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20 December 2012

Ms Joanne Reid  
Director, Operations 3  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
Canberra  
Australian Capital Territory 2601

Dear Ms Reid

Dongbu Steel Co., Ltd (“Dongbu Steel”) wishes to make its views known about issues which have come to light in submissions placed on the public record in the investigations concerning the alleged dumping of coated steel products.<sup>1</sup>

Our concerns relate to the trade practices of the Australian industry applicant (“BlueScope”), and what those practices might be telling us about the injury position of the Australian industry and why it has “constructed” its dumping complaint in the way that it has.

We reference the letter to the Australian Customs and Border Protection Service (“Customs”) dated 5 November 2012, and Section G of POSCO’s submission to Customs dated 16 November 2012. In those submissions, POSCO drew attention to what it alleged are significant volumes of coated steel produced by BlueScope which do not appear to be accounted for in its application.

In the 5 November letter POSCO asked five questions regarding BlueScope’s production and sales of unpainted coated steel and of painted (“pre-painted”) coated steel. BlueScope subsequently responded to these questions – in a letter dated 14 November 2012 - by way of simple dismissal, rather than by making an attempt at a reasoned and adequate rebuttal.

In the 16 November submission POSCO appears to have cogently raised its concern that Customs’ consideration of BlueScope’s coated steel production must include the production of all of BlueScope’s coated steel.

POSCO also argued that BlueScope’s business practices – how it decides to price one product compared to another, the quantities of product it makes available for sale, who it decides to sell to and the terms on which it sells – are relevant considerations in Customs’ assessment of “injury” and what might be the cause of such injury.

POSCO expressed concern about BlueScope’s presentation of its injury claim, and about accounting methodologies that might distort the reality of BlueScope’s coated steel production.

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<sup>1</sup> Dongbu Steel is an exporter of both GI (galvanized steel) and GL (zinc aluminium coated steel). We understand that most of BlueScope’s painted coated steel uses GL as a substrate.

Lastly, POSCO mentioned the probability of a “like goods” overlap between some painted and unpainted coated steel products, in some applications.

Dongbu Steel believes that there are now a number of pieces of information on the public record of these investigations which give credence to POSCO’s concerns. Evidence has been presented to Customs which indicates the likelihood that BlueScope has engaged in business strategies which constitute restrictive trade practices. These matters are highly relevant to assessing the nature of the competition between the respective producers of the goods under consideration.

Dongbu Steel has considered these matters [CONFIDENTIAL TEXT DELETED] and now presents its views in respect of the matters raised.

### **Consideration of “restrictive trade practices” and “competition”**

Section 269TAE(2A)(d) of the *Customs Act* 1901 (“the Act”) provides that restrictive trade practices of, and competition between, foreign and Australian producers of like goods are factors other than the exportation of “dumped” goods that might be causing injury to the Australian industry concerned. These factors are to be considered in making a determination as to whether “dumping” has caused material injury to the industry, or not.

Dongbu Steel submits that the public record indicates a number of practices on BlueScope’s part which are relevant to the assessment which is called for by Section 269TAE(2A)(d).

### **Refusals to supply coated steel**

In the visit report concerning OneSteel Coil Coaters, it is made clear that BlueScope chooses not to supply that company with unpainted coated steel. The visit report states:

*...OneSteel Coil Coaters conceded it is likely that the applicant does produce unchromated aluminium zinc and galvanised coil without resin coating which is consumed in its own business which is relevantly identical to OneSteel Coil Coaters business in terms of its operation, and products produced. OneSteel Coil Coaters submitted that the applicant has been approached as a source of supply, but has never supplied a competitive and commercially realistic supply offer which would be acceptable to OneSteel Coil Coaters. [underlining supplied]*

...

*As stated previously OneSteel Coil Coaters submitted that they have sought to source raw coil from the applicant, but the applicant has not entered bona fide supply negotiations. We requested, and were provided with, evidence of the frustrated negotiation for supply initiated by OneSteel Coil Coaters with the applicant. [underlining supplied]*

Recalling POSCO’s suggestion that BlueScope’s painted coated steel sales are highly profitable, one can surmise that BlueScope’s non-supply of coated steel to another Australian painted coated steel producer is a strategic decision on its part to protect the profitable position it holds in the painted coated steel market. The visit report mentions the directly competitive interaction of the BlueScope and OneSteel “ColorGuard” painted products:

*...ColorGuard product is used by end users in Australia for non-residential construction and steel fabricated products and is the direct competitor with a relevantly similar painted steel product produced and sold in Australia by BlueScope.*  
[underlining supplied]

Whatever one might think of that strategy, the loss of sales arising thereby has nothing whatsoever to do with any alleged dumping of coated steel. The clear conclusion is that BlueScope refuses to sell its product to a potential and willing customer.

In the same context, Ace Gutters has advised Customs of its inability to obtain coated steel from BlueScope, despite an apparent willingness to do business with BlueScope:

*The company's main concerns centre around BlueScope's refusal to provide product on a reasonable commercial basis to them, forcing them to seek sources from overseas.*

We do not rely on this evidence merely to show that BlueScope has deprived itself of sales to OneSteel Coil Coaters and Ace Gutters. If that were the case, BlueScope might simply try to “wave away” any suggestion that this has caused it any substantial self-injury, because of its competitors’ small market shares – which Dongbu Steel would also reject.<sup>2</sup> However the main issue is not so much the sales it has deprived itself of, and the way this has “belittled” its potential customers, but rather what that refusal to sell allows it to do in the painted steel market.

We highlight these circumstances as evidence of the degree to which BlueScope wishes to protect its own dominant market position. In our view its refusal to sell to companies that could sell painted coated steel in Australia entrenches its dominance of the painted coated steel market, and admits the profitability of its sales into that market. Apparently, its statements that it makes coated steel available to Australian customers on reasonable commercial terms is not true. We suggest that BlueScope would only say that if it felt that the truth was in some way damaging to it – such as if the truth exposed a strategy that would detract from its claim to have been caused injury by dumping.

### **Obstructing market entry**

We wish to point out that the full story of BlueScope’s opposition to the existence of Ace Gutters as a potential business competitor does not appear on the public record of this investigation.

Our lawyer’s research has established that BlueScope objected to development applications lodged by Ace Gutters for the establishment of its paint lines in Hurstville – despite the fact that BlueScope has no landholding in Hurstville that could be affected by an approval to the development application in a planning sense.<sup>3</sup>

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<sup>2</sup> Nonetheless, that defence would not stand up to scrutiny either. BlueScope’s “selective” choice of customer appears to be a fairly common practice: see *Submission of OneSteel Australian Tube Mills dated 27 November 2012*, at page 2; *Record of meeting between Ace Gutters and Australian Customs, dated 13 November 2012*; and *Marubeni-Itochu Steel Oceania Pty Ltd Importer Visit Report*, at page 28.

<sup>3</sup> *Ace Gutters Pty Limited v Hurstville City Council* [2008] NSWLEC 1204 (29 May 2008) and *BlueScope Steel Limited v Hurstville City Council & Anor* [2008] NSWLEC 207 (7 July 2008).

BlueScope took its concerns all the way to the Land and Environment Court. The Court had to deal with contorted positions adopted by BlueScope – that it was “*not directly affected*”, but that it wished to “*provide meaningful assistance, relying on its own knowledge of this kind of plant and its operation, and engage consultants to prepare reports of an expert nature*”. The Court noted that Ace Gutters was a competitor to BlueScope in the roof guttering market.

The Court denied that BlueScope had standing:

*Whilst BlueScope is to be commended for its public spirit in seeking to ensure that this application is appropriately dealt with, this is not enough to warrant joinder and I thus reject the application that they be joined as second respondent to these proceedings.*

The words used by the Court in our view indicate a critical attitude of the position adopted by BlueScope – that of seeking to restrict *business competition* in a *town planning forum*.

Dongbu Steel also notes references in the public record to what appear to be extremely onerous “loyalty program” requirements demanded by BlueScope of major customers. In the visit report concerning CITIC Australia Commodity Trading Pty Limited, this is said:

*...due to BlueScope’s loyalty agreement with domestic customers (specifying that 98-99% of total volume of the goods must be supplied by BlueScope), the import competition (of less than 2%) for these customers is limited and cannot be causing injury to the Australian industry...<sup>4</sup>*

It is unclear what the benefits of this loyalty agreement are, or what the consequences for breaching it may be. Dongbu Steel does not have enough details of this program in order to determine whether it unfairly restricts trade. However, we do wish to suggest that resistance on the part of customers to entering into such a restrictive supply arrangement would be reasonable. These loyalty arrangements – demanded by the sole Australian manufacturer – can also be expected to restrict market entry.<sup>5</sup>

### **The cost-price differentials between unpainted and painted coated steel**

Dongbu has been advised that latest FIS prices for galvanised coated steel from NZ Steel – a BlueScope company – are about AUD900 per MT. Dongbu has also been advised that the prices presently being charged for painted coated steel products by BlueScope are from AUD1600 to AUD2000 per MT, depending on specification. This is a *price* difference of from AUD700 to AUD1,100.

At the same time, the *cost* difference between Dongbu Steel’s unpainted and painted products is [CONFIDENTIAL TEXT DELETED], which at today’s exchange rate is equivalent to [CONFIDENTIAL TEXT DELETED].<sup>6</sup>

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<sup>4</sup> Page 34

<sup>5</sup> In this regard we also refer back to our comments in footnote 2. Loyalty agreements like this turn away prospective customers, rather than attracting them, and can operate as a disincentive to sales rather than an incentive. Demanding that customers enter into such arrangements – and a sensible reluctance on their part to do so – will necessarily exclude BlueScope from making sales that it might otherwise have made. In these circumstances it would be appropriate for customers to seek alternative sources of supply.

<sup>6</sup> This is an average, with the actual costs varying depending on paint types.

We request that Customs make inquiries of BlueScope to ascertain the true position. However as presently advised, it would appear to Dongbu Steel that BlueScope “uplifts” the price of its pre-painted coated steel by 78% to 122% when the difference in the cost of making the two products is in the region of [CONFIDENTIAL TEXT DELETED].

### **Competition – utilising a cross-subsidy**

What might the circumstances which we have documented above be telling us, and how is that relevant to Customs’ material injury analysis?

If BlueScope sells painted coated steel at a premium – the anecdotal evidence for which is set out above – then it has the ability to drive down the price of unpainted coated steel to below cost levels and still be profitable in that product group “overall”.

BlueScope’s business strategies tell us that protecting its market dominance in the painted coated steel market is a key consideration. Dongbu Steel postulates that in a contracting market for all coated steel products BlueScope has made a choice. That choice has been to support its painted coated steel profitability, and the quantity of the production of its coated steel going to that market, at the expense of its unpainted coated steel profitability. This can be seen as an attempt to increase its sales of unpainted coated steel for non-painting purposes.

Exporters - who are then forced to compete at those low prices – should not be “blamed” for the injury to BlueScope’s unpainted coated steel sales. Instead, BlueScope’s own restrictive trade practices, and the way it has chosen to compete, can be seen to be the cause of the injury it claims to have suffered in its sales of unpainted coated steel. In that context, its application is an unmerited and unjustifiable request for protection – a trade-off between a temporary period of “manageable” self-injury, and hoped-for long term price protection under a dumping duty regime.

### **“Selecting” the like goods and accounting methodologies**

Dongbu Steel supports POSCO’s concern that BlueScope should not be allowed to “tell” Customs which goods Customs should include and exclude in its injury analysis. So far as we are concerned, “coated steel production” is exactly that – the production of coated steel by BlueScope.

We wish to take that proposition one important step further. In its letter dated 14 November, BlueScope states as follows:

*Painted coated steel is not included in the coverage of goods the subject of the application. Sales to related parties (including internal transfer) are comparable to unrelated customer sales.”*

Is BlueScope suggesting that internal transfers of unpainted coated steel are recorded for accounting purposes at the “depressed” price that BlueScope has itself created in the coated steel market? We do not have enough information to know whether this is the case. However, if it is the case, then we submit that Customs should not accept a “depressed” unpainted coated steel price as the correct value of that steel. BlueScope’s prices for painted coated steel indicate buoyant profitability. If BlueScope did sell unpainted coated steel for painting and then on-sale into the painted coated steel market, BlueScope could obtain a better price for it than the price it obtains in selling unpainted coated steel for non-painting applications. There is no reason to accept the depressed price of BlueScope’s sales of unpainted coated steel as

the “transfer” price, when BlueScope itself has caused the price to be as low as it is.

If valued at other than cost, unpainted coated steel which is internally transferred to BlueScope’s painted steel lines should be valued at a level which reflects the proportionate profitability of the product for which it is the substrate.

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Lastly, Dongbu Steel wishes to make clear that these submissions are not to be interpreted as being an accusation of “unlawful” practices on the part of BlueScope. Business strategy is an aspect of competition in any market, and competitors will adopt strategies which utilise their competitive advantages and which will lead to their business success.

However, it must be recalled that BlueScope Steel is the only Australian producer of coated steel; that steel is an important resource for the downstream economy; and that BlueScope is the recipient of large amounts of public funds from the Australian Government.

Other anti-dumping investigations in other countries of the world concerning coated steel products have included painted steel in their scope. However in this case BlueScope has omitted painted coated steel. Dongbu believes that this says much about BlueScope’s strategy in this case, given the surrounding circumstances outlined in this letter. There is a very real prospect that BlueScope has been the intentional architect of its own injury – by driving prices of its unpainted coated steel lower, in an attempt to win market share, on the back of the profits that it earns in the market in which it restricts its competition.

Dongbu requests that BlueScope’s restrictive trade practices and competitive strategies should be carefully investigated. Customs has a legal duty, under Section 269TAE(2A)(d) of the Act, to properly consider the business practices of the applicant in assessing its causes of injury. Customs also has an administrative responsibility to guard against a misuse of the Australian anti-dumping system, and the unjustified protection and economic inefficiencies that would result from such a misuse.

Yours sincerely

Signature

\_\_\_\_\_ [signed] \_\_\_\_\_

Name: Keun Chae, Na

Position: Head of Legal Staff