



1 August 2012

Ms Kim Farrant, National Manager
International Trade Remedies Branch
Australian Customs and Border Protection Service
5 Constitutional Ave,
Canberra City, ACT 2601

Dear Ms Farrant,

**Anti-Dumping Investigation-Hot Rolled Coil Steel from Korea, Malaysia and Taiwan-
ACDN 2012/30 refers**

On behalf of Australian Tube Mills (ATM), please find below our response to the subject application lodged by BlueScope Steel Ltd and BlueScope Steel (AIS) Pty Ltd and initiated by the International Trade Remedies Branch (ITRB) of Customs and Border Protection on 15 June 2012.

ATM requests Customs terminate immediately, the investigation in accordance with S269TDA (13) of the Customs Act 1901 with respect to exports from Japan and JFE on the basis:

- No causal link exists between exports from JFE and BlueScope Steel material injury
- Significant factors other than dumping have caused the material injury incurred by BlueScope Steel

1. Background

1.1 Like Goods

The ITRB and BlueScope have stated that the "like goods" included in the application are classified to various Tariff sub-items in 7208 and 7211 (except for classifications 7208.51.00 and 7208.52.00), that conform to Australian Standard AS 1594 and the corresponding equivalent Japanese International Standard JIS 3131 and JIS 3101. We note that the like goods definition does not extend to HRC products that are clad, plated or coated and also plate products (exceeding 4.75mm in thickness) imported in sheet form.

In addition, BlueScope have also claimed that Hot Rolled Coil (HRC) like goods are typically sold into the following markets:-

(i) Pipe and Tubing Market Sector

Structural tubing, precision tubing, square hollow sections (SHS), circular hollow sections (CHS), water, oil and gas pipelines.

(ii) Automotive Market Sector

Vehicles, structural members and components.

(iii) Manufacturing Market Sector

This sector is made up of a number of discreet market segments such as agriculture, engineering, construction, mining, oil and gas, non-residential construction, residential construction and transport. Some end uses within these segments are agriculture plant, machinery and equipment, mining consumables, electrical generation and transmission equipment and plant, racking solutions, steel furniture, household appliances, hardware and tools, commercial and industrial construction, road and rail equipment and plant."

Please note Australian Tube Mills (ATM) has [REDACTED] for the pipe and tube division of the company as a material input for the manufacture of pipe and tube in Australia over the last [REDACTED] years.

1.2 Rationale for Importing HRC from Japan

ATM imports HRC on the basis of taking a [REDACTED] position within its Australian pipe and tube manufacturing business. This position is adopted to ensure supply of this critical manufacturing input (HRC) and has been consistently maintained should BlueScope's HRC [REDACTED] at any given time.

To confirm this position, [REDACTED]
[REDACTED]

1.3 Material Injury and Causation

BlueScope's Anti-Dumping application claims that material injury from the alleged dumped imports commenced during the financial year 2010/11 and the company is claiming to have experienced further injury in the financial year 2011/12, due to the alleged dumped imports that have undercut BlueScope's selling prices in the Australian market and have resulted in:

- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenues;
- reduced employment;
- reduced wages expense; and
- reduced return on investment

It is clear from BlueScope's application that price undercutting represented a key root cause for its claims of other forms of material injury.

However, BlueScope have accepted that the global downturn experienced in 2009/10 has contributed to its loss of sales volume, which we believe is consistent with the overall market trend in Australia. Whilst BlueScope claims that the market has subsequently increased, it admits that the market has not yet grown back to the size it was in 2008/09. Of concern is the further claim by BlueScope that this reduction in market size has not impacted all suppliers equally and that imports from the nominated sources have actually increased since 2008/09.

This claim will no doubt need to be re-assessed and clarified by Customs and Border Protection during the verification phase/visits, particularly in relation to Japan.

BlueScope has also admitted that it incurred "significant costs" in the shutdown of its export business and the restructure of its import business and that these costs have been excluded from the profit and cost analysis. ATM is concerned that such adjustments will not adequately recognize the substantial impact that closing 50% of BlueScope's iron making capacity (due to a range of factors other than "dumping" of HRC) will have had on increasing its [REDACTED] in FY12. Specifically, ATM believe any analysis of price suppression and profit decline by Customs should only be based on the recovery or otherwise of BlueScope's [REDACTED] costs.

As outlined during ATM's recent Importer Verification visit conducted by Customs and Border Protection, ATM contends that there are multiple factors (other than the alleged dumped imports) that are the source of BlueScope's material injury. ATM maintains that the alleged effect of dumped imports from Japan, which have only been supplied into the pipe and tube market for [REDACTED], have clearly not been a cause of material injury to BlueScope.

We have detailed our rationale below.

2. Market Factors and Injury

2.1 Imports of Japanese HRC are not the source of BlueScope's Injury

2.1.1 Market Share/Volume Decline

- o Japanese origin HRC represents a small and decreasing proportion of overall HRC import volumes during the investigation period (please refer to Attachment A page 2)
- o Japanese HRC volumes were lower in the investigation period (year) than in any other year from FY09 (please refer to Attachment A page 15).
- o Japanese share of the total HRC market was lower in the investigation period (year) than in any other year from FY09 (please refer to Attachment A page 15).
- o A high proportion of Japanese HRC has been imported as raw material inputs for the pipe and tube market as follows (please refer to Attachment A page 6):
 - 08/09 – 09/10 average = [REDACTED]%
 - 10/11 – 11/12 average = [REDACTED]%
 - Specifically, [REDACTED] proportion of export HRC supplied to ATM in the investigation period was [REDACTED]% of its total exports to AustraliaTherefore any analysis of the causal link of HRC from [REDACTED] must examine the specific dynamics of HRC used in the Pipe and Tube segment.
- o Australian Tube Mills (ATM) & Kembla Grange import low HRC volumes, as a percentage of their total HRC purchases, which were [REDACTED] during FY12 during the investigation period (see Attachment A page 8):-
 - FY09 = [REDACTED]%
 - FY10 = [REDACTED]%

- FY11 = █%
- FY12 = █%

BlueScope's own supply offers recognise that ATM cannot be expected to █
 █ BlueScope's stated objective of █% share of
 ATM purchases has been achieved throughout the injury period.

2.1.2 Price Depression/Suppression/Undercutting

- █ has been in-line or above international benchmark pricing during the investigation period (please refer to Attachment A- page 9)

█
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 █

- █ any claims from BlueScope that imports of HRC in Pipe & Tube caused price depression/suppression and decline in margins are negated.

2.2 The supply of HRC from Japan into the Tube industry is not responsible for BlueScope's Injury

BlueScope has consistently achieved at least █% market share amongst domestic tube manufacturers since FY09 (█), as follows:

- █% share of tube market in FY12 (refer Attachment A- slide 4)

Imported finished tubular goods are having a greater impact on BlueScope's share of the tube market than HRC imported by local tube manufacturers (refer Attachment A- slide 5):

- FY12 imported percentages of HRC for tube manufacture equalled █% of the total domestic tube market.
- FY12 imported finished tubular goods were █% of the domestic tube market.

The Tube market as a percentage of BlueScope's sales has increased consistently since 2008/09. Tube as a percentage of BlueScope's sales have increased from █% in FY09 to █% in FY12 (refer to Attachment A -slide 6).

Please note, ATM is a significant buyer of BlueScope's HRC production and accounts for circa █% of all HRC purchased for their ATM business in Australia.

█
 █

[REDACTED]

2.3 ATM HRC imports are a [REDACTED] supply position

ATM requires a [REDACTED] HRC source for [REDACTED] supply. Key drivers/indicators of this are:

[REDACTED]

- o Occasionally steel suppliers have failures within their supply and/or production processes. This has occurred previously with BlueScope in Westernport. It has also occurred previously with the [REDACTED]. There is now an [REDACTED] with BlueScope given that they have reduced iron production to a single blast furnace and have closed the Westernport Hot Strip Mill.

ATM's percentage share of imports have been reflective of a [REDACTED] approach. It should be noted that BlueScope's own objectives of achieving above [REDACTED] % market share of ATM's business have been consistently achieved throughout the four year period (beginning in FY09).

2.4 Other sources of material injury

Margin compression over raw material costs for all steelmakers globally, coupled with the depressed state of international prices for steel, have been key drivers of BlueScope's injury (please refer to Attachment A- slide 11), particularly considering the following:

- o FY09/10 average margin over raw materials [REDACTED]/tonne
- o FY11/12 average margin over raw materials equalled AUD [REDACTED]/tonne
- o The average decline of AUD [REDACTED]/tonne is a global trend reflective of the international market for HRC. It has been the significant driver of BlueScope's price suppression and profit decline and is unable to be attributed to "dumping" of HRC.

An increasing percentage of BlueScope's sales were in the export market in FY11. This drove lower overall profitability (refer Attachment A slide 12). In FY12 the reduction/closure of 50% of BlueScope's iron making capacity drove an increase [REDACTED]. This is a significant factor influencing the key elements of price suppression and profit decline and is not attributable to the HRC market share and pricing relating to imports.

Over the claimed injury period, there has been a significant decline in the Australian market size for HRC due to the increasing impact of imported finished pipe and tube products that have caused the following to occur in the Australian market:

- o The closure of Orrcon's large pipe mill in Unanderra and OneSteel's Oil and Gas mill in Kembla Grange is evidence of the impact of imported finished goods. Both mills sourced HRC from BlueScope and have ceased production due to their inability to compete with imported pipe and tube product on price
- o Production by the Australian API mills have decreased by [REDACTED] from FY09 to FY12 (refer to Attachment A- slide 14). In the 4 years to March 2012, the domestic HRC market (BlueScope's application) decreased by [REDACTED]% (approx [REDACTED]kt). The proportional reduction in sales from API tube mills is greater than the reduction in the total HRC market and is equivalent to approximately [REDACTED] of the total HRC market volume decrease (note: comparing FY API v FY ending March 2012)
- o The loss of BlueScope's HRC sales to API mills has contributed to BlueScope's injury but cannot be attributable to imports of HRC. It is the result of the severe competition with imported finished pipe and tube products

ATM understands that there have also been adverse Australian market conditions for other products such as cold rolled coil, galvanised coil, PPGI etc of which HRC is the substrate. These are also contributing factors that have led to reduced volumes and profitability in the substrate markets and have impacted BlueScope's cost base and injury claims in relation to HRC.

3. Our Causation Position

3.1 WTO Article 3.5

As you are aware, the "Causal Link" provision is provided for in Article 3.5 of the WTO Anti-Dumping Agreement (ADA) and demonstration of the causal link must be based on an examination presented to Customs and Border Protection by BlueScope, containing all relevant evidence, including any known factors, other than the alleged dumped imports.

Article 3.5 of the ADA (please refer to the definition in Attachment B), prohibits Customs and Border Protection from attributing the injury caused by other factors to dumped imports of HRC. The issue of causation and "non-attribution" was previously raised in the dispute of the *"United States- Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan"*. In this case, Japan submitted inter-alia that the USITC had failed to ensure that injury caused by other factors was not attributed to dumped imports.

According to Japan, in the *United States – Wheat Gluten* decision, the Appellant Body made it quite clear that an Anti-Dumping investigating authority must ensure that when injury is caused by other factors it is subtracted; therefore the remaining injury will still need to rise to the level of "materiality".

The Panel subsequently came to the conclusion that inherent in Article 3.5, there appears to be a warning against overly simplifying conclusions on material injury and authorities must thoroughly examine other known factors injuring the domestic industry (i.e. including downstream market effects). The Panel further noted that the relevant authority is directed to examine and ensure that other industry factors do not sever the causal link that may appear to exist between dumped imports and material injury.

The WTO Appellant Body (AB) has consistently made assessments under Article 3.5 that in examining the causal link from imports, the process involves separating and distinguishing the injurious effects of other factors from the reasoning for claiming injury. Therefore in the present case, if the absence of such separation and distinction of the injurious effects are not

appropriately accounted for by Customs and Border Protection, there will be no rational basis to conclude that the alleged dumped imports are causing the injury.

In addition, not only do we request that adequate allowance be provided for the economic state of the pipe and tube industry over the injury period, but also appropriate economic accounting attributable to the major disruptions caused by the re-structure of BlueScope's business, including prior losses incurred in the HRC export business.

3.2 Australia's Approach to Causation

With respect to separation or non-attribution of other injury factors, of interest is Customs and Border Protection's assessment in the Clear Float Glass (CFG) case (Final Report to the Minister).

We believe this case is particularly relevant to the HRC investigation as similar circumstances apply in respect of the plant closure by BlueScope. Of particular interest in the CFG investigation was the economic impact of the downstream market on the production volumes of the float line, and the similar conditions applicable to the HRC market in Australia in relation to the parlous economic state of the downstream pipe and tube industry.

Of particular note is the following extract from the recently updated "Dumping & Subsidy Manual" (March 2012) in relation to s. 269TAE (2A) of the Customs Act 1901, as follows:-

"As injury caused by other factors cannot be attributed to dumped or subsidised imports, Customs and Border Protection considers the influence of other factors when assessing whether there is a causal link between the injury to the Australian industry and the presence of dumped and/or subsidised imports in the market.

Such other factors may include, but are not limited to:

- ***the volume and prices of imports that are not dumped or subsidised;***
- ***contraction in demand or changes in the patterns of consumption;***
- ***trade restrictive practices of, and competition between, foreign and domestic producers;***
- ***developments in technology;***
- ***the export performance and productivity of the domestic industry."***

As a consequence, we believe that an appropriate assessment needs to be carefully carried out by Customs and Border Protection in order to determine the actual domestic market conditions prevalent in Australia during the injury period.

In general, appropriate causation adjustments for injury assessment need to be taken into account in accordance with the following other factors:

- Downstream Pipe and Tube industry production has reduced by [REDACTED] since FY 2009
- Closure of manufacturing facilities in the Pipe and Tube sector during the injury period
- BlueScope losses attributable to the HRC export sector
- The impact of finished goods imports including tube not only on the market size for HRC but also BlueScope's pricing.

- o Closure of 50% of Iron Making capacity in FY12 has resulted in increased CTMS with a corresponding severe reduction in export tonnages
- o The global demand and supply for HRC, iron ore and coking coal that has driven significant compression in A\$ margins for steelmaking internationally over raw material costs.

This request is further supported by the following factors that specifically demonstrate the absence of any causal linkage between imports from Japan/JFE and any material injury suffered by BlueScope:

- ATM purchases from [REDACTED]. This undermines [REDACTED] of any claims regarding price depression, suppression and profit decline
- [REDACTED] volumes and share with ATM have declined in the investigation period and consistently been at or below [REDACTED]% of ATM's requirements.
- Overall HRC volumes and market share from Japan have declined in the investigation period.
- Bluescope's share of the tubular manufacturers has continued to operate above its stated target levels of [REDACTED]%

Given the significant extent of the above "other factors" and absence of causal factors in relation to imports from Japan/JFE, we hereby seek immediate Termination of the investigation in accordance with s269TDA of the Customs Act 1901 and Article 5.8 of the WTO General Agreement on Tariffs and Trade, 1994, particularly in relation to exports of HRC from JFE in Japan (and Japan in general).

We look forward to receiving your favourable consideration of our termination request at your earliest convenience.

We would also like to meet with you shortly to further discuss certain elements of our submission when convenient. In the meantime, please do not hesitate to contact the undersigned if you require any further information or assistance in relation to our submission.

Kind regards,



STEPHEN PORTER
General Manager Sales