITR 188 or ITR 209 that suggests that the data provided by SBB inaccurately represents market trends in East Asia HRC prices.

### 4.5.3 Legislative changes and natural justice

At the time of REP 188, purely ad valorem duties were not available to Customs and Border Protection as a method of applying an anti-dumping measure.

On 11 June 2013, legislative changes took effect that allow Customs and Border Protection to recommend to the Minister that ad valorem duties should be imposed as a result of this reinvestigation. As this legislative change became effective in the days prior to this report being provided to the Minister, Customs and Border Protection considers that interested parties have not been afforded due process to make comment on any such proposed change to the type of measure imposed and it would be inappropriate for Customs and Border Protection to consider the application of a purely ad valorem duty in this instance.

## 4.6 Finding

The reinvestigation affirms that there were sufficient grounds to use contemporaneous variable factors, however those contemporaneous variable factors should have been determined by indexing the investigation period variable factors in relation to the movement in SBB East Asia HRC Prices to the year ending October 2012. The result of this finding will be that the ascertained variable factors will increase.

## **5 STRUCTURING OF THE CONDITIONS ATTACHED TO THE IMPOSITION OF MEASURES**

### **5.1 Summary of reinvestigation findings**

The delegate recommends that the Minister affirm the finding of the original investigation that it is not appropriate to structure the conditions attached to the imposition of dumping duties on imports of HRC for the automotive industry in such a way that imports that were not found to be causing injury during the investigation period are not liable for duty under the dumping duty notice.

### **5.2 The original investigation**

The original investigation (REP 188) found that BlueScope had reduced its sales to the automotive sector over the injury period. However it did not find any evidence to link this reduction to competition from imports and no evidence was provided of contracts lost to exporters in the nominated countries during the investigation period. Due to the longer term nature of contracts in this sector, Customs and Border Protection concluded that the loss of sales volume was due to other factors, such as the reduction in the number of cars manufactured in Australia.

However, overall Customs and Border Protection found that dumping of HRC from Japan, Korea, Malaysia and Taiwan caused material injury to the Australian industry and thus recommended that the Minister publish a dumping duty notice in respect of HRC from those countries.

### **5.3 Issues identified by the TMRO**

Applications by POSCO and Holden to the TMRO argued that no dumping duty should have been imposed on HRC imported for use by the automotive industry, as Customs and Border Protection found that the automotive sector did not experience injury caused by dumped imports. The TMRO recommended to the Minister that Customs and Border Protection reinvestigate:

*'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'*

### **5.4 Submissions regarding the issues raised by the TMRO**

The following parties made submissions in relation to this aspect of the reinvestigation:

- BlueScope;
- Holden;
- JFE Steel;
- Nippon Steel; and
- POSCO.

#### **5.4.1 BlueScope Submission**

In its submission of 17 May 2013, BlueScope asserted that the exemption provisions of s.8(7) of the Dumping Duty Act were sufficient for importers to obtain an exemption if like goods are not available from local supply, and that such applications should not be considered in the course of an investigation. It also considered that the TMRO confirmed that the measures extend to the 'full range of like goods' and that the provisions of s.269TG(1) and s.269TG(2) of the Act disagree with POSCO's claims that subsectors of the goods could be exempted from the measures.

#### **5.4.2 Holden**

In its submission of 17 May 2013, Holden submitted that it is preferable that the goods that do not cause injury be exempt from measures without relying on s.8(7) of the Dumping Duty Act. Holden state that in the case of HRC, Holden and others cannot rely on this section as no Tariff Concession Orders (TCOs) are in place relating to HRC.

Holden proposed that Customs and Border Protection create a new statistical code for HRC that is sold into the automotive industry, and designate that the code would be exempt from measures as a means of differentiating the goods destined for the automotive sector.

#### **5.4.3 JFE Steel Corporation Submission**

In its submission of 17 May 2013, JFE submitted that no exemption under s.8(7) of the Dumping Duty Act can be applied to pickled and oiled HRC (P&O HRC), but that it was not necessary to limit exemptions only to those circumstances because:

- 1) there is no express or implied restriction in s.269TG of the Act that would prohibit a description of the goods that excludes P&O HRC from Japan, which were intended for use in the automotive sector and were found not to cause injury. JFE Steel also submit that the TMRO's finding that the dumping notice 'extends to the full range of like goods' can only be justified when the investigation involves a homogenous product. JFE Steel believes that Customs and Border Protection accept that P&O is not like to other goods in GUC, as evidenced when considering causation and establishing normal values; and
- 2) under s33(3A) of the *Acts Interpretation Act 1901*, regardless of whether P&O has been sold into markets other than automotive, Customs and Border Protection can terminate the investigation into P&O from Japan which was

intended for use in the automotive industry as there has been a finding of no injury.

#### **5.4.4 Nippon Steel Submission**

In its submission of 17 May 2013, Nippon Steel claim that the interpretation of s.33(3A) of the *Acts Interpretation Act 1901* should be resolved judicially, and that currently the remedy for non-Japanese exporters of P&O should be an exemption under s.8(7) of the Dumping Duty Act only.

#### **5.4.5 POSCO Submission**

In a submission of 21 May 2013, POSCO notes that the finding that the imports from the investigated countries for automotive industry end-use did not cause injury has not been raised for reinvestigation and that Customs and Border Protection should therefore not revisit that issue. POSCO considers that there was no evidence provided by BlueScope or findings during the investigation that supports that injury in the automotive market sector is caused by dumping.

POSCO considers that s.33(3A) of the *Acts Interpretation Act 1901* gives Customs and Border Protection the ability to recommend that the Minister exercise a discretion to publish a dumping notice for only some of the 'like goods' investigated. POSCO provided examples of cases from the US and Canada where dumping duties are imposed on injurious goods, but not on non-injurious goods within the same goods description.

POSCO also submits that by excluding all P&O HRC sold into the automotive sector from a duty liability, the issue of non-discriminatory treatment becomes redundant.

### **5.5 The Reinvestigation**

The Customs and Border Protection *Dumping and Subsidy Manual* states that when determining whether the findings from the original investigation should be affirmed, or revoked and substituted with new findings, a reinvestigation will reconsider the original findings and act within the policy and practice stated in the manual to determine what the correct and preferable decision should be. The reinvestigation has focused on the two key issues raised in the direction from the Minister being:

- whether it was possible within law, as the TMRO suggests it was, to apply conditions to the imposition of measures that would result in a subset of the goods under consideration that were found not be causing or not likely to cause injury to BlueScope were not liable for duty under the dumping duty notice; and
- if it was possible, whether it was preferable, to do so.

### 5.5.1 Structure of the measures imposed

In its application to the TMRO, POSCO claimed:

*'that a finding that a particular type of 'like goods' has not caused material injury precludes the imposition of dumping duties on like goods of that type as a matter of law',* <sup>49</sup>

and

*'that the Minister has the power, as a matter of discretion, not to impose dumping duties on all like goods, and that a decision to exclude HRC for automotive industry uses was open to the Minister and could be considered appropriate in the circumstance of this case.'* <sup>50</sup>

In response to the first claim, the TMRO disagreed with that interpretation and stated that sections 269TG(1) and 269TG(2) of the Act contained no such express limitation, thus the reinvestigation has not considered this as a decision requiring reinvestigation.

However, in response to the second claim the TMRO was not persuaded by Customs and Border Protection's reasoning in the original investigation and has recommended to the Minister that this decision be reinvestigated.

The reinvestigation has considered the application of s.269TG(2) of the Act, and the effect of section 33(3A) of the *Acts Interpretation Act 1901* as to whether the Minister had a discretion to exercise in this instance.

The original investigation was of the view that this provision presents a binary option: either all goods under investigation may have measures imposed, or none. The TMRO takes an alternative view and considers that measures may be imposed on one subset of goods, but not another. The TMRO noted the application of s.33(3A) of the *Acts Interpretation Act 1901*, which states:

*Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) with respect to particular matters (however the matters are described), the power shall be construed as including a power to make, grant or issue such an instrument with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters [emphasis added].*

The reinvestigation considered how the *Acts Interpretation Act 1901* might apply in this situation, and whether, within s.269TG(2) of the Act, it would be lawful for the Minister to issue a notice on certain classes of goods.

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<sup>49</sup> Application for review of a decision whether to publish a dumping duty notice or a countervailing duty notice – POSCO, p7

<sup>50</sup> *Ibid*, p8

In previous investigations, Customs and Border Protection has recommended to the Minister to impose different levels of measures on subsets of goods, however, in those instances goods have been allocated into subsets based on physical characteristics such as size or finish and in those cases measures have been applied across all of the 'goods under consideration.' In this instance, however, the TMRO recommends adopting the same approach to exclude from measures a subset of the goods under consideration physically identical but differing in *end-use*.

In this reinvestigation, Customs and Border Protection does not agree with this interpretation by the TMRO in which a subset of goods could be 'carved out' from the goods under consideration and be excluded from any measures that would be applied.

Section 269TC(4)(bf) requires Customs and Border Protection to prepare a report for the Minister '*on the basis of the examination of exportations to Australia of the goods the subject of the application during a period specified in the notice as the investigation period in relation to the application [emphasis added]*'<sup>51</sup>. Thus Customs and Border Protection was correct in recommending to the Minister that all the goods subject of the application must be included in any dumping duty notice.

Customs and Border Protection's position remains that subsections 269TD(1) and 269TEA(1) of the Act require analysis by the CEO and recommendations by the CEO to the Minister in respect of the 'goods the subject of the application.' The investigation must be terminated in relation to a particular exporter if there has been no or negligible dumping by that exporter (s.269TDA(1)), but there is no comparable provision for narrowing the investigation to particular categories of the goods the subject of the application.

Consideration of the matters which the Minister must be satisfied before publishing a dumping duty notice (whether dumping has occurred and may occur, and whether material injury to Australian industry has been caused) therefore occurs by reference to the whole class of goods the subject of the application.

For these reasons, the reinvestigation affirms the original investigation and finds that the original approach was correct, in the sense that it was made according to law.

### **5.5.2 'Preferable' Approach**

Despite Customs and Border Protection not agreeing with the TMRO that it was possible to make a subset of the goods that would be defined by end use not subject to the dumping duty notice, the reinvestigation has further considered whether or not, even if it were possible, it would be an appropriate or preferable approach in this situation.

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<sup>51</sup> S.269TC(4)(bf)

## **Injury to the automotive sector**

The TMRO stated in his report that Customs and Border Protection, in reference to imports for the automotive sector, stated that ‘imports that are acknowledged by Customs not to be causing or likely to cause injury to BlueScope’ could be not liable for duty under the dumping duty notice. However, in REP 188 Customs and Border Protection:

*‘found that BlueScope has reduced its sales to the automotive sector over the injury period, it has not found any evidence to link this reduction to competition from imports. No evidence has been provided of contracts lost to exporters in the nominated countries during the investigation period.’*

BlueScope, in its submissions to both Customs and Border Protection and to the TMRO, contends that injury was present during the investigation period, however concedes that as no long term contracts commenced during the investigation period, it could not provide evidence of such injury during the investigation period.

BlueScope was unable to demonstrate evidence that there were contracts lost during the investigation period and thus the original investigation found that there was no evidence to suggest that the reduction in sales was due to competition from imports. The original investigation did not however, conclude that imports, destined for the automotive sector were not likely to cause injury to BlueScope.

BlueScope has argued that imports of HRC into the automotive sector were dumped and undercut BlueScope’s prices, and it is likely that the loss of future contracts may cause injury. Varying the notice, should it be possible to do so, would remove any measure from the goods and undermine the ability for the anti-dumping system to remove future injury caused by dumping.

## **Identification of HRC destined for the automotive Industry**

The reinvestigation also considered claims by Holden that a separate statistical code should be created to differentiate goods on importation by end use, specifically identifying HRC that was destined for the automotive industry. The reinvestigation does not support this recommendation.

Data obtained during the investigation showed that although imports of P&O HRC from Japan were able to be clearly identified as being sold to the automotive industry, it was not possible to clearly identify the end use of imports from other countries. As will be discussed further in section 6 below, the creation of a separate statistical code that would not be subject to the measures is not appropriate as it is not possible at the time of importation, to clearly identify that a product would be consumed in any particular *end-use*, especially when that importation is conducted via a trader or distribution chain.

Although Customs and Border Protection operates within a self-assessment framework that is monitored using compliance techniques, it would be difficult to monitor compliance with such a statistical code based on end use, and deliberate non-compliance by importers may render any measures ineffective.



Furthermore, such an approach would encourage interested parties to submit arguments around many possible product or market niches with an aim of achieving duty rates prescribed according to end use. This would require a significant and unreasonable increase to the depth and breadth of investigation coverage.

### **5.5.3 Conclusion**

The reinvestigation maintains that even if it were possible, it would not be a preferable approach to exclude goods subject to the notice by end use, and affirms the decision of REP 188. Additionally, as stated in section 5.5.1 above, Customs and Border Protection does not consider that it would be legally possible to structure the measures in the way in which the TMRO suggested.

## **6 PICKLED AND OILED FROM KOREA, MALAYSIA AND TAIWAN**

### **6.1 Summary of the reinvestigation findings**

Customs and Border Protection recommends that the Minister affirms the finding of the original investigation that a lesser duty should only apply to Japanese exports of P&O HRC and not to exports of P&O HRC from other countries.

### **6.2 The original investigation**

The original investigation found that P&O HRC exports from Japan did not contribute to the material injury suffered by the Australian industry during the investigation period. In REP 188, Customs and Border Protection found:

*'that BlueScope has reduced its sales to the automotive sector over the injury period, [Customs and Border Protection] has not found any evidence to link this reduction to competition from imports. No evidence has been provided of contracts lost to exporters in the nominated countries during the investigation period. Due to the longer term nature of contracts in this sector, Customs and Border Protection concludes that the loss of sales volume is due to other factors, such as the reduction in the number of cars manufactured in Australia'<sup>52</sup>*

Customs and Border Protection recommended that the Minister have regard to the desirability of fixing a lesser amount of duty. In this case, it was recommended that the ascertained export price be set equal to the ascertained non-injurious price to ensure a zero rate of fixed duty.

### **6.3 Issues identified by the TMRO**

In POSCO's application to the TMRO, it claimed that the level of measures imposed against its exports of P&O HRC (from Korea) was incorrect, and that it should have been treated in the same manner as P&O HRC that was exported from Japan.

The TMRO noted that although Customs and Border Protection had found that P&O HRC exports from Japan did not contribute to the material injury during the investigation period and it was recommended that the lesser duty would apply, that same treatment did not extend to P&O HRC exported from the other subject countries.

In assessing this claim, the TMRO stated

*'It is not apparent to me why, if sales into the automotive industry are not to be wholly exempt from duty, non-Japanese sales of pickled and oiled HRC actually used in the automotive sector should be treated differently to Japanese sales into*

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<sup>52</sup> REP 188 p60

*that sector. I acknowledge that there may be difficulty in being satisfied as to actual use which may differ from the use declared at the time of entry for home consumption, but the fact that Customs found past imports of Japanese pickled and oiled HRC had been entirely for use in the automotive sector is no guarantee that this will remain the case through the period of currency of the dumping duty notice.<sup>53</sup>*

The TMRO concluded by recommending to the Minister that the CEO ‘reinvestigate why P&O HRC from Korea, Malaysia and Taiwan sold to and used in the automotive sector should not be treated in the same manner as Japanese imports of P&O HRC for the automotive sector.<sup>54</sup>

## **6.4 Submissions regarding the issues raised by the TMRO**

The following parties made submissions in relation to this aspect of the reinvestigation:

- BlueScope;
- Nippon Steel; and
- POSCO

### **6.4.1 BlueScope’s submission**

In its submission of 17 May 2013, BlueScope submitted that it did not agree with POSCO’s allegation that P&O HRC from Korea should be treated in the same manner as P&O HRC from Japan. BlueScope stated that although it could not provide evidence of injury from Japanese exports of P&O HRC during the investigation period, it did provide evidence of injury from Korean imports during the investigation period. BlueScope further stated that HRC (including P&O HRC) from Korea could be used across a number of industry sectors and was not limited to the automotive sector as the Japanese P&O HRC was.

### **6.4.2 Nippon Steel’s submission**

In its submission of 15 May 2013, Nippon Steel submitted that it agreed with Customs and Border Protection’s findings in REP 188 with regard to the treatment of Japanese P&O HRC in that exports of Japanese P&O HRC were exported to, and consumed entirely in, the automotive sector and were found to not to have caused injury to BlueScope during the investigation period.

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<sup>53</sup> TMRO Report – p13 paragraph 63

<sup>54</sup> TMRO Report, p13 para 64

Nippon Steel further noted that it disagreed with TMRO's statement that:

*'the fact that Customs found past imports of Japanese pickled and oiled HRC had been entirely for use in the automotive sector is no guarantee that this will remain the case through the period of currency of the dumping duty notice'<sup>55</sup>*

It stated that

*'the dumping application can only be decided on the facts of the case that have been established during the investigation period. These findings cannot now be impugned in the manner suggested by the TMRO.'<sup>56</sup>*

### **6.4.3 POSCO's Submission**

In its submission of 21 May 2013, POSCO submitted that Customs and Border Protection should proceed with the exclusion of all HRC for automotive industry uses (as discussed in section 5.4.5 above) and as such, that action:

*'fully obviates any need for further discussion of the treatment of POSCO's 'picked and oiled' ('P/O') HRC for automotive industry uses.'<sup>57</sup>*

POSCO also requested that Customs and Border Protection refer to the paragraphs in the TMRO's report that question Customs and Border Protection's treatment of P&O HRC, with POSCO stating that

*'...the TMRO clearly means to indicate to all concerned that there should not be any such differential treatment – a proposition with which POSCO agrees.'<sup>58</sup>*

## **6.5 The Reinvestigation**

The reinvestigation considered whether it was preferable, as the TMRO questioned, to treat exports of P&O HRC from Korea, Malaysia and Taiwan in the same manner as P&O HRC exported from Japan.

As the TMRO identified, in REP 188 Customs and Border Protection was able to identify that all exports of P&O HRC from Japan were sold into the automotive sector and found that these imports did not contribute to the material injury to the Australian industry and thus a lesser duty was recommended to be applied.

Such a direct correlation between exports and end use was not possible for Korea, Malaysia or Taiwan where not all imports of P&O HRC were found to be destined for the automotive industry. Thus the original investigation in REP 188 was unable to conclude that exports from Korea, Malaysia or Taiwan were used solely in the

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<sup>55</sup> TMRO Report p13 para 63

<sup>56</sup> Nippon Steel Submission p 3

<sup>57</sup> POSCO submission to ITR 209, p.8.

<sup>58</sup> Ibid

automotive industry nor were they able to conclude that those imports did not contribute to the material injury to the Australian industry as a whole.

Holden submitted that Customs and Border Protection should issue a new statistical code to allow HRC destined for the automotive industry to be exempt from the measures as a method of differentiating the goods by end use at the time of importation. As discussed in section 5 above, the reinvestigation does not consider that this would be a preferable decision as, with the exception of P&O HRC imported from Japan during the investigation period, Customs and Border Protection was unable to clearly identify imports wholly destined for the automotive industry.

The reinvestigation has reviewed this finding and has found that the methodology used was valid, and thus recommends that the Minister affirm the original finding in REP 188.

The TMRO also noted that although exports of P&O HRC from Japan did not cause injury during the investigation period, and that although those exports were all used in the automotive sector during that period, there is no guarantee that this would continue during the life of the dumping duty notice.

The reinvestigation agrees with this comment by the TMRO, however also notes that as the goods are still subject to the notice, albeit currently with a zero fixed rate of duty, should a review be conducted that determined that Japanese P&O HRC was no longer being used solely in the automotive industry, the variable factors could be varied so that an amount of fixed duty above zero may apply.

For these reasons, the reinvestigation affirms the findings in ITR 188 on this issue.

## **7 RECOMMENDATIONS**

Customs and Border Protection recommends that the Minister make the following findings as a result of the reinvestigation of REP 188:

### **7.1 Finding 1 – Hyundai Steel Dumping Margin**

The delegate recommends that the Minister vary the findings of the original investigation in regards to a finding of the dumping margin for Hyundai. The delegate considers that the finding of the dumping margin for Hyundai included errors that were identified within the evidence gathered by Customs and Border Protection during the investigation, which the CEO had regard to in making his decision. The delegate considers that there are sufficient grounds to revise the dumping margin for Hyundai. After correcting errors, the dumping margin for Hyundai remains 2.6%.

### **7.2 Finding 2 – Reference to Prices Outside the Investigation Period**

The delegate recommends that the Minister affirm the findings of the original investigation in the respect that there were sufficient grounds to warrant setting the measures by reference to prices other than those within the investigation period.

However, the delegate also recommends that the Minister vary the methodology for calculating the relevant variable factors.

### **7.3 Finding 3 – Structuring of the Conditions attached to Imposition of the Measures**

The delegate recommends that the Minister affirm the finding of the original investigation that it is not appropriate to structure the conditions attached to the imposition of dumping duties for the automotive industry in such a way that imports that were not found to be causing injury during the investigation period are not liable for duty under the dumping duty notice.

### **7.4 Finding 4 – Treatment of Pickled and Oiled from Korea, Malaysia and Taiwan**

The delegate recommends that the Minister affirm the finding of the original investigation that a lesser duty should only apply to Japanese exports of pickled and oiled HRC and not to exports of pickled and oiled exports from other countries.

## **8 EVIDENCE OR OTHER MATERIAL RELIED ON**

In making its findings, the reinvestigation had regard to the following material or other evidence:

- SEF 188, REP 188 and the TMRO Report of 2 April 2013 and appendices;
- relevant information provided to Customs and Border Protection's original investigation by Australian industry, importers, exporters, manufacturers and other parties
- Customs and Border Protection's import database as far as it relates to the imports of HRC during the investigation period;
- submissions to the TMRO and to the reinvestigation as far as they relate to the relevant information or conclusions based on the relevant information; and
- submissions provided to the reinvestigation as far as they relate to the relevant information or conclusions based on the relevant information.