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Australian Customs and Border Protection Service  
5 Constitution Avenue  
CANBERRA ACT 2600

19 September 2012

Our ref 11276/80133959

Dear Ms Cooke

**Hot rolled coil steel exported from the Republic of Korea, Taiwan, Japan and Malaysia**

We act for Nippon Steel Corporation (**Nippon Steel**) and wish to highlight, prior to the publication of the Statement of Essential Facts (**SEF**), a number of issues that we consider to be so fundamental that they ought to be addressed by Customs prior to such publication.

**1. Market segmentation**

- 1.1 In our submission dated 9 July 2012 (at paragraph 3.8), we noted the fact of market segmentation and addressed the issue of market segmentation as it impacts on price undercutting, price suppression and depression. We did so mindful of the fact that BlueScope:
- (a) correctly in our view, acknowledged in its application that there were three discrete markets: automotive, pipe and tubing, and general manufacturing;
  - (b) only referred to a single example of dumping in the pipe and tube market.
- 1.2 Later, in our submission dated 8 August 2012, we revisited the issue of market segmentation - and we did so in great detail (see paragraphs 4.1 to 4.9). Our client considers that it is clear that the market for hot rolled coil (**HRC**) steel should be treated as segmented at the very least between HRC supplied to the automotive industry, and that supplied to the pipe and tube and manufacturing industries.
- 1.3 Other parties have since corroborated the existence of the 3 separate markets including:
- (a) the Australian Steel Association;<sup>1</sup>
  - (b) Ford;<sup>2</sup>
  - (c) Toyota;<sup>3</sup>

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<sup>1</sup> Australian Steel Association Inc submission dated 25 July 2012.

<sup>2</sup> Ford Motor Company of Australia Limited submission dated 2 August 2012.

<sup>3</sup> Toyota Motor Corporation Australia Limited submission dated 25 July 2012.

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- (d) General Motors Holden;<sup>4</sup> and
- (e) importers including Tokyo Boeki<sup>5</sup> and Toyota Tsusho<sup>6</sup>.
- 1.4 It is notable that BlueScope did not respond to the submissions from Toyota, Ford, GMH, the Japanese exporters and importers or the submission from the Australian Steel Association, all of which evidence and treat the market as segmented.
- 1.5 Despite overwhelming evidence, and the self confessed statement of BlueScope, no indication from Customs has been given that the HRC steel market is segmented and, as such, material injury and causal link needs to be assessed with reference to each such market segment. Such statements are commonly contained in the consideration reports as it informs all interested parties of the approach that Customs will take in making a determination on material injury and causal link. It gives affected parties the opportunity to address the issue by reference to the market in which they compete - which is only fair.
- 1.6 We consider that a failure to address the issues of material injury and causal link without regard to the market segmentation would be irrational, would go against the weight of the evidence (which is all one way) and would be contrary to Customs' own practice. We expect that any analysis of material injury and causal link contained in the SEF would be based on a segmented market approach or that legally cogent reasons be provided as to how Customs satisfied itself about the homogeneity of the market.
2. **Cumulation**
- 2.1 The application filed by BlueScope includes imports from Japan, Taiwan, Korea and Malaysia. In order to cumulate all exports from the nominated countries for the purpose of assessing material injury and causal link, the Minister is required, under section 269TAE(2C) of the *Customs Act 1901* (Cth) (Act), to be satisfied that it is appropriate to consider the cumulative effect of those exportations after having regard to the conditions of competition between those goods, and the condition of competition between those goods and the "like" goods.
- 2.2 Our client adopts the submission made by JFE Steel Corporation, Kobe Steel Ltd and Nisshin Steel Co Ltd (by their lawyers Minter Ellison)<sup>7</sup> and considers that the exports from Japan cannot be cumulated with the exports from the other nominated countries for the reasons given in that submission. Not only is there market segmentation in the HRC industry, there is evidence that particular countries specialise in different segments. The product supplied by our client to its Australian automotive clients has been the subject of a supply arrangement and understanding of many decades duration and meets the car manufacturers' rigid specifications. There is no effective competition between the HRC steel supplied to the car manufacturers by our client and the applicant.

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<sup>4</sup> Hunt & Hunt Lawyers submission of 25 July 2012.

<sup>5</sup> Tokyo Boeki (Australia) Pty Ltd submission dated 24 July 2012.

<sup>6</sup> Toyota Tsusho (Australasia) Pty Ltd submissions dated 24 July 2012.

<sup>7</sup> Minter Ellison submission of 11 September 2012.

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- 2.3        Indeed, in its submission dated 2 August 2012, the Ford pointed out that:
- (a)        it does not consider the BlueScope grades to be equivalent to those currently engineered into their vehicles given the differences in key characteristics, such as yield and tensile strengths and crash/impact performance; and
  - (b)        BlueScope does not produce HRC having a thickness less than 1.6mm or a width greater than 1550mm.
- 2.4        In its submission dated 24 July 2012, Toyota Tsusho (Australasia) Pty Ltd pointed out that:
- (a)        BlueScope does not produce an equivalent product to our client's specifications;
  - (b)        BlueScope's product has not been approved for use in Toyota automobiles; or
  - (c)        BlueScope does not produce the requisite measurements of HRC steel.
- 2.5        These submissions make clear that BlueScope does not produce an equivalent grade to that required by Ford and Toyota and supplied by our client.
- 2.6        We submit that that there could be no lawful basis on which the Minister could reasonably conclude that cumulation of imports from Japan with those of the other nominated countries is *appropriate* given:
- (a)        first, the market segmentation; and
  - (b)        second, the *conditions of competition*<sup>8</sup>.
3.        **Export Price**
- 3.1        We refer to the Visit Report relating to Tokyo Boeki Australia Pty Ltd and to the recommendation that the export price should be established under section 269TAB(1)(c) of the Act using the invoice price between Tokyo Boeki Steel and Materials Ltd (TBSM) and Tokyo Boeki, less appropriate deductions.
- 3.2        The basis for not using section 269TAB(1) to determine an export price is stated by Customs to be that the goods "*appear*" not to have been purchased by the importer from the exporter.
- 3.3        This, however, is factually incorrect as TBSM is no more than an intermediary which has facilitated the transaction between "*Company Y*" and "*Company Z*" and the end purchaser (Ford). In this instance, Customs found that the actual negotiations relating to price took place between the steel producers and Ford with regard to Ford's specific requirements.<sup>9</sup>

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<sup>8</sup> By way of example, there is certainly no competition between our client's supply of product to the car manufacturers with say the light manufacturer AD Coote (see public file document 006).

<sup>9</sup> "However Ford negotiates prices directly with the Japanese steel mills. Ford Australia orders the goods which are manufactured specifically for Ford requirements." See Visit Report - Tokyo Boeki Australia Pty Ltd, page 11.

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3.4 It is clear that the function performed by Tokyo Boeki Australia Pty Ltd, utilising the services of TBSM, is that of a trading house and as such is not the "exporter" of the goods in question.<sup>10</sup>

3.5 As stated in the Dumping Manual:<sup>11</sup>

*"Customs and Border Protection considers that only in rare circumstances would an intermediary be found to be the exporter. Typically this will only occur where the intermediary has purchased the goods from the manufacturer; the manufacturer has no knowledge at all that the goods are destined for export to any country; and the essential role of the intermediary is that of a distributor rather than a trader and because it is acting more like a distributor intermediary may usually have its own inventory for all export sales."*

3.6 In this case, Customs found that the manufacturer had clear knowledge that the goods were being purchased by Ford, to its specific specification requirements, and that TSBM and Tokyo Boeki Australia Pty Ltd were merely facilitating the transaction.

3.7 In such circumstances, the export price is the price as determined in accordance with the provisions of s 269TAB(1) of the Act.

#### 4. Non-confidential summaries

4.1 We note that in the recent ACDN N0. 2012/42, "Provision of information for the public record", Customs stated that:

*"All redacted or deleted text in documentation provided for the Electronic Public Record (EPR) must be accompanied by a summary that contains sufficient detail to allow a reasonable understanding of the substance of the information. This may be done by providing bracketed text following any redacted text."*

4.2 The ACDN further stated that:

*"Sections or text of a confidential nature contained in documents provided for the public record may be blank or blacked out. It is a requirement that, to enable interested parties to obtain a reasonable understanding of the substance of information in public file documents, every deletion (or blacked out text) be followed by a bracketed summary containing sufficient detail to permit a reasonable understanding of the substance of the information deleted or blacked out. If such an explanation is not provided Customs and Border Protection may disregard the information in the submission."*

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<sup>10</sup> It is common for traders or other intermediaries to play a role in the exportation of the goods. These parties will typically provide services such as arranging transportation (both land and ocean), arranging port services, arranging loading, conducting price negotiations, arranging contracts with producer and customer alike, conveying the customer's specifications to the producer including quality, marking, and packing requirements, etc – Dumping Manual, page 25.

<sup>11</sup> Dumping Manual, page 26.

- 4.3 Finally, the ACDN makes it clear that adequate non-confidential summaries of confidential information should be placed on the public file at least two weeks prior to the publication of the SEF. We note that the date of publication of the SEF is the 3 October 2012. Accordingly, adequate non-confidential summaries should be placed on the public file by 19 September 2012.
- 4.4 Our client, in its submission of 9 July 2012, pointed out the inadequate nature of the non-confidential summaries provided by the Applicant. BlueScope responded in their submission dated 16 of July 2012 by simply restating in general terms their claims and without providing adequate non-confidential summaries. Our client's reply submission of 23 July 2012 pointed out that the anti-dumping authorities (namely Customs) bears the responsibility of ensuring that adequate non-confidential summaries are provided.<sup>12</sup> We submit that if adequate non-confidential summaries are not provided by 19 September 2012, then Customs should disregard that information.
5. **Other factors**
- 5.1 Our client reiterates that BlueScope has not provided cogent evidence of the impact of "*other factors*" which it itself described as the "*perfect storm*". No additional evidence was provided as part of its verification visit.
- 5.2 BlueScope has made nothing more than a simplistic claim that whilst the global downturn caused by the global financial crisis (GFC) resulted in a loss of sales volumes as the market contracted, exports from the nominated countries increased since 2009 and that it was more susceptible to the impact of dumping now given that the market is smaller.<sup>13</sup> Our client submits that the loss of sales due to the impact of the GFC would have a flow-on effect in terms of loss of profit and profitability to BlueScope. Secondly, BlueScope has failed to address the continued impact of the GFC. Thirdly, BlueScope is experiencing fundamental structural change (its has closed down certain mills).
- 5.3 Importantly, the Applicant refers to the increase in exports from the nominated countries since 2008-9 as evidence that this must be due to the effect of dumped imports from those nominated countries. However, as our client stated in its submission of 9 July 2012, the impact of dumped exports can only be considered during the investigation period.<sup>14</sup> This is acknowledged by Customs in its Dumping Manual.
- 5.4 When regard is had to the investigation period itself, which is the 2011/12 period, the application itself states that BlueScope's sales declined by 11.5% and volumes from the nominated countries declined by some 30.1%. During this same period, volumes from other imports, i.e. countries not included in the application, increased by some 13.8%. This illustrates that there was an overall decline in demand during this period, and that it was not due to "dumped" imports from the nominated countries. The decline in imports from the

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<sup>12</sup> See submission dated 23 July 2012, par 1.2.

<sup>13</sup> See Visit Report - BlueScope, page 34.

<sup>14</sup> Submission dated 9 July 2012, par 4.7.

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nominated countries was much greater, almost three times, the decline experienced by the Applicant.

5.5 This information does not support the argument being put forward by the Applicant that the cause of injury was from dumped imports from the nominated countries, yet this is the only evidence it offers to counter the overwhelming evidence of injury being caused by other factors.

6. **Conclusion**

6.1 As the publication of the SEF is scheduled for 3 October 2012, our client strongly urges Customs to consider and address the concerns contained in this submission prior to any such publication.

Yours sincerely



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