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23 October 2012

Mr John Bracic
Director, Operations 1
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Mr Bracic

Public File

Response to Statement of Essential Facts No. 188 – Hot Rolled Coil exported from Japan, Korea, Malaysia and Taiwan

Please find attached BlueScope Steel Limited's response to Statement of Essential Facts No. 188 in respect of hot rolled coil exported from Japan, Korea, Malaysia and Taiwan.

If you have any questions concerning the attached submission, please do not hesitate to contact me on (02) 4275 3859.

Yours sincerely

A handwritten signature in black ink, appearing to read "Alan Gibbs".

Alan Gibbs
Development Manager – International Trade

Key Points

BlueScope Steel Limited ("BlueScope") welcomes the preliminary findings contained in Statement of Essential Facts No. 188 ("SEF No. 188") on hot rolled coil ("HRC") exported from Japan, Korea, Malaysia and Taiwan.

The publication of SEF No. 188 follows an application for anti-dumping measures by BlueScope that exports of HRC from Japan, Korea, Malaysia and Taiwan had caused, and threatened, material injury to the Australian HRC industry.

Customs and Border Protection's investigations with overseas exporters confirmed the following dumping margins:

- Japan - 7.5 per cent;
- Korea – POSCO - 6.0 per cent;
- Korea – Hyundai Co., Ltd – 4.5 per cent;
- Korea – other exporters – 11.8 per cent;
- Malaysia – Megasteel Sdn. Bhd. – 15.45 per cent;
- Malaysia – other exporters – 15.45 per cent;
- Taiwan – China Steel Corporation – 3.4 per cent;
- Taiwan – Chung Hung Steel Corporation – 8.5 per cent;
- Taiwan – Shang Chen Steel Co., Ltd – 3.3 per cent;
- Taiwan – other exporters – 8.5 per cent.

In its examination of material injury to the Australian industry, Customs and Border Protection established that injury in the following forms was confirmed:

- reduced revenue;
- price depression;
- price suppression; and
- lost profits and profitability.

Customs and Border Protection was also satisfied that the dumped imports had caused the Australian industry to reduce its prices to maintain market share, resulting in the reduced revenues and lost profits and profitability. In its macro-analysis, Customs and Border Protection identified price undercutting of the Australian industry's selling prices during the investigation period from the dumped imports at levels of approximately 8 per cent. The micro-analysis across the industry segments confirmed price undercutting by up to 11 per cent. Further, Customs and Border Protection concluded that whilst there were impacts for certain "other" factors on the Australian industry's economic performance during the investigation period, it was satisfied that the injury caused by the dumped exports was material.

The findings of Customs and Border Protection contained in SEF No. 188 uphold BlueScope's claims that it had suffered material injury from dumping from HRC exports from Japan, Korea, Malaysia and Taiwan during the investigation period. BlueScope agrees with Customs and Border Protection's assessment that it has attempted to maintain market share and reduced prices in response to pricing pressures from the dumped exports that undercut its selling prices.

SEF No. 188 does include findings that BlueScope respectfully requests Customs and Border Protection to re-examine. These include (and are addressed further in this submission hereunder):

- consideration of grounds for exemption from measures for "*HRC that falls outside of BlueScope's width and thickness production capability*";
- the non-publication of a public file version of an exporter visit report for Chung Hung Steel Corporation ("CHS") of Taiwan;
- the exclusion of an amount for profit in CHS's normal value for sales that were sold at a loss and not recoverable;

- the finding that BlueScope had not suffered injury in its sales of HRC to the automotive sector¹;
- adjustments' to Shang Chen Steel's ("SCS") normal value for physical differences between domestic sales (either an absence of, or insufficient volume thereof) and export sales based upon "costs" rather than pricing differentials;
- an "inconclusive" finding² as to whether employment, wages and return on investment have been impacted by the dumped exports;
- the finding that BlueScope's "import parity pricing" is an appropriate basis for calculating an unsuppressed selling price (and, hence, non-injurious prices); and
- an appropriate unsuppressed selling price ("USP") for the Australian industry.

This submission is not intended to detract from earlier submissions made by BlueScope that comment upon (and identify concerns) with the determination of normal values for relevant exporter visit reports that were published prior to the publication of SEF No. 188.

BlueScope notes that Customs and Border Protection in its preparation of SEF No. 188 has not considered the following submissions:

- BlueScope dated 21 September 2012;
- Minter Ellison on behalf of JFE Steel Corporation, Kobe Steel Ltd and Nisshin Steel Co Ltd, 25 September;
- Shang Chen Steel Co Ltd, 26 September;
- OneSteel Australian Tube Mills, 26 September;
- Clayton Utz on behalf of Nippon Steel, 26 September;
- Hunt and Hunt on behalf of Hyundai Steel Company, 2 October.

BlueScope has examined the referenced submissions and has included comments in this submission on certain matters raised. This submission does not limit BlueScope from providing further comments on the matters raised in these (and earlier submissions) as required, and matters not addressed herein are not conceded.

1.0 Goods and like Goods

Customs and Border Protection is satisfied that the HRC produced by the Australian industry are like goods to HRC exported from Japan, Korea, Malaysia and Taiwan in that they possess the same (or similar) physical likeness, commercial likeness, functional likeness and production likeness.

BlueScope concurs with this assessment.

Section 4.4.5 of SEF No. 188 seeks the views of interested parties as to whether "*grounds exist for imported HRC that falls outside of BlueScope's width and thickness production capability to be exempt from measures*". Specifically, Customs and Border Protection has requested that interested parties "*provide evidence to support the claim*".

BlueScope notes the grounds upon which the Minister must be satisfied in order that a claim for exemption may be granted. BlueScope, however, does not consider that interested parties have been able to demonstrate – as supported by evidence – that directly competitive and/or substitutable goods – are not available from local production. Further, the claims that goods that fall outside BlueScope's width and thickness range should be exempted from measures, can only be upheld when BlueScope has been afforded the opportunity to examine the evidence in support of a claim to assess the legitimacy of assertions made.

¹ Refer Statement of Essential Facts No. 188, P.45.

² SEF No. 188, P. 51.

As at the date of this submission no interested party had specifically identified like goods that are not available from local production.

2.0 Imports of the goods under consideration from Japan, Korea, Malaysia and Taiwan

Exports of HRC from the nominated countries accounted for approximately 75 per cent of total HRC exports to Australia during the investigation period³. Customs and Border Protection visited the largest eight importers of HRC that accounted for more than 90 per cent of imports from Japan, Korea, Malaysia and Taiwan.

BlueScope submits that the volume of HRC exported from the nominated countries accounts for a significant proportion of the Australian HRC market. The impact of the volume of dumped HRC exports that account for more than 15 per cent of the total annual HRC sales in Australia, should not be overlooked. Customs and Border Protection's finding that the dumped exports undercut the Australian industry's selling prices by approximately 8 per cent (on a macro-analysis basis) supports the finding of a causal link between the material injury sustained by the Australian industry and the injurious exports of HRC.

The volume of dumped exports to Australia during the investigation period is a relevant factor in assessing injury to the Australian industry during the investigation period.

3.0 Normal values

3.1 *Japanese exporters*

The identified Japanese exporters of HRC to Australia did not provide information to Customs and Border Protection to enable normal values to be determined under s.269TAC(1) of the Customs Act. Information provided by BlueScope in its application was relied upon by Customs and Border Protection as the most "*reliable and relevant information for the purposes of determining normal values*" under s.269TAC(6).

Adjustments to normal values were made for the goods exported to Australia to account for "extras" associated with the various grades exported to Australia, as well as for costs associated with "pickled and oiled" products.

BlueScope supports the adjustments made to normal values to account for differences associated with the exported goods. It is BlueScope's understanding that approximately one-third of all Japanese exports was pickled and oiled, and the remainder was dry HRC. However, it is not clear from SEF No. 188 what impact the relevant segment of the market had on HRC export prices (and dumping margins determined). For example, there is no commentary on the grade of HRC sold into the pipe and tube sector which is understood to have been at a lower price than HRC sold to the automotive sector.

BlueScope seeks further clarity surrounding the adjustments made to normal values to account for differences of the exported goods to the different market segments in Australia.

3.2 *Korea – Hyundai Co., Ltd*

BlueScope notes the representations made on behalf of Hyundai Steel Company ("Hyundai") contesting the alteration of the weighted-average dumping margin to 4.5 per cent.

Customs and Border Protection's "Review of Preliminary Dumping Margins" document placed on the public file dated 28 September outlines the rationale for the change in dumping margins determined for Hyundai. Customs and Border Protection's assessment highlights that the classification of HRC products by "model" for fair comparison purposes "*should take*

³ Based upon ISSB export data.

into account such factors as physical characteristics, level of trade and time of sale. The critical issue to be assessed is whether these factors have significantly affected price”.

This last prerequisite is important. HRC producers sell product according to their published “extras” table. As Customs and Border Protection has determined, the company’s “model” classification system (that identified sales in the exporter questionnaire) “*don’t accord with the company’s model classification system*” and hence it is not relevant to use this “model” classification system for fair comparison purposes.

BlueScope supports the methodology followed by Customs and Border Protection in assessing for fair comparison purposes the appropriate adjustments to be made for the goods exported to Australia based upon evidenced market “price” differentials.

3.3 Chung Hung Steel

SEF No. 188 indicates at Section 7.10 that at *‘the time of publication of this Report CHS has been unable to provide a non-confidential version of the audit report’.*

BlueScope requests that Customs and Border Protection release a non-confidential version of the CHS audit report as soon as possible. It is noted that the dumping margin determined for CHS is aligned to that for “Other Exporters” from Taiwan and therefore any adjustments afforded to CHS are likely to have flowed to the other Taiwanese exporters.

It is important that BlueScope be afforded the opportunity during the investigation to examine whether the adjustments are fair and reasonable.

It is further noted that CHS had domestic sales of certain HRC grades that were sold unprofitably and were not recoverable. Normal values for these grades were determined under s.269TAC(2)(c) with no profit included (as per s.269TAC(13)).

BlueScope notes that *Customs Amendment (Anti-Dumping Improvements) Bill (No.2) 2012*, provides for the repealing of Section 269TAC(13) and the requirement that no profit be applied to constructed normal values determined under s.269TAC(2)(c). It is understood by BlueScope that in certain other contemporary investigations Customs and Border Protection has adopted the practice of applying a level of profit to constructed normal values determined under s.269TAC(2)(c).

BlueScope contends that a level of profit should be applied to the normal value(s) determined for grades sold by CHS that are either unprofitable or are of insufficient volume. This approach would be in accordance with recent practice and the intent of the legislative provisions that have been recently been considered by the Federal Parliament. Further, BlueScope suggests that as CHS was not visited during the investigation, it should not be afforded the benefit of a reduced normal value for grades that were either sold unprofitably or of insufficient volume. Customs and Border Protection has conducted exporter verifications with two Taiwanese HRC exporters and could have used the profit achieved on weighted-average domestic sales of HRC by these exporters to apply to CHS’ constructed normal values.

BlueScope requests Customs and Border Protection to re-calculate constructed normal values for CHS using a level of profit from either:

- (i) CHS’ domestic sales of other HRC models that were sold in the ordinary course of trade; or
- (ii) From sales by other sellers in Taiwan (as verified by Customs) for sales of HRC sold in the ordinary course of trade.

3.4 Shang Chen Steel Co., Ltd

Normal values for SCS have been determined by Customs and Border Protection under s.269TAC(1) as having been made in the ordinary course of trade. In some instances, SCS had no domestic sales, or insufficient domestic sales made in the ordinary course of trade for comparable models (exported to Australia) during the investigation period. Customs and Border Protection made adjustments to a comparable domestic model sold in the ordinary course of trade to account for the physical differences between the two products.

However, for pickled and oiled and sheet HRC the adjustments were based upon cost differences, whilst all other adjustments were based on "price" differentials.

BlueScope submits that all adjustments should have been made on price differentials evidenced by Customs and Border Protection during its verification visit. Normal values for other HRC exporters of the goods under consideration have been adjusted on the basis of "price" differentials, and it is considered that Customs and Border Protection should maintain consistency and not vary from this approach for SCS.

SCS's Exporter Visit report indicates that the company includes protective sheeting in its exports sales of HS HRC. Protective sheeting is not included on equivalent domestic sales. BlueScope considers that an upward adjustment to SCS's normal value for HS HRC is required to account for the cost of the protective sheeting used in export sales.

BlueScope has examined the representations made on behalf of SCS by submission dated 26 September 2012. It is suggested that as the goods exported by SCS account for less than 1 per cent of SCS's total sales and the determined dumping margin is 3.34 per cent that "*these two factors should be sufficient grounds for not imposing any provisional measures*". BlueScope rejects this suggestion as SCS's exports, along with all remaining HRC exports from the nominated countries – have contributed to material injury sustained by the Australian industry during the investigation period.

The grounds suggested on behalf of SCS do not warrant the exclusion of SCS's dumped exports from provisional measures.

4.0 Material injury to Australian HRC industry

4.1 *Cumulation*

Customs and Border Protection examined injury to the Australian HRC industry on a 'two-tier' perspective. Initially, Customs and Border Protection conducted a macro-analysis assessment that focused on imports, market share, prices and industry performance across the total HRC market. The price undercutting analysis involved comparison of the locally produced HRC and imports according to pricing for the total class of goods and pricing by product category.

Following a macro-analysis, Customs and Border Protection conducted a micro-analysis that involved an examination of competition in the key market segments of the HRC market. This involved an analysis of pricing in each segment, pricing by grades, and pricing to common customers (where possible).

Importantly, Customs and Border Protection examined "*the conditions of competition between the exported goods*". It found that HRC exports from Japan, Korea, Malaysia and Taiwan compete across multiple market sectors⁴ on the Australian market. Customs and Border Protection found, for example, that both Japan and Korean exporters supply the automotive sector and the pipe and tube sector. Customs and Border Protection further confirmed that "*the conditions of competition between imported and domestically produced HRC are similar as domestically-produced HRC can be directly substituted with imported HRC*".

⁴ Market segments include pipe & tube, manufacturing, automotive, and distribution.

These conclusions enabled Customs and Border Protection to consider the cumulative effect of the dumped imports from Japan, Korea, Malaysia and Taiwan. Separate injury analysis for each sector of the Australian market was therefore not required.

Customs and Border Protection's finding on cumulation contradicts the assertions made on behalf of JFE Steel, Kobe Steel and Nisshin Steel in the submission of 25 September where it was argued that *"the purported analysis of substitutability across segments must be dismissed because it is unsupported"*. BlueScope contends that the market segments identified are based primarily on end-use – however, that is not to say that certain grades are not used across more than one market segment or in more than one application.

4.2 Automotive sector

At Section 8.7.1 Customs and Border protection states its preliminary view that *"BlueScope has not suffered injury in the automotive sector due to dumped imports"*.

This finding follows Customs and Border Protection's following comments:

"BlueScope has not stated that it has suffered injury in the automotive sector or provided any evidence to suggest this is the case, either in the application or in any subsequent submission to the case. Rather, BlueScope has answered arguments put forward by parties in the automotive sector by referring to the injury it has suffered across all sectors. Customs and Border protection has examined sales data in the automotive sector and found that BlueScope's sales were profitable. Furthermore, as sales in this industry are based on long term contract an price arrangements, BlueScope's claims to have suffered injury from 2010-11 due to dumped imports would appear to exclude this sector."

BlueScope does not consider that Customs and Border Protection's *preliminary* finding on an apparent absence of injury to BlueScope in the automotive sector is correct. BlueScope has provided Customs and Border Protection with a breakdown of its sales volumes by sector (including automotive) over the four-year injury analysis period. BlueScope considers that the decline in its sales volumes to this segment extend beyond the *"contraction of the automotive market"*.

The nature of contractual arrangements with automotive manufacturers (generally up to five-year contracts) makes it difficult for BlueScope to demonstrate the loss of a contract in the investigation period. However, BlueScope does suggest that it has experienced an erosion of margin in selling prices to the automotive sector over the injury period. It is insufficient to dismiss injury in the sector to BlueScope's on the basis that its sales to the sector remain "profitable". This simplistic analysis does not consider the level of return, or whether there has been an erosion of the injury period.

Customs and Border Protection has confirmed that Korea is a supplier to the automotive industry. Along with the dumped exports from Japan, Korean exports at dumped prices have contributed to reduced returns for BlueScope in the automotive sector. It therefore cannot be concluded that BlueScope has not suffered injury in the automotive sector – particularly when it continues to be a supplier to this sector and capable of supplying HRC to the grade specification(s) required by the automotive manufacturers.

4.3 "Other" injury factors

Customs and Border Protection has stated that due to BlueScope's decision to close its export business, it is "inconclusive" as to whether BlueScope has suffered injury in the form of employment, wages and return on investment⁵.

⁵ SEF No. 188, P.51.

BlueScope's decision to reduce export sales of HRC was announced in October 2011. The decision was not effective immediately, as export sale commitments required completion. The full impact of the announced closure did not translate to production reductions until the Jan to Mar 2012 quarter.

BlueScope contends that the performance of the indicators on employment, wages and return on investment was observable for the two quarters immediately prior to the announced withdrawal from export markets. BlueScope's economic performance prior to the announcement indicates that domestic profit had declined. Customs and Border Protection has confirmed this to be the case in SEF No. 188. BlueScope submits that a reduction in profit is reflected in a return on investment (and similarly, the ability of the business to attract funds for re-investment).

BlueScope demonstrated during its verification visit that it has reduced employee numbers at Port Kembla which was not affected by the blast furnace closure.

BlueScope views the reduction in profit on the domestic market as directly impacting its return on investment. BlueScope also views the reduction in employees at Port Kembla as a consequence of the reduced profit and profitability on domestic HRC sales in Australia.

5.0 Unsuppressed Selling Price ("USP")

5.1 *Concept of USP*

Customs and Border Protection determines a Non-Injurious price ("NIP") from an Unsuppressed Selling Price. An USP is a price that is "unaffected by dumping". Generally, a USP will be determined on the basis of a market price that occurred immediately prior to the onset of the dumping or, alternatively, in the absence of a market-determined price, a constructed selling price may be derived using the industry's cost-to-make-and-sell ("CTM&S") plus an amount of profit that can be demonstrated as being achieved in the absence of dumping.

5.2 *Non-injurious price for HRC*

It is noted by BlueScope that Customs and Border Protection considers that a NIP in the HRC investigation "can be established by reference to a constructed price which reflects an undumped import parity price"⁶. It is further stated that the measures will be applied on the basis of whether HRC is pickled and oiled, or dry. Thus far, Customs and Border Protection has established "that the NIP is lower than the normal value for pickled and oiled HRC exported from Japan. Therefore, the NIP is the operative measure for these goods. In this instance the NIP has been determined to equal the export price". It is further stated:

"For all other goods and nominated countries, the NIP exceeded the export price by more than the calculated dumping margin. This means that the lesser duty rule does not come into effect and the proposed measures are linked to the full margin of dumping."

At Section 10.6 Customs and Border Protection – in rejecting BlueScope's recommended approach to determining a USP – states the following:

"Customs and Border Protection is of the view that in a market unaffected by dumping, it is reasonable to expect that BlueScope would be able to achieve as a minimum, selling prices that reflected undumped import parity pricing."

Customs and Border Protection further acknowledges the existence of a premium that BlueScope has been able to demonstrate that it achieves on domestic sales.

⁶ SEF No. 188, P 6.

Customs and Border Protection comments that it has received from BlueScope "*information relating to the company's internal pricing policy which outlines the expected premium to be achieved (expressed as a percentage) above import parity. This information is considered reliable for the purposes of constructing a USP.*"

BlueScope understands that Customs and Border Protection is seeking to establish a USP that reflects a price unaffected by dumping. However, the methodology followed by Customs and Border Protection does not achieve the desired outcome. The referred [] policy which is based upon import parity is **not** reflective of selling prices unaffected by dumping. Rather, the import parity prices included in the [] include import parity prices for the dumped HRC exports from Japan, Korea, Malaysia and Taiwan. As approximately 75 per cent of imports of HRC during the investigation period were from the nominated countries, the driving influence of the BlueScope import parity pricing reflects the dumped prices from Japan, Korea, Malaysia and Taiwan.

The import parity pricing referred to by Customs and Border Protection assists BlueScope in establishing an [] for its supply against the dumped exports, however, it does not reflect **non-dumped** or **non-injurious prices** unaffected by dumping.

BlueScope is not of the view that Customs and Border Protection's basis for a USP can be considered a "price unaffected by dumping". To the contrary, the import parity prices included in BlueScope's pricing model include dumped offers for HRC from the nominated exporting countries.

Customs and Border Protection is therefore requested not to recommend to the Minister that the NIP for pickled and oiled HRC exports from Japan be based upon actual FOB export prices. A recommendation of the appropriate non-injurious price for pickled and oiled HRC exported from Japan can only be made following consideration of a USP for HRC that *reflects prices unaffected by dumping.*

5.3 *Proposed USP*

By submission dated 6 September 2012, BlueScope detailed an appropriate basis for a USP for HRC. Customs and Border Protection refers to BlueScope's recommended methodology at Section 10.6 of SEF No. 188 and suggests that it has not taken account of other factors that impact the steel industry in recent times, including weak demand, excess capacity, the Australian dollar and the restructured business.

BlueScope respectfully disputes these assertions. In recommending a proposed USP, BlueScope included a level of profit in its constructed selling price methodology that was achieved in 2008/09 and 2009/10 – a period that includes the economic slowdown associated with the global financial crisis, a significant reduction in demand with excess capacity across the steel industry, and the high Australian dollar. It is therefore incorrect to assert that BlueScope has not taken these factors into account in proposing a USP.

BlueScope therefore re-affirms the basis for a proposed USP as contained in its 6 September 2012 submission. It is considered that the proposed USP provides the appropriate means of arriving at a USP "unaffected by dumping" and can be adjusted to determine the relevant NIPs from each of the identified exporters.

6.0 Comments and conclusions

BlueScope welcomes Customs and Border Protection's finding that exports of HRC from Japan, Korea, Malaysia and Taiwan have been exported at dumped prices. The dumping margins assessed by Customs and Border Protection have **all** been assessed at above negligible levels (i.e. greater than 2 per cent).

It is noted by BlueScope that exporters of HRC in Japan, Korea, Malaysia and Taiwan have been the subject of anti-dumping investigations by other administrations, with measures currently applying following investigation⁷. It is also understood that Malaysia is currently conducting an investigation into HRC exported from Taiwan. BlueScope agrees with Customs and Border Protection's concern about the propensity of exporters in the nominated countries to export HRC at dumped prices.

BlueScope considers that Customs and Border Protection's assessment that it has suffered injury from the dumped exports in the form of reduced revenues, price depression and suppression, and reduced profit and profitability, concurs with its own assessment of the impact the dumped exports. Customs and Border Protection's finding that the dumping has caused material injury is also supported.

BlueScope has detailed certain concerns with SEF No. 188 that it requests Customs and Border Protection to re-visit. These include:

- claims for exemptions from measures to be based upon actual evidence submitted that will enable BlueScope to assess;
- the basis for adjustments to normal values for Japanese exporters of HRC;
- the adjustments to Hyundai's normal values can only reflect actual "price" differentials for fair comparison purposes;
- that the Chung Hung Steel audit report be released publicly;
- exports of HRC by Shang Chen Steel do not warrant exclusion from the measures, and the adjustment for the protective sheeting;
- correctly applying the cumulation principle to all exports of HRC from Japan, Korea, Malaysia and Taiwan for injury purposes;
- evidence that BlueScope has suffered injury in its HRC sales to the automotive sector;
- confirmation that BlueScope has experienced injury in the form of loss of employment, wages and reduced return on investment in HRC;
- recognition that the USP preliminarily determined by Customs and Border Protection includes import prices at dumped levels and therefore cannot be considered "unaffected" by dumping; and
- determination of a USP that is based upon the industry's CTM&S plus profit as per BlueScope's submission of 6 September 2012.

BlueScope requests that Customs and Border Protection recommend to the Minister that anti-dumping measures be applied to all future exports of HRC from Japan, Korea, Malaysia and Taiwan.

BlueScope welcomes the opportunity to discuss any aspect of this submission with Customs and Border Protection as required.

⁷ Refer Section 8.14 of SEF No. 188.