

Ms Lydia Cooke  
Manager, Operations 1  
International Trade Remedies Branch  
Australian Customs and Border Protection  
Service  
5 Constitution Avenue  
CANBERRA ACT 2600

28 September 2012

Our ref 11276/80133959

Dear Ms Cooke

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

We act for Nippon Steel Corporation (Nippon Steel).

This submission responds to the recent submissions of BlueScope Steel dated 17 September 2012.

In this submission we address certain issues directed towards automotive sector HRC and Japanese exports of HRC, as relevant to our client. Matters otherwise not addressed are not conceded.

1. **Market segmentation**

1.1 Our client has outlined the need for Customs to assess the alleged dumping by reference to the segmented market for HRC. We believe that proper market segmentation analysis, at least in relation to the automotive sector, will show that there has been no material injury caused by our client's exports. This conclusion is inevitable and supported by the submissions from Ford and Toyota which corroborate the claim that each company has special requirements that can only be met by sourcing from Japanese steel mills.

1.2 In Hunt & Hunt's submission dated 17 September 2012, it was said that Customs, in conducting its export visit to POSCO, evinced a concern that undertaking a separate market assessment would result in varying dumping duties or the exclusion of a particular market so as to encourage or facilitate the circumvention of dumping duties. This position is incorrect in law. It is of great concern to our client if Customs is not considering a market test because of a circumvention issue. Significantly:

- (a) the Applicant has not in any filed document raised circumvention as a concern;
- (b) Customs proceeds under a misunderstanding as to the meaning of the term "*circumvention*" - Customs cannot anticipate circumvention<sup>1</sup> and, in any event, circumvention is the subject of current legislative reform and measures can be put in place to address the issue.<sup>2</sup>

1.3 Given the nature of the HRC product used in the automotive industry, it is extremely doubtful that the product exported by our client would be used to circumvent measures (if

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<sup>1</sup> See the explanatory memorandum to Customs Amendment (Anti-Dumping Improvements) Bill (No. 3) 2012.

<sup>2</sup> Ibid.

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imposed and if the products were excluded and imports of HRC for other sectors were not). Additionally, circumvention cannot be used to override the fundamental duty imposed on the dumping authority to consider material injury by disregarding positive evidence about the market.

2. **BlueScope's submission re submissions made on behalf of JFE Steel Ltd and other Japanese exporters**

2.1 BlueScope claims that *"HRC produced by [it] is commonly used across various applications"* involving pipe and tubing, automotive and general manufacturing. This broad and bold statement, in seeking to assert of claim of substitutability, is wrong. Pickled and oiled HRC for automotive sector use is not used for pipe and tubing and nor is it used in general manufacturing where low specification, less costly and less refined steel is utilised. It is wrong to suggest that high end and refined HRC product for use in the automotive sector is readily substitutable with non pickled and/or uncoiled steel for other market segments.

2.2 It is also significant that BlueScope has failed to advance a single instance of automotive HRC being used in any market segment other than the automotive segment. Indeed there is not a skerrick of evidence of cross-application of automotive HRC into other market segments.

3. **BlueScope's submission re importer visit reports**

3.1 In relation to certain importer visit reports, BlueScope has stated that the weighted average FOB price calculated will need to be adjusted to reflect different finishes as it is essential that Customs compare like-with-like.<sup>3</sup> Our client agrees and says that it is essential that a "like-with-like" comparison is undertaken on products that compete within each market segment, rather than outside those market segments.

4. **BlueScope's submission re interested parties (Nippon Steel)**

4.1 Our client, in an earlier submission, outlined the proper basis for Customs in determining an export price. Those factors have not been addressed or contradicted by BlueScope in its submissions.

4.2 Our client reiterates that BlueScope has not provided evidence of any price undercutting in respect of the automotive sector. Absent such evidence, there can be no material injury.

5. **BlueScope's failure to address the submissions made by the automotive sector**

5.1 BlueScope has now conceded that *"some specific automotive applications may fall outside BlueScope HRC specification range"*. However, its insistence that it cannot address concerns regarding particular specifications in the absence of information on the grades concerned is contradicted by Toyota Tsusho's submission. We also know, through discussions with Toyota Motor Corporation, that BlueScope is aware of the grades of steel

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<sup>3</sup> BlueScope submission of 17 September 2012 - Hot Rolled Coil exported from Japan, Korea, Malaysia and Taiwan - Importer visit reports, page 3.

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used by it which BlueScope is unable to produce, not approved to supply and which fails its quality standard requirements.

5.2 In any event, what is clear from the submissions of Toyota and Ford is that BlueScope cannot meet all their specification requirements.

## 6. Cumulation

6.1 There is no evidence to support the argument put forward by BlueScope that higher grade product can be sold into a market of lesser grade and quality.

6.2 BlueScope has not led any evidence that this is what they or other exporters do in practice. Absent any evidence that this occurs, there is no support for the proposition put forward that there is substitutability between the three market segments. It follows that there is no competition between exporters in the various market segments, nor with the exporters competing with BlueScope - other than on a segment by segment basis. Rather than confirming substitutability, it confirms the contrary and provides further proof that the provisions of s 269TAE(2C) of the *Customs Act 1901* (Cth) (Act) have not been met.

6.3 In this case, the goods in question have different specifications as well as end uses and do not compete in the same market because the market is segmented. These factors support a finding that there are no grounds for cumulation in the present application.

## 7. Material injury

7.1 As previously submitted by our client, when consideration is given to the actual investigation period, the greatest decline in market share was suffered by the nominated export countries. This is not consistent with these countries gaining market share at the expense of BlueScope.

7.2 In this case, as has been noted by our client and others, there are a range of factors which show that the cost increases in coking coal and iron ore were incapable of being recovered through a price increase, especially in a shrinking market. As the submission by Moulis Legal, on behalf of China Steel Corporation, points out, BlueScope made a business decision to increase its production and market share in spite of the down turn in the market.<sup>4</sup> It is difficult to maintain, let alone increase prices in circumstances when supply is increased but demand is decreasing.

7.3 Likewise, the impact on profit and profitability during the investigation period is linked not to the "dumped" goods, but to a range of factors described in previous submissions as the "perfect storm". None of these factors were related to the alleged dumped imports. As noted in the Moulis submission, the source of BlueScope's loss of profit is attributable to its decision to shut down its export production and to reduce capacity. As observed, without these factors, BlueScope would have been profitable.<sup>5</sup>

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<sup>4</sup> China Steel Corporation submission dated 11 September 2012, pages 7 to 11.

<sup>5</sup> China Steel Corporation submission dated 11 September 2012, page 22.

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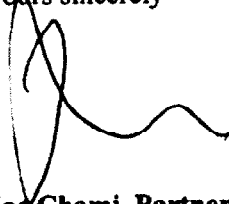
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7.4 It is assumed that Customs will, in assessing the question of injury, have regard to the relationship between internal and external sales and the business strategy pursued by BlueScope in this regard.

**Other matters**

7.5 We understand that Toyota Tsusho was not the subject of an import verification visit (despite having made a submission to Customs). We consider this to be a reviewable error and we would urge Customs to arrange for such a visit as a matter of urgency.

Yours sincerely



**Zac Chami, Partner**  
+61 2 9353 4744  
zchami@claytonutz.com

**Michael Mulgrew, Consultant**  
+61 2 6279 4054  
mmulgrew@claytonutz.com