11 September 2012

China Steel Corporation

Alleged dumping of hot rolled coil exported from Japan, Korea, Malaysia and Taiwan

Hot-rolled coil exports to Australia have not caused material injury to BlueScope Steel

A Introduction

On 15 June 2012, Australian Customs and Border Protection Service ("Australian Customs") published Australian Customs Dumping Notice No. 2012/30 ("ACDN 2012/30"). This notified interested parties of the initiation of a dumping investigation into hot rolled coil ("HRC") exported to Australia from Japan, the Republic of Korea, Malaysia and Taiwan.

ACDN 2012/30 explained that the Australian industry, BlueScope Steel Limited and BlueScope Steel (AIS) Pty. Ltd (referred collectively as "BlueScope"), had alleged in its application for dumping duties ("the Application") that HRC from Taiwan had been imported at dumped prices, and that this had caused the Australian industry material injury through:

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

China Steel Corporation ("CSC") disagrees with the proposition that HRC exported to Australia from the countries under investigation has caused material injury to the Australian industry. In making this submission, CSC notes that the alleged "dumping" position concerning its own exports is still under consideration by Customs, and that CSC does not agree with the suggestion that it engaged in any actionable dumping of HRC during the period of investigation ("POI").

B Relevant law

For a dumping duty notice to be published under Section 269TG of the *Customs Act 1901* ("the Act"), it must be established that imports of the goods under consideration have been dumped and, because of that:

> *material injury to an Australian industry producing like goods has been caused, or is being caused or threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered*

Section 269TAE of the Act elaborates the concept of material injury. Section 269TAE(1) essentially requires the Minister to determine whether material injury has occurred on the basis of the effect or likely effect of the importation of those goods. However, this must be done subject to Subsections 269TAE(2A) and (2B). Relevantly, these provide:

> *(2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:*
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> *(a) the volume and prices of imported like goods that are not dumped; or*
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> *(b) the volume and prices of importations of like goods that are not subsidised; or*
>
> *(c) contractions in demand or changes in patterns of consumption; or*
>
> *(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or*
>
> *(e) developments in technology; or*
>
> *(f) the export performance and productivity of the Australian industry;*
>
> *and any such injury or hindrance must not be attributed to the exportation of those goods.*
>
> *(2B) In determining:*
>
> *(a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry*
>
> *...*
>
> *because of the exportation of goods into the Australian market, the Minister must take account only of such changes in circumstances, including changes of a kind determined by the Minister, as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.*

We also note the recent publication of the *Ministerial Direction on Material Injury 2012.* The Direction itself correctly indicates that it must be read subject to the law. The Direction also provides:

- that "*identification of material injury must be based on facts and not on assertions unsupported by facts*";
- the CEO "*must have regard to the facts of the individual case*", and "*identifying material injury depends upon the circumstances of each case and will differ from industry to industry and from time to time*";
- "*the injury caused by dumping or subsidisation is material in degree*";
- that material injury must be "*greater than that likely to occur in the normal ebb and flow of business*"; and
- that "*dumping and subsidisation need not be the sole cause of injury to the Australian industry*" however, "*whether dumping... is the sole cause of injury or where there are other contributing factors... the injury caused by dumping... must be material in degree*".

The Minister notes that, in considering whether material injury exists:

> *an industry that was at one point healthy and could shrug off the effects of the presence of dumped... products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping.*

This however does not detract from the law and the direction that "*injury caused by other factors must not be attributed to dumping*". Injury caused by other factors cannot be ignored, and the injury caused by any proven dumping must be *"material"*, being *"not immaterial, insubstantial or insignificant"*. The injury caused by dumping must be greater than would otherwise have occurred in *"the normal ebb and flow of business"*. Furthermore, there must be evidence to establish that the injury has been caused by the existence of the dumped goods in the market.

Given that these factors require some degree of prognostication it is clear that the facts relied upon to establish this causation, as well as the materiality of the alleged injury, must be both accurate and adequate for the task.

C BlueScope's dominant market share

First and foremost, despite the injury factors claimed by BlueScope, it has not only maintained its dominant market share in the Australian HRC market since 2008/09, but has also increased its market share during the POI.

A table of market share information based on BlueScope's own application is set out below:

	2008/09	2009/10	2010/11	2011/12
BlueScope	78%	76.8%	76.8%	79%
Imports under investigation	12.1%	15.6%	17.7%	16.3%
Other imports	9.9%	7.6%	5.5%	4.7%

We can extrapolate BlueScope's market share based on its own "indexed table of sales quantities" as provided at A-4.6 of its Application, and using its 78.0% market share in 2008/09 as the base rate. This is set out in the following table:

	2008/09	2009/10	2010/11	2011/12
BlueScope sales quantity index	100%	84.7%	90.4%	78.9%
Total market index	100%	81.3%	91.8%	77.8%
BlueScope market share	78%	81.3%	76.8%	79.1%

Despite the discrepancy of the results in 2009/10, it is clear that BlueScope has enjoyed a dominant market position in the Australian HRC market at all relevant times. According to the sales quantity index, BlueScope's market share increased by 4% in 2009/10 whilst the overall market contracted. In the next year this was followed by an increase in sales volume of almost 7%. In that same year its market share declined slightly but remained similar to its pre-global financial crisis ("GFC") level. In the next year – the POI – its market share increased to about 79%, which is above its 2008/09 level.

Market share is an important indicator of trading performance and market power. The market share statistics establish that BlueScope has had a very strong position in the Australian HRC market at all relevant times. On this basis – viewed on its own - it could not be said that it has suffered any injury at all. Whilst other economic factors should also be given proper consideration in determining whether the Australian industry has suffered material injury, a dominant market share defines the market power of the company which holds that share. This includes the power to set or to influence market prices – the key to several of the injury claims made by BlueScope. In that context the reasons for the pricing decisions it makes are critical to understanding what has caused it injury.

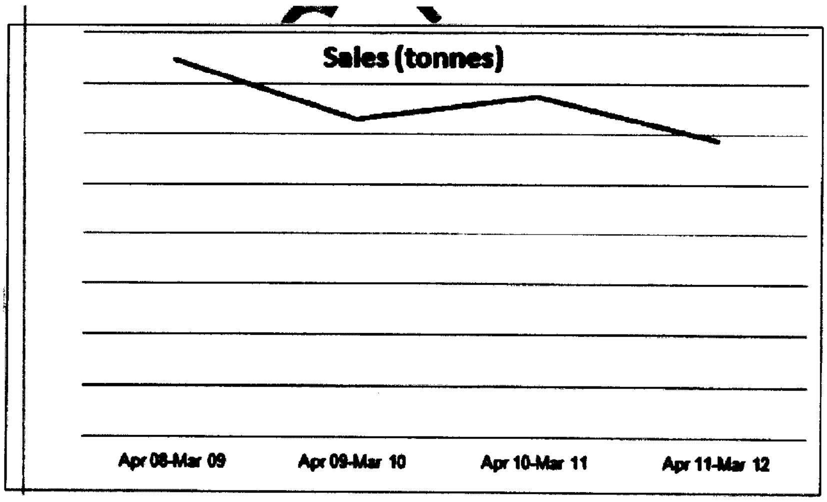
As discussed below, we submit that even if BlueScope did suffer material injury, any such injury must be directly attributed to BlueScope's own business decisions, other significant changes which it experienced in and leading up to the POI, and broader economic circumstances, rather than HRC imported from the countries under investigation.

BlueScope was able to maintain its already dominant market share at about 80% during the injury analysis period. It increased its market share in the POI. These facts militate against the conclusion that BlueScope suffered material injury because of much smaller-scale import competition.

Furthermore, whilst the overall market share of HRC imported from the nominated countries increased after 2008, that increase appears to have been proportional to the decrease in imports from other countries. In particular, CSC notes that export policy changes in China – a country whose exports are not under investigation in this instance - may have provided a disincentive to Chinese HRC exporters in recent years.[1]

D BlueScope has not suffered reduced volume

We note that in the BlueScope Visit Report placed on the electronic public record ("the Visit Report"), Customs *"consider[s] that BlueScope has suffered injury in the form of reduced sales volume"*. The following chart is extracted from the Visit Report. The chart seeks to demonstrate this reduction:



It is stated in the Visit Report that this chart only *"refers to external sales and excludes transfers to CPD"* (CPD being a reference to BlueScope's Coated Products Division). The Visit Report also refers to the fact that *"a large proportion of BlueScope's HRC sales were to the CPD where it was further processed, to make products such as colorbond steel roofing."*[2]

CPD is part of the broad market in which HRC is utilised to produce downstream products. HRC made for CPD sales is the same product sold by BlueScope to external parties. It follows

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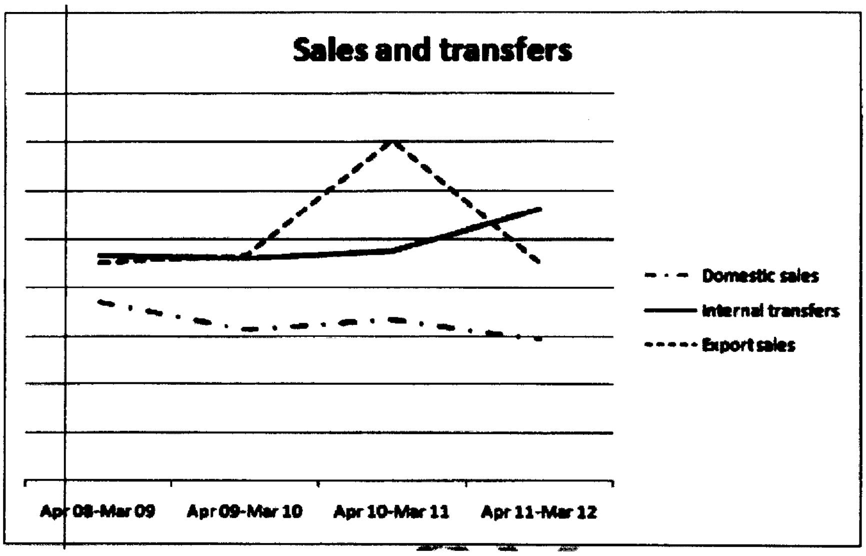
1 See BlueScope Visit Report, at page 33 *"in relation to imports from China, BlueScope noted that in the past imports from this source had been in significantly higher volumes but since 2008 when certain export taxes in China were introduced, the volume had dropped significantly..."*

2 BlueScope Visit Report, page 6

that sales made to CPD must be considered in determining whether there has been volume related injury. Clearly, the Applicant should not be allowed to claim injury in the form of volume reduction if it simply decided to supply to its own/related facility, rather than its downstream customers.

Indeed, the other chart in section 9.2 of the Visit Report – which is extracted below - demonstrates that internal transfers have always been above the volume level of domestic sales. These internal transfers increased significantly during the POI, and therefore appear to have sufficiently offset any decrease in external sales.



The chart also shows that BlueScope's export sales surged by about 30% during 2010/11, before easing back to the 2008/09 and 2009/10 levels in the POI.

As we have already mentioned, internal transfers have consistently exceeded domestic external sales since 2008. However the difference in the sales volumes of those two channels started to widen from 2009/10. BlueScope increased its internal sales and export sales but reduced its external domestic sales. The reasons for this need to be explored. For example:

- is it the case that BlueScope increased its production levels to unrealistic levels, such that the only outlet for its production was low priced exports and internal transfers?

- is there any substance to the allegations made by several parties that BlueScope sometimes cannot meet their demand,[3] and is this because it preferred making internal transfers to CPD for higher value-adding?

Conscious decisions by BlueScope to give preference to export sales and internal transfers over external domestic sales would definitely encourage its Australian customers to seek and then maintain sources of reliable supply from other places.

It is also evident from various index tables in the Application that BlueScope increased its export sales at a time when it faced increased costs of production and a higher-value Australian dollar. As a result, it acknowledges making large losses to such an extent that it eventually decided to withdraw from export markets.[4]

As a separate issue, it is not clear to us how the *"Sales and transfers"* chart in the Visit Report reflects the sales quantities as claimed by BlueScope in the indexed tables in the Application. The export sales line in the *"Sales and transfers"* chart was on par with the level of internal transfers in 2008/09 and 2009/10, and above the level of external domestic sales. Export sales experienced significant fluctuations during the 2009-2012 period, whereas domestic sales and internal transfers changed only slightly. The chart also suggests that the combination of internal transfers and external domestic sales volume would have been higher than that of export sales.

However, our review of information from the Application indicates that export sales have consistently accounted for about 55% of BlueScope's total sales since 2009/10 despite the volume variance indicated in the *"Sales and transfers"* chart.[5]

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3 Submission by Dematic Pty Ltd dated 25 July, at page 2; SK Steel Australia Importer Visit Report, at page 17. See also GS Global Importer Visit Report, in which GS Global advised that in the distribution market BlueScope only supplies to its franchised distributors.

4 BlueScope ASX media release dated 22 August 2011; BlueScope FY2011 Results and Business Update Presentation

5 BlueScope Application, page 21. It is not possible for us to work out the ratio for 2008/09 because the Applicant refers to it as the base year of the index.

Like goods quantity	2008/09	2009/10	2010/11	2011/12
Australian market	100	84.68	90.45	78.92
Export market	100	103.00	155.65	99.30
Total	100	94.72	126.17	90.09

If internal transfers are taken into account, then according to the *"Sales and transfers"* chart BlueScope has not suffered any volume reduction in the recent period at all. Its domestic external sales slipped slightly in 2009/10, most likely because of the effects of the GFC. There was an improvement in its domestic external sales volume in 2010/11 – the period which BlueScope alleges to be the "commencement of dumping". The external domestic sales level in 2011/12 then descended to a level below that of 2009/10 (noting the overall reduced market size in 2011/12). On the other hand, BlueScope enjoyed steady internal sales of HRC from 2008/09 to 2010/11, and a significant increase in the volume of these internal transfers in the POI. The degree of that increase apparently surpassed the slight decrease in external domestic sales over the same period of time.

This significant improvement in overall sales volume, in 2011/12 in particular, contradicts BlueScope's claim that *"BlueScope's domestic sales quantities and revenues for the GUC have declined in 2011/12 as BlueScope has sought to respond to dumped exports of HRC from Korea, Taiwan, Japan and Malaysia"*.

Therefore, in an overall recessing market from 2009 to 2012, BlueScope has not only managed to increase its already dominant market share, but also to maintain, if not improve, its total sales volume as well. An argument that it had to make those internal transfers because of decreases in its external sales volumes must be very seriously interrogated and analysed. CPD processes the HRC under investigation and then sells a value-added product into the market. Choosing to service that sales channel is just as likely to have been the result of a commercial strategy to exploit a different market. That choice could not be said to be a choice necessitated by alleged dumping – and the transfer price into that channel at "market prices for HRC" might not have been a realistic commercial decision at all, given BlueScope Steel's control over that whole chain of production.

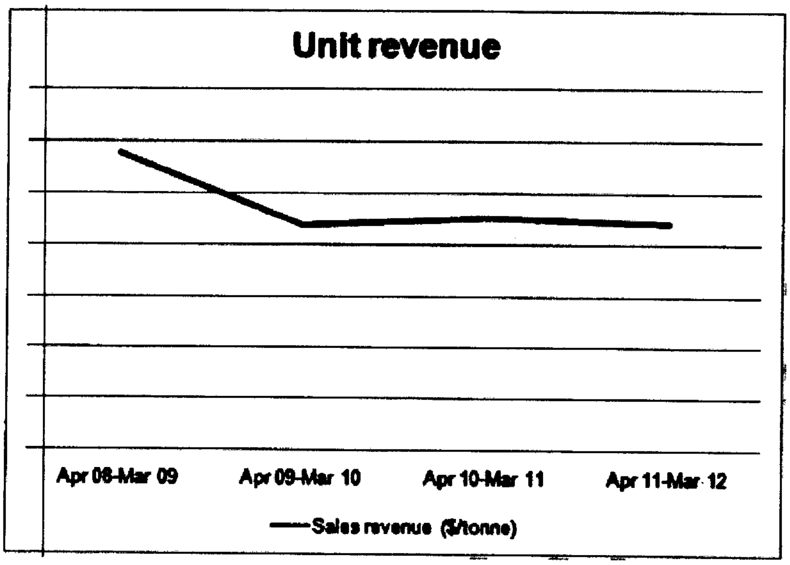
To return to our main point – the facts reasonably disprove BlueScope's claim of material injury caused by dumping in terms of loss of sales volumes. The alleged decline in domestic sales volume seems to be "optical" only. It is merely the result of the exclusion of BlueScope's growing volume of "internal transfers" from the actual sales. Those "internal transfers" made up a large proportion of BlueScope's total HRC production and sales. There is no reason why such sales should not be included in Customs' consideration of BlueScope's material injury claims and in assessing whether there is any causal link between such claimed injury and any alleged dumping.

E BlueScope has not suffered price depression

BlueScope claims that it has suffered material injury in the form of price depression. However, as observed by Customs in the Visit Report:

> *BlueScope's prices fell in 2009-10, rose marginally in 2010-11 and fell marginally in 2011-12. BlueScope's prices in 2011-12 were marginally higher than in 2009-10...*

This description reflects the following chart from the Visit Report:



It is clear that the only price depression that may be considered "real" or "material" is the fall of price in 2009/10 compared to that of 2008/09. The 2009 period was affected by the GFC, as BlueScope has acknowledged:

> *The Australian market for HRC was adversely affected by a reduction in demand in 2009/10 attributable to the global economic slowdown. BlueScope's HRC sales volume contracted, along with demand across the Australian HRC market.*
>
> *The HRC market contracted in the 2009/10, with all suppliers experiencing reduced demand (of levels up to 20 per cent).*

As noted in Customs' Initiation Report No 188:

> *BlueScope states that the Australian market for HRC was adversely affected by a reduction in demand in 2009/10 attributable to the global economic slowdown. The market demand recovered in 2010/11 but not to pre-2009 levels.*

Further, various parties have pointed out that whilst demand in the HRC market recovered in 2010/11, it has not recovered to the same level as existed before the GFC.[6]

We submit that it would not be sensible to conduct any price analysis including the pre-2009 period. The analysis should proceed on the basis of the period since then, in a period not distorted by the extraordinary factors encountered during the GFC. BlueScope itself confirms that this should be the relevant period for analysis, saying:

> *...material injury from the allegedly dumped and subsidised exports commenced during 2010/11. BlueScope has experienced further injury in 2011/12 as the alleged dumped imports have undercut BlueScope's selling prices resulting in price depression, price suppression and reduced profits and profitability.*

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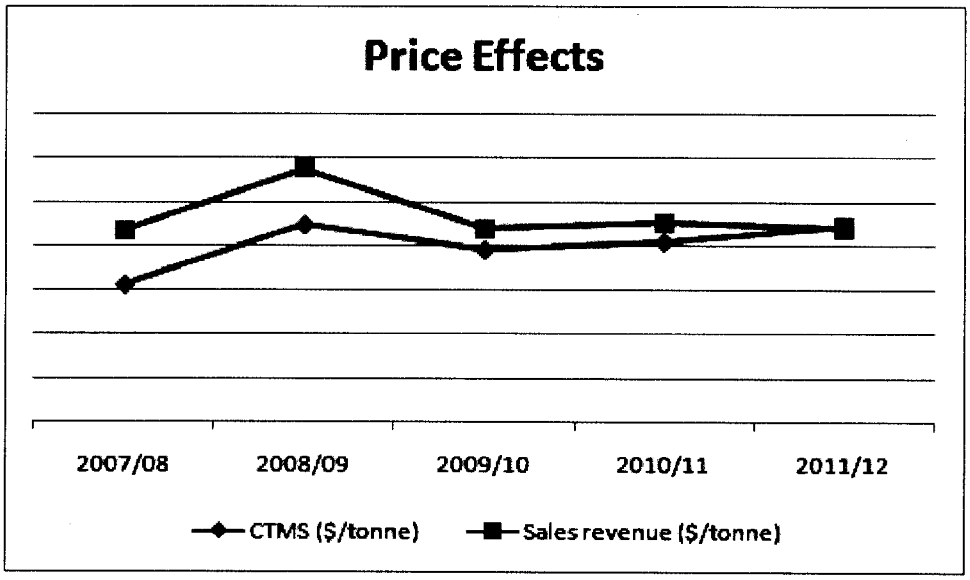
6 Submission by Tokyo Boeki Australia dated 24 July 2012 and Submission by Ford Motors dated 2 August 2012, claiming that car production has been in decline since at least 2009 and there has been no signs of recovery. See also submission by OneSteel dated 1 August 2012, testifying that pipe and tube industry production has been in reduction since 2009.

Accordingly there should be no need to go any further back than 2009/10 as part of Customs' price analysis. As we have quoted above from the Visit Report, BlueScope's price in the "further injury" year of 2011/12 actually increased from that which existed in 2009/10. BlueScope's price in the so called "dumping commencement" year also increased from its previous period. The only reduction was a marginal fall in 2011/12. BlueScope's price trend in the past years has not presented any overall downward trend or downward fluctuation. Its prices during 2010/11 and 2011/12 demonstrate a slight growth trend over the longer term, ignoring the exceptionally high pre-GFC price spike of 2008/09.

This is illustrated by the chart provided in Customs' Consideration Report No. 188, using BlueScope's unit revenue data, which is extracted below:



As shown in this chart, BlueScope's HRC price has been quite stable apart from the surge in the 2008/09 period. Prices during 2010/11 and 2011/12 appear to be higher than in 2007/08 and 2009/10.

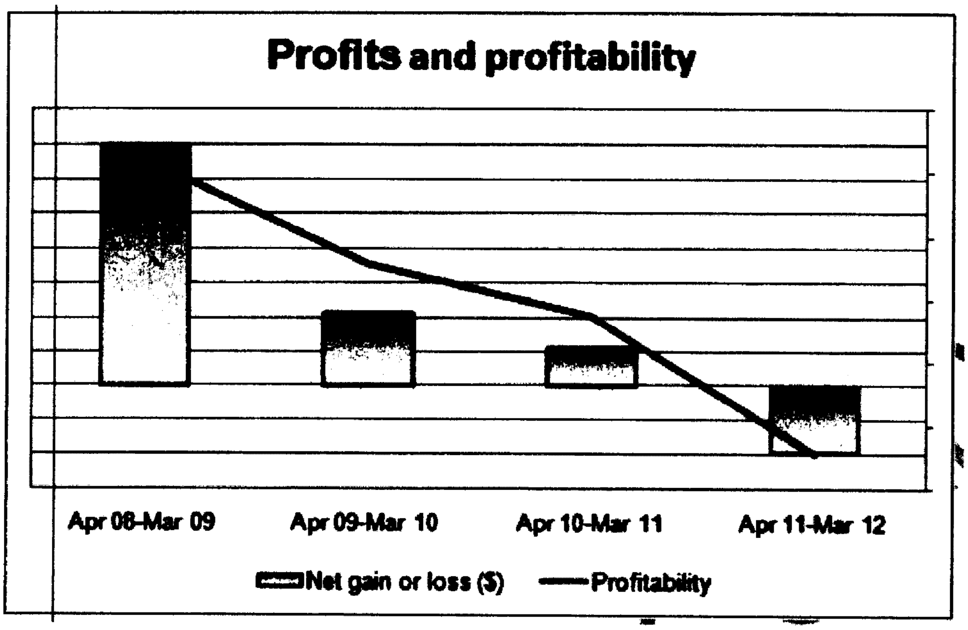
Therefore, Customs should find that BlueScope has not suffered any injury in the form of price depression since 2009. Even if some level of depression occurred during 2009/10 compared to the pre-GFC price spike, such depression seems to have been an isolated event and cannot be attributed to any alleged dumping.

Further, as discussed above, BlueScope's data indicates that BlueScope achieved its highest market share for the injury analysis period during 2009/10. This increase in market share coincides with the contraction of the HRC market and the sharp price reductions at that time. After 2009/10, BlueScope's HRC price increased. These circumstances contradict BlueScope's claim that it lowered prices in response to the commencement of dumping from 2010/11. The price went down before the alleged dumping started.

In this light BlueScope's claim that "dumped imports" undercut its prices and that it suffered price depression in response to such undercutting must be doubted. We submit that the true reason for the price depression in 2009/10 – an era prior to any alleged dumping – was because of BlueScope's own long term objective *"to maintain sales volumes to hold market share where possible"*. Pursuing this objective led BlueScope to increase its already high market share, from 78% in 2008/09 to the improved level of 81.3% in 2009/10 and the similar level of 79.1% in 2011/12.

F BlueScope's profit-related injury claim is unreliable

BlueScope has claimed that it has suffered injury in the form of reduced profits and profitability. A chart relating to this claim is provided in the Visit Report as below:



It is not clear to us whether the profit information relates solely to BlueScope's domestic sales and, if so, whether it also includes the large proportion of "internal" sales. Indeed, BlueScope's Application does not explain which data was for its total domestic market and which was only related to external domestic sales. We also do not know whether the profit and profitability data as shown in the chart is affected by BlueScope's large amount of loss-making sales in its export market.

BlueScope has claimed that its cost of production increased about 10% in 2011/12 when compared to 2010/11. BlueScope then claims that its selling price was suppressed, and that this combination of factors led to reduced profits and profitability.

We note that these things took place in an HRC market which was declining overall. We also note that during 2011/12, BlueScope's production volume – a figure including the production for internal transfer and exports - reached its highest point since 2008. One could reasonably be expected to question why BlueScope decided to increase production at higher costs in a declining market. Further, one could reasonably conclude that this would inevitably result in an oversupply of HRC and excessive inventory costs.

The relationship between BlueScope's production and its export sales – and the impact of it allegedly shutting down its export activity - needs to be explored in this context. As shown in one sales quantity table set out above,[7] BlueScope's exports increased by about 20% during 2009/10, followed by another 33% increase in 2010/11. Then, in 2011/12, BlueScope decided to shut down half of its capacity and to quit its export business. As a result, its exports then eased back to their 2008/09 levels.

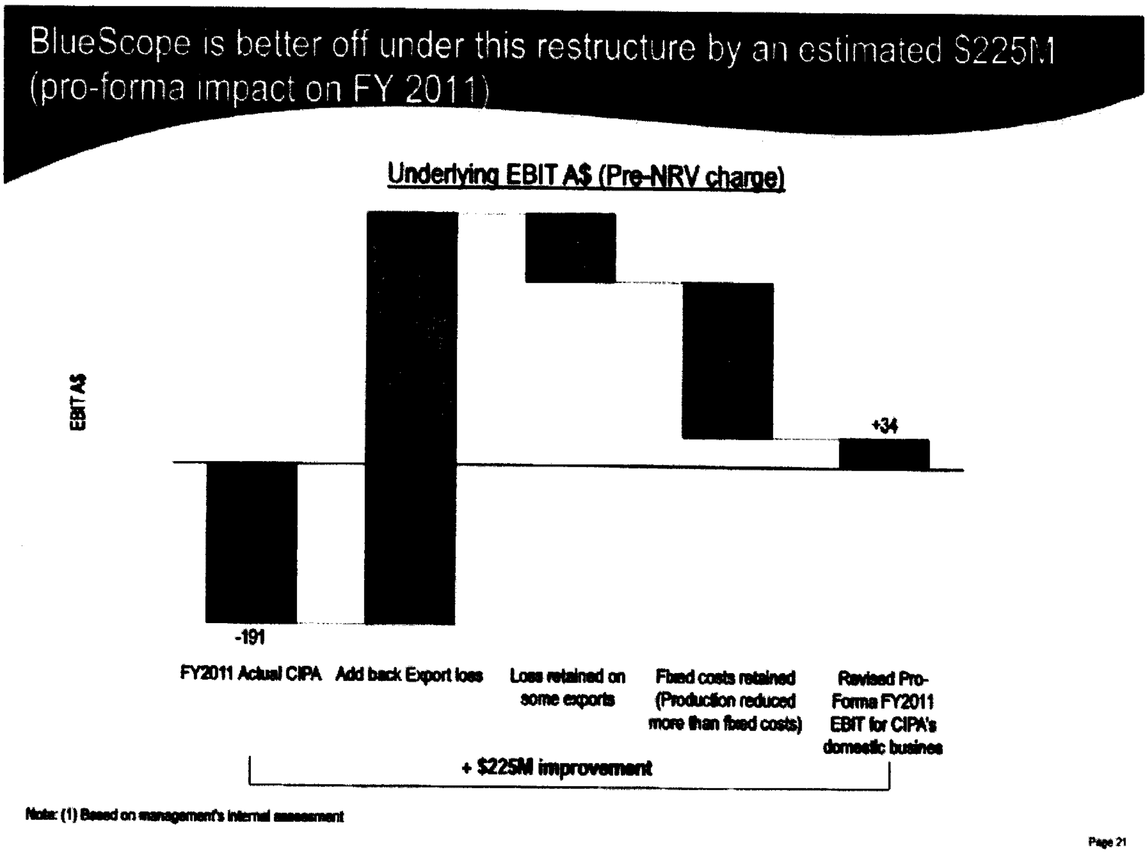
The increase in BlueScope's export sales volume in 2009/10 and 2010/11 did not result in increased revenue. BlueScope's increased focus on production for export and its increased export sales took place at a time during which it was making huge losses amidst growing costs of production in an overall declining Australian market. The *"Indexed table of Applicant's sales*

[7] See above at page 9

values for like goods" in the Application[8] indicates that BlueScope's revenue dropped 41% in 2009/10, 11.75% in 2010/11 and about 35% in 2011/12, compared to the base year of 2008/09.

Production of loss-making exports must inevitably affect production overall, and therefore must also affect BlueScope's "domestic" performance. We believe this is demonstrated in BlueScope's own FY2011 results presentation, in which it announced the decision to stop exporting and to shut down 50% of its HRC and coated products lines.

A chart used by BlueScope in that presentation is extracted below:[9]



8 BlueScope Application, page 21

9 BlueScope FY2011 Result and Business Update Presentation, at page 21

As shown in this chart, BlueScope's Coated & Industrial Product Australian division ("CIPA"), of which the production and sale of HRC is a major part would have had a positive EBIT result in FY2011 for its domestic business without its loss making export business.

Therefore, BlueScope's claim regarding its reduced profits and profitability is likely to have been affected by its strategy and market forecasts relating to both the export and the domestic markets. BlueScope's export performance – and the closedown of a large part of its production capacity – have both adversely affected its financial performance. The significance of the impact caused by the loss making export sales; their production; and the closedown of their production, must be examined closely. The injury caused by that impact must not be attributed to the importation of HRC from any country, whether dumped or not.

We have also referred to BlueScope's objective of maintaining a dominant market share. This has driven it to be the price setter in the Australian market. One of the importers of HRC exported from Korea noted that BlueScope *"dominates and is the price setter in the HRC market in Australia"*.[10] Another importer claims that BlueScope's fully owned subsidiary, New Zealand Steel Limited, is the price setter in the market.[11] [12]

Various interested parties have stated that BlueScope's product is the lower quality product on the market – arguably suggesting that BlueScope needs to offer an even lower price in the market to maintain market share.

This accumulation of factors:

- a dominant market share;
- a policy of maintaining market share;
- maintaining prices to maintain that share, despite higher costs;

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10 GS Global Importer Visit Report, page 14

11 CITIC Australia Commodity Trading Pty Ltd Importer Visit Report, page 12

12 Customs cannot ignore the factor of NZ prices as a cause of injury. It makes no difference at all that these are from a company related to BlueScope. If they are sold at a low price in Australia, they are a factor causing injury which is unrelated to dumping. They are not Australian production.

- diversion of supply to CPD and the internal price chosen for that diversion;
- a lower quality product, which suffers in comparison to higher quality import competition and must necessarily be priced less than that competition; and
- exit from export activity and resultant closedown and disruptions caused by that decision,

suggest that BlueScope's decreased profitability has been due to its own internal policies and problems rather than anything done by the exporters against whom it has levelled this dumping complaint.

Indeed, in its FY2012 Financial Statement presentation, BlueScope does not blame "dumping" by name at all, and suggests that its performance will improve without the "protection" of dumping duties. In that presentation, BlueScope:[13]

- blames its net loss after tax ("NLAT") on *"lower spread and higher fixed conversion costs per unit associated with the closure of No. 6 Blast Furnace (No. 6 BF) partly offset by lower loss making exports and favourable FX"*;
- blames its overall lower sales revenue on the *"stronger A$ vs US$, lower sales volumes (largely due to halving Australian steel production from October 2011) and lower sales prices"*;
- blames the losses incurred by its CIPA division on *"reduced spread, higher fixed conversion costs per unit as a result of the BF closure and adverse domestic product mix partly offset by lower loss making exports and favourable FX"*;
- blames lower domestic prices of CIPA on *"a stronger AUD:USD and increased competition from imports"* and also refers to *"lower overall domestic volumes"* (a claim which we have refuted).

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13 BlueScope FY2012 Financial Results Presentation, page 33; also see BlueScope FY2012 Financial Report.

However, in that presentation BlueScope expects CIPA to deliver positive underlying earnings in FY2013. In this regard, BlueScope:

- relies upon *"domestic margin and demand"*;
- says this outcome will arise through *"restructure benefits"*, specifically *"raw material mix, reduction in exports to single blast furnace"*; and
- refers to the *"potential for slight domestic margin improvement (pre any success in anti-dumping actions)"*.

We do not doubt that BlueScope itself believes that dumped imports have caused it material injury. Otherwise, it would not have lodged its Application. However it is the task of Australian Customs to sift through the circumstances and to properly assess the evidence. Our point about the BlueScope presentation is that it speaks of the impacts of factors such as the closure of one of its furnaces; the appreciation of the Australian dollar; and adverse domestic product mix. Moreover, it bases its recovery on a pick-up in domestic margin and demand; the benefits of its costly restructure; and domestic margin improvement <u>without any success in anti-dumping actions</u>.

We submit that this presentation honestly assesses the problems that BlueScope has faced, and also honestly admits that in its position as the dominant market participant it can achieve improvements in pricing in the absence of dumping duties.

G BlueScope's alleged injury is in market sectors which have themselves been affected by other factors

In BlueScope's application, it is stated that its HRC is sold within the following three key Australian market sectors:

- the pipe and tube market;
- the automotive market; and
- the general manufacturing market.

BlueScope notes that the pipe and tube sector is the largest HRC market sector by volume. BlueScope has identified that the main source of imports of HRC into the pipe and tube sector was from two Japanese companies, namely JFE Steel and Nippon Steel. This has also been mentioned in submissions made by OneSteel ATM. We understand that OneSteel is the single largest pipe and tube manufacturer in Australia. The other pipe and tube manufacturer - Orrcon Steel - advised that it has imported some of its HRC, primarily from Korea.

Further, the Applicant alleges that that its injury in the form of price suppression and depression is particularly evident in its sales to the pipe and tube sector, and that it has had to "respond" to alleged dumped pricing in that sector.

In relation to this claim by BlueScope, we simply note that the pipe and tube sector has itself been affected by low pricing – of imported pipe and tube. However the like goods here are HRC, not pipe and tube.

Another key HRC market is the automotive sector. As indicated in a number of submissions from the major Australian automotive manufacturers, including Toyota Motor, Ford and GM Holden, they have sourced HRC from Korea and Japan. Those sectors have themselves been affected by reduced production levels, and most – if not all – sourcing decisions are based on global considerations of quality, volume and price. We submit that any impacts on BlueScope by reason of reduced or terminated HRC purchases by a global car manufacturer operating within Australia are unrelated to dumping of HRC in Australia. Instead, they relate to production chain decisions made outside Australia.

CSC has been one of the higher volume exporters to Australia. CSC understands that its products are mainly sold to the general manufacturing sector. However the injury of which BlueScope appears to most complain about is in markets that are serviced by the exporters of other countries which are here under investigation – the automotive and pipe and tube sectors.

In the general manufacturing sector, CSC's products are sold either to distributors that BlueScope does not franchise or to BlueScope distributors who require product types that BlueScope does not produce. CSC's customers advise that CSC's products do not generally compete "head to head" with the product supplied by the Australian HRC industry.

The reason we draw attention to all of these factors is because they cast doubt on the "materiality" of any claimed injury and of any "causal link". As we have outlined:

- the sectors in which BlueScope claims to have been most affected by imports are subject to their own depressed conditions, and by global purchasing decisions in which a domestic supplier such as BlueScope will inevitably feature less and less; and
- CSC – a larger exporter amongst the exporters of countries under investigation - is largely absent from the markets in which the injury is most alleged to have occurred.

H Other causes of injury

CSC notes that many interested parties have submitted that Australian domestic demand has been in decline due to:

- the weakening of Australian manufacturing industry;[14]
- the slowdown in the housing sector;[15] and
- imports of downstream product – such as fabricated steel goods and other higher value-added goods - made affordable by the high value of the Australian dollar.[16]

We also draw Customs' attention to the submission made by the Australian Steel Association, which refers to the detrimental effects on BlueScope's customer relationships arising from its strategic decision to *"push into downstream manufacturing operations that directly compete and potentially alienate the Applicant's customer base"*.[17] This appears to be supported by the fact that BlueScope's internal sales of HRC, which are mostly used to make downstream products, have steadily increased since 2008/09, and experienced accelerated growth during

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14 Submission by Australia Steel Association dated 25 July 2012; submission by Tokyo Boeki Australia dated 24 July 2012; submission by Ford Motors dated 2 August 2012; submission by OneSteel dated 1 August 2012; GS Global Visit Report; submission by GM Holden dated 25 July; Stemcor Australia Importer Visit Report; and OneSteel Trading Pty Ltd Importer Visit Report.

15 Stemcor Australia Importer Visit Report; OneSteel Trading Pty Ltd Importer Visit Report, at page 22.

16 Submission by Australia Steel Association dated 25 July 2012; GS Global Visit Report, at page 18; submission by AD Coote & Co dated 11 July 2012; submission by Dematic dated 25 July at page 2.

17 *Ibid*

2010/11 and 2011/12. These periods coincide with BlueScope's alleged dumping and injury claim.

This upward trend in internal transfers is to be contrasted with BlueScope's external domestic sales. This speaks to a change in BlueScope's product mix and marketing, dictated by a desire for greater profits. However the fact that BlueScope wants higher profits in a higher-order market (if that be the fact), and any failure of its attempts to achieve that objective (reflected in its internal transfer pricing), cannot be blamed on imports of HRC in the lower-order market.

BlueScope claims that *"the margin erosion can be directly linked to BlueScope responding to pricing offers for dumped imports... "*. As discussed above,[18] the most direct cause of BlueScope's reduced profitability appears to have been the circumstances surrounding its export production and sales, and the related close-down of a large part of its capacity. Without those factors BlueScope admits that it would have achieved a profitable position on its domestic sales of HRC. BlueScope continued to increase its production volume during the POI despite the market slowdown and its loss making exports. Its decision to increase production levels by about 5% in 2011/12 and then to achieve a revenue reduction of about 15% compared to 2010/11 is particularly puzzling. CSC is of the view that these outcomes are the result of business decisions which turned out to be inappropriate.

As discussed above and as shown in the "price effect" chart,[19] HRC prices have been flat since 2009. CSC views this as a strong price "trend", reflecting the continuation of the global economic slowdown since the GFC. In CSC's opinion, it is simply not reasonable to expect any company to be able to increase its price in an overall declining market. Certainly, increasing production levels and then quitting that production in low price markets is not a sensible approach to adopt. BlueScope's announcement shows that it now realises this. Imports should not be blamed.

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18 See Section F above at page 14 to18

19 See above at page 13

Lastly, we wish to refute the claim made on behalf of the Korean exporter POSCO that the statistics available *"demonstrate that any alleged dumping relates predominantly to export from Taiwan"*. The POSCO submission attempts to justify that claim by saying that *"exports from Korea have remained relatively stable throughout the investigation period, whereas exports from Taiwan have dramatically increased"*.

It is neither possible nor appropriate to attribute any material injury caused by alleged dumping to any particular source of imports just because that source has enjoyed higher export volumes than other exporters. Material injury and causation analysis requires price, dumping margins and actual market impacts to be taken into account. Exports of HRC from Taiwan have grown over the past years, as CSC's better product quality has attracted increasing recognition in Australia.[20] Our client does not consider such growth to have been *"dramatic"*. Moreover, as outlined above,[21] close examination of the data suggests that BlueScope has not suffered volume-related injury in recent years, and that its market share has been either at par or above its pre-GFC level. Accordingly, any increase in exports from Taiwan has only resulted in a change of market share as between exporters. The fact that export from Taiwan increased during the investigation period has little relevance in determining whether material injury has occurred and whether such injury is caused by dumping.

I No apparent link between alleged dumping and injury

BlueScope claims that there are two links between alleged dumping and its injury. They are:

- that the market share of imports from countries subject to its Application increased over the period of analysis, whilst imports from other sources declined and the overall market contracted; and

20 CSC also notes the submissions made by CITIC and Wright Steel, who state that products imported from Taiwan are of superior quality and are available in a wider range than the HRC offered by BlueScope. See CITIC Australia Visit Report, at page 12 and 17

21 See Section D above at page 6 to 10.

- that the Applicant reduced its price to *"respond"* to the alleged dumped price.[22]

We have already explained that the increase in the market share of imports from the nominated countries has had no impact on BlueScope's own market share. To the contrary, BlueScope increased its market share. Accordingly, there is no clear "link" between the market share increase of the allegedly dumped imports and any injury suffered by BlueScope.

We have also observed that BlueScope did not reduce its price as it claimed "in response" to dumping – its price dropped because of the global economic slowdown starting form 2009, a period that predates any alleged dumping and the period of investigation in this case. BlueScope's price actually increased in 2010/11 and 2011/12 from the 2009/10 level.

Even if BlueScope did reduce its price, it has admitted that this was to achieve its objective of maintaining sales volume and market share where possible. We submit that an attempt to maintain sales volume at a time of declining demand, while increasing production at higher cost, invites injury.

We understand that BlueScope attempted to achieve this objective by implementing an *"import parity"* pricing policy. BlueScope further claims that it was required to *"benchmark prices at the lower end of the import prices"*. BlueScope's policy of undercutting the majority of import prices by always matching the lower end of import prices requires an answer to the questions: which prices were the lowest, and was BlueScope's market information about price competition accurate enough and reliable enough for it to make its pricing decisions?

One importer has advised Customs that the *"lower end"* price was often that of BlueScope's own New Zealand operation. A submission made by POSCO suggests that exports from China were considered to be the major source of price competition.[23] Indeed, CSC's market intelligence suggests that BlueScope New Zealand accounts for the majority of the "other exporter" market share in Australia. The influence of BlueScope New Zealand and its impact on the market and on BlueScope Australia's performance must be considered carefully, and such

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22 BlueScope Application, at page 27.

23 Submission by POSCO dated 8 August 2012, at page 7.

influence should be treated as an externally injurious factor which is unrelated to dumping. Customs should ask itself whether BlueScope's pricing decisions during the POI were the kind of rational commercial decisions that a dominant market player could have been justified in making in the market in which it competed and under the conditions it faced.

J BlueScope's other claimed injuries

BlueScope has also claimed injury in the form of reduced employment, reduced wages expenses[24] and reduced return on investment. These alleged injury factors were not discussed in the Visit Report, nor were they identified as injuries suffered by BlueScope in the "summary of major injury indicators".[25]

Nonetheless, we would expect these "injuries" to have been the direct result of BlueScope's restructure and the closure of some of its production capacity. We understand – from BlueScope's own announcements – that this arose from its decision to exit export markets, a factor which can have no connection to the alleged dumping.

By doing these things, it seems that BlueScope actually attracted a significant amount of new "investment" – in the form of the benefits afforded to it by the Australian Government under the Steel Transformation Plan, and its joint venture with Nippon Steel.

K Concluding comments

Our client CSC respectfully submits that:

- BlueScope has not suffered either a market share loss, or a loss of volume, in its domestic sales of HRC.
- Internal transfers for downstream production are relevantly "domestic sales" and do not represent injury caused by dumping, whether on a *per se* basis or in the circumstances of this case.

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24 BlueScope Visit Report, at page 23; Consideration Report No 188, at page 5; also see BlueScope Application, at page 27.

25 BlueScope Visit Report, at page 29

- BlueScope's decreased profitability has been due to its own internal policies and problems.
- BlueScope's now-ended export business and its restructure have very significantly impacted on its overall performance.
- There have been a number of other real, identifiable and significant causes of injury to BlueScope, which cannot be attributed to alleged dumping.

China Steel Corporation has a strong commitment to Australia and to Australian industry. It is an investor in the Australian resources industry. It is supportive of its suppliers and its customers and intends to build and maintain long-lasting relationships with them. It offers quality products at fair prices.

CSC requests fair consideration and evaluation of its submissions, and pledges its continued cooperation to Australian Customs in its investigation.

Daniel Moulis
Principal

Charles Zhan
Solicitor