



BlueScope Steel Limited
Sirius Building
Five Islands Road, Port Kembla NSW 2505
PO Box 1854, Wollongong NSW 2500
P +61 2 4275 3859 | M +61 419 427 730
E Alan.Gibbs@bluescope.com

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Mr Graham McDonald
Member
Anti-Dumping Review Panel
C/o Legal Services Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

ADRP_support@customs.gov.au

Dear Mr McDonald

For Public File

Hot Rolled Plate Steel exported from the People's Republic of China, the Republic of Indonesia, Japan and the Republic of Korea

1. Introduction

The Anti-Dumping Review Panel ("ADRP") has received an application for review of the decision by the Minister to impose anti-dumping measures on certain hot rolled plate steel exported from Korea by Dongkuk Steel Mill Co. Ltd ("DSM"). A further application for review of the decision applying anti-dumping measures to hot rolled plate steel exported by DSM to Australia has been made by G S Global Corporation ("GSG"). The GSG application for review similarly disputes the findings of the Anti-Dumping Commission ("ADC") and accepted by the Minister that DSM is the exporter of the like goods to Australia.

DSM is seeking a review of the Minister's decision that it was the exporter of the goods manufactured by DSM that were exported to Australia during the investigation period. It is DSM's contention that it was not the exporter of the goods and that GS Global Corporation (i.e. GSG) was the exporter of the goods manufactured by DSM during the investigation period.

2. DSM Application

The ADC determined that DSM was the exporter of goods with a margin of dumping of 18.4 per cent, and imposed interim duties at this amount on future exports to Australia. DSM argues that the importer purchases the goods from the exporter and, in the "circumstances" of this case, GSG was the exporter of the goods to the Australian importer. Additionally, DSM is aggrieved that it has been identified as an exporter associated with the dumping of goods into Australia and that this has ramifications with respect to its "future commercial prospects".

It is not contested by DSM that it was the manufacturer of the hot rolled plate steel exported to Australia during the investigation period. DSM submits that it sold the goods to a "number of

commercial parties” none of which were an Australian importer of the goods. DSM states that one of the parties to whom it sold the goods was GSG, who it is claimed is a Korean trading company.

GSG then exported the goods to its Australian importer of the goods.

The ADC determined that DSM was the exporter of the goods and that the export price for the goods could not be established under s.269TAB(1) (a) or (b) as the goods were not purchased by the importer from the exporter. The ADC determined – correctly in BlueScope’s view - that the export price for the goods manufactured by DSM and exported to Australia was the price paid by GSG to DSM. However, DSM argues this determination is not correct and preferable decision.

BlueScope agrees with the ADC’s assessment that DSM is the manufacturer and exporter of the like goods. GSG is the agent that operates between the Australian importer and the Korean producer/exporter of the hot rolled plate steel exported to Australia. GSG’s role is to communicate between the Australian importer and the Korean manufacturer (DSM) the commercial elements of the sale (i.e. the price and volume of goods to be exported). It cannot be denied by DSM that it had no knowledge of the ultimate destination of the goods that it manufactured, and the price it which it sold it to the agent GSG for export to Australia.

It is also stated by DSM that in its submission to the ADC during the inquiry that “DSM has been a long term source of supply of plate steel for GSG’s sales to Australia”. DSM fully understood that the goods would be exported to Australia and GSG is merely an agent acting for DSM supply of hot rolled plate steel for export to Australia.

It is suggested by DSM that GSG had provided the ADC with information that suggested its was something more than a “mere trader for another manufacturer” in its activities supplying DSM hot rolled plate steel to the Australian importer. It was the view of the ADC that GSG’s role in the relationship was nothing more than an agent acting between the manufacturer and the Australian importer. For this reasons, the ADC was correct in its assessment of DSM as the exporter of the hot rolled steel plate.

Within Section C of DSM’s representations to the ADRP, the activities of DSM and GSG are detailed and cited as having been sourced from the DSM Exporter Visit Report. These activities are detailed to establish a perception that DSM and GSG operate wholly independent of each other and that DSM has little knowledge as to the ultimate destination of the goods purchased by GSG. This cannot be accepted. In representations on behalf of DSM it is stated that there existed a “long term” arrangement for the supply of goods by DSM to GSG. DSM, therefore, would be well informed as to the export destination of the hot rolled steel plate (and the selling prices for the goods to an Australian importer).

BlueScope rejects DSM’s submission that “knowledge” can have little bearing as to who is the exporter of the goods. DSM has intimate knowledge of the destination and the price of the goods for export to Australia. It would have been DSM’s decision as to whether to proceed with the supply of the goods for export to Australia based upon a price offer from its agent GSG. DSM cannot conveniently expunge itself from all responsibility for the supply of the hot rolled steel plate exported to Australia (and a role in the commercial negotiation of the goods).

BlueScope supports the conclusions of the ADC and that of the Minister in determining that DSM was the exporter of the goods to Australia and that the role of GSG is akin to an agent in the commercial transaction.

3. GSG's Application

GSG's application to the ADRP reflects the position argued by DSM. Specifically, GSG has requested the ADRP to review the Minister's decision that DSM is the exporter of the goods to Australia. Additionally, if it is found by the ADRP that DSM is the exporter, GSG is seeking a review of the finding that DSM's export price is the price paid by GSG to DSM for the exported goods.

The GSG application for review reflects the arguments and reasons asserted by DSM.

It is not BlueScope's intention to restate its views supporting the recommendation of the ADC and the decision of the Minister. BlueScope fully understands that the identification of the exporter and the export price must be determined in accordance with the legislation. BlueScope would, however, like to highlight with the ADRP that in the event DSM was found not to be the exporter of the hot rolled plate steel to Australia and that GSG was the exporter, a precedent is affirmed whereby a manufacturer of dumped goods can be shielded from an anti-dumping investigation by merely "selling" its goods via an intermediary in the country of export, prior to exportation.

In the circumstances applicable to DSM and GSG it is evident that DSM has a long history of supply to GSG. DSM has confirmed in its submission to the ADRP that the ADC's decision in finding DSM as the exporter appeared to be influenced by DSM's knowledge of the ultimate destination of the goods and the domestic price of like goods in Korea (i.e. that DSM knew that it was selling goods at a dumped price). Had DSM sold the goods to an agent or trade where DSM little or no knowledge of the ultimate destination of the goods, a different scenario may arise. In the current circumstances, this is not the case.

GSG in supporting DSM's representations is also seeking its price to the Australian importer as the appropriate export price for assessing interim dumping duty. BlueScope rejects this scenario. It is the price from the manufacturer to the agent/trader that is the dumped price – as indicated, where this price is below the prevailing domestic price, it is the manufacturer that possesses the knowledge about whether or not the goods are dumped. For this reason the selling price between DSM and GSG is the relevant price for establishing export prices to Australia for the goods in question.

BlueScope fully endorses the ADC's finding and recommendation that DSM is the exporter of hot rolled plate steel exported to Australia, and that the relevant prices for determining whether the goods were exported at dumped prices are those between the manufacturer DSM and its agent, GSG.

4. Conclusions

DSM and GSG have requested a review of the findings of the ADC and the Minister that DSM is the exporter of hot rolled plate steel exported to Australia. GSG has also requested a review of the price selected by the ADC and accepted by the Minister as the relevant export price for determining margins of dumping for the goods exported to Australia.

BlueScope agrees with the determinations of the ADC and the Minister that DSM – the manufacturer of the exported goods – is the exporter of the goods. Further, BlueScope also supports the finding that the price from the manufacturer DSM to the agent GSG is the relevant export price for determining margins of dumping. BlueScope is concerned that a determination of the agent's export price to Australia as the relevant export price for dumping purposes could result in manufacturers limiting responsibility for goods that are knowingly sold for export.

If you have any questions concerning this submission or would like to discuss further, please do not hesitate to contact me on (02) 4275 3859.

Yours sincerely

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

Alan Gibbs
Development Manager – International Trade Affairs