

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

23 October 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 & Sumitomo Metal Corporation (formerly Nippon Steel Corporation)  
(Nippon Steel).

In this submission we address the issue of material injury and respond more broadly to the Statement of Essential Facts (SEF).

1. **Executive Summary**

1.1 Our client notes that there is no finding that imports of pickled and oiled hot rolled coil steel (HRC) have caused material injury to the Applicant. Our client agrees with Customs' findings that the Applicant has never stated or provided reasons to suggest that it had suffered material injury in respect of these products which were used to supply Toyota and Ford. Nevertheless, our client considers, for the reasons set out below, that Customs:

- (a) should not consider goods supplied to the automotive sector as "*like goods*";
- (b) should not cumulate HRC exported from different countries into different market sectors;
- (c) failed to ensure that non-confidential summary of the Applicant's import price parity policy was placed on the public file - which resulted in a denial of procedural fairness;
- (d) incorrectly determined that there was material injury at the macro and micro levels;
- (e) did not address the question of causal link, and in particular failed to give proper weight to "*other factors*".
- (f) erred in finding price depression and did not adequately consider the question of price suppression;
- (g) did not have sufficient evidence to make a finding of material injury overall; and
- (h) did not provide a detailed and meaningful analysis and consideration of the substratum of facts to support the conclusions it made in the SEF with respect to like goods, material injury and causal link.

1.2 We consider that, for the reasons set out in this submission, no material injury to the pipe and tube sector, or the other sectors referred to in the SEF, has been established. The case against Japan should be terminated.

## 2. Like Goods and Market Segmentation

2.1 In considering the question of whether or not goods are "like", Customs stated that it would make this determination with reference to:

- (a) physical likeness;
- (b) commercial likeness;
- (c) functional likeness; and
- (d) production likeness.

2.2 The SEF does not go into any detail as to how each of these particular factors, as relevant to the automotive sector, applied.

2.3 Customs refers to the detailed criteria it takes into consideration in making a determination of whether goods are like at page 14 of the SEF. The criteria referred to are those set out in the Dumping Manual (which sets out the particular considerations under each of the headings referred to at 2.1 above).

2.4 Customs, having referred to these considerations, states that:

*"The findings on i, ii, iii and iv lead to the conclusion that locally produced HRC, while not identical has characteristics closely resembling the imported goods. These findings are not premised on a comparison of individual imported or locally produced models but represent a global consideration of the goods"<sup>1</sup> (emphasis added)*

2.5 In relying on a global consideration of the goods, Customs ignored that the market is divided into different sectors and that the products, in relation to quality, grade, finish, functional purpose and production processes, are different in each sector. This is particularly so with imported products for car manufacturers as:

- (a) the products are not physically like HRC sold into the pipe and tube or manufacturing and distribution sector;
- (b) there is no evidence that goods imported for the car manufacturers compete with goods in other sectors;
- (c) there is no functional likeness in HRC imported for car manufacturers;
- (d) the Applicant closed its Western Port Hot Strip Mill, which mill produced certain HRC that was approved by car manufacturers, Ford and Toyota; and

---

<sup>1</sup> SEF, page 15.

- (e) the Applicant has acknowledged that it does not produce a like product to that required by car manufacturers.
- 2.6 The global approach taken by Customs to the *like good* analysis ignores the segmented market - which Customs has accepted elsewhere in the SEF. Indeed, for the purpose of injury analysis, Customs used the market segmentation approach and acknowledged that the market is segmented. Our client considers that the market segmentation approach adopted by Customs for the purpose of analysis of injury factors is correct but should also be applied in considering the issue of like goods. This is so because the evidence on the public file concerning market segmentation and its impact on physical, functional and commercial likeness is overwhelming. Clearly, market segmentation does affect the like good analysis and the broad brush approach is not supportable whether as a matter of fact or law.
- 2.7 Finally, the submissions of Ford<sup>2</sup>, Toyota<sup>3</sup> and General Motors Holden<sup>4</sup> (GMH), as made available on the public file, make it plain that the HRC they consume is of a different grade, type, quality and technical specification to that which can be supplied by the Applicant<sup>5</sup>. Indeed, the closure of the Western Port Hot Strip Mill has meant that certain grades of the Applicant's current HRC production is not approved for use by Toyota or Ford. In this way, the question of like goods may be moot.
3. **Cumulation**
- 3.1 Customs states that:
- "BlueScope claimed that imports from Japan and Korea entered the pipe and tube market sector; imports from Taiwan and Korea were prevalent in the distribution sector; Japan exported to the automotive sector; and imports from Malaysia targeted the manufacturing sector, specifically the rock bolt industry."*<sup>6</sup>
- 3.2 In assessing the question of conditions of competition between the exported goods and the conditions of competition between exported goods and like goods that are domestically produced, Customs did not examine the conditions of competition between each market segment.
- 3.3 Customs says it will address this issue in its final report. In that regard we refer to our submission of 28 September 2012 which addressed the issue of cumulation, and reiterate that there is no lawful basis to cumulate the exports from different countries in this case.

---

<sup>2</sup> See Submission by Ford Motor Company of Australia Limited dated 2 August 2012.

<sup>3</sup> See Submission by Toyota Motor Corporation Australia Limited dated 25 July 2012 and Submission by Toyota Tsusho (Australasia) Pty Ltd dated 24 July 2012.

<sup>4</sup> See Submission by General Motors Holden dated 25 July 2012.

<sup>5</sup> See also Submission by Toyota Boeki Steel & Materials Ltd dated 8 August 2012 and Submission by Tokyo Boeki (Australia) Pty Ltd dated 24 July 2012.

<sup>6</sup> SEF, page 32.

**4. Import Price Parity**

- 4.1 The principal argument relied upon by the Applicant, and accepted by Customs, is that the price at which the Applicant sold HRC (with the exception of certain products) was based on its policy of import price parity.
- 4.2 At no stage in the investigation has there been a non-confidential summary of this policy and how it applied in practice. Our client has requested that such a document be placed on the public file and that the responsibility of ensuring that this occurred rests with Customs. Despite this being the key issue in the case, a non-confidential version has not been provided.
- 4.3 We refer to our submission of 8 August 2012 where we responded to comments made by the Applicant in its Visit Report. In particular, your attention is drawn to part 8, "*Price Effects*", and comments made in response to the claims of import parity.
- 4.4 It is clear that the alleged import price parity business model adopted by the Applicant must have been applied differentially to cater for different segments.
- 4.5 In relation to the distribution and manufacturing sectors, Customs found that the Applicant's prices were based on import price parity. The SEF sets out a chart which shows that the import price parity was simply the gathering of market intelligence on current import offers and in assessing those offers, coming up with a benchmark on which to base its own pricing.<sup>7</sup> The same model seems to have been used in the pipe and tube sector.
- 4.6 It seems to be clear that prices were set on a three monthly basis, using market intelligence to set a forward competitive market price taking into account large volumes that customers purchased and that after this benchmark price had been established, then there were negotiations followed by an agreed price. As part of those price negotiations, the Applicant attempted also to include a premium.
- 4.7 In other words, it was not the case that the Applicant's pricing policy was determined by an import price parity, but rather it was a factor it took into account in determining a competitive price going forward.
- 4.8 A statement was made by Customs that the Applicant provided evidence that showed that in its price negotiating process, the price of imports were used to leverage lower prices with the Applicant. However, no details are provided as to what this evidence was and whether it was based on the faulty market intelligence. Customs noted that with respect to the two products, TUBEFORM and PIPESTEEL, there was no price undercutting by imports and that the Applicants either over-reacted or relied on faulty market intelligence.
- 4.9 In other words, the import price parity played no part in the determination of the price for these two products which were the two major products sold by the Applicant in the largest market for HRC.

**5. Price Premium**

- 5.1 The applicant makes a one line reference in the application to the question of price premium.

---

<sup>7</sup> SEF, pages 42-44.

- 5.2 In its Visit Report, the Applicant states it was unable to achieve the premium that it previously sought to achieve. The Applicant informed Customs that when it attempted to raise the premium, customers responded by reducing sales volume.<sup>8</sup>
- 5.3 Customs states that:
- "BlueScope has provided Customs and Border Protection with 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"*<sup>9</sup>
- 5.4 There is no evidence that the use of a premium, or the amount of the premium, is in any way affected by the question of dumped imports. The ability to charge a premium is driven by the market in Australia and the evidence demonstrates that the market does not respond well to the Applicant's attempts to raise the premium.
- 5.5 There is no factual record in the SEF of whether a premium can be charged by the Applicant, in relation to what products, and how often. The Applicant's reference to a pricing policy is not evidence of the market accepting that premium. The statement that this policy document is reliable for the purpose of constructing a USP is not supported and is of doubtful legal relevance.
6. **Causal Link**
- 6.1 The Appellate Body in *US - Hot Rolled Steel* noted that investigating authorities are required, as a part of their causation analysis, to examine all "*known factors*", other than dumped imports, which are causing injury to the domestic industry. Where such other known factors are causing injury, the investigating authority must ensure that the injurious effects of these factors are not "*attributed*" to the dumped imports.
- 6.2 The non-attribution analysis requires "*separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports*", rather than making "*mere assumptions*" about the effects of the imports and the other factors.
- 6.3 In this case, Customs has effectively assumed that dumped imports have caused material injury through its failure to properly address and meaningfully analyse the other factors which have been identified by the Applicant as the cause of the injury being suffered by it.
- 6.4 Indeed, the unique feature of this case is that those factors referred by the Applicant as being "*the perfect storm*" have led to extensive losses. These "*other factors*" have been the subject of extensive submissions by our client and other exporters, as well as end users of HRC.
- 6.5 Customs has not attempted to quantify the impact on these other factors but has instead relied on the fact that, as the goods were found to be dumped, it is reasonable to assume that other factors had an effect, but that this did not either detract or weaken the finding that dumped

---

<sup>8</sup> Visit Report to BlueScope Steel, page 33.

<sup>9</sup> SEF, page 57.

imports had directly impacted on the Applicant's prices and revenue over the investigation period.

6.6 We refer to Customs' statement that:

*"BlueScope has also faced adverse conditions in both the Australian and global steel markets due to the high Australian dollar, high raw material costs, low demand for steel and the closure of BlueScope's export business, all of which have put price pressure on BlueScope. The Minister has directed that, while dumping need not be the sole cause of injury in order to impose measures, injury caused by other factors must not be attributed to dumping.*

*In order to differentiate the effects of dumping from the effects of other factors, Customs and Border Protection has examined what effect dumping has specifically had on price. Customs and Border Protection has found that BlueScope sets its price using a benchmark based on import parity prices plus a margin to reflect a premium for sourcing from a local producer.*

*In the investigation period, this benchmark was based on dumped prices, which accordingly lowered the level at which industry could set its prices. Given this method of pricing, Customs and Border Protection considers that the minimum amount of injury suffered by BlueScope that can directly be attributed to dumped exports is reflective of the individual dumping margins. For example, but for HRC being exported at dumping margins of 5%, BlueScope could have reasonably expected to achieve 5% higher prices.*

*Any price reductions and/or profit reductions or losses that have occurred in excess of those attributed to dumping are considered to have been the result of factors other than dumping.*

*Customs and Border Protection has calculated the cumulative impact that dumped exports had on BlueScope's prices and lost revenue over the investigation period. Injury that can be attributed to dumping amounted to approximately 5% of BlueScope's total HRC revenue for external sales. Therefore Customs and Border Protection considers that the injury caused by dumping is material."<sup>10</sup>*

#### **General Comments**

6.7 Our client makes the following observations regarding Customs' findings.

#### Automotive sector

6.8 There is no material injury to the automotive industry despite a finding of dumping because the products being imported for car producers were not capable of being produced by the Applicant.

---

<sup>10</sup> SEF, pages 52-53.

Pipe and Tube sector

- 6.9 In relation to the two most significant products, there was no price undercutting and the decision to lower prices was based on either faulty intelligence or was an over-reaction.
- 6.10 This conclusion is well founded because there was no evidence of price undercutting (contrary to the erroneous BlueScope claim in its application that Japanese offers were undercutting its prices by some 16%).<sup>11</sup>
- 6.11 No other evidence was provided by the Applicant that there was price undercutting in respect of other products in the pipe and tube sector.
- 6.12 Customs found that the import parity model was not used for small and medium products (see 7.17 to 7.20 below).
- 6.13 Customs made no finding that the ability or inability to charge a premium was in anyway affected by the question of import price parity, to the contrary, the resistance to paying a premium was based on market forces. Further, the very nature of a price premium reflects the advantage of being a local distributor, and so would not be affected by lower priced exported goods.

Distribution and manufacturing sector

- 6.14 Customs found that there were a range of non-price related factors which impacted the Applicant's sales, including:
- (a) the Applicant's inability to supply HRC to the specifications required (be it grade, width, thickness or quality);
  - (b) the inability to source HRC from the Applicant because only certain distributors are approved to be distributors by the Applicant;
  - (c) purchasers ensuring security of supply by having more than one source for HRC; and
  - (d) purchasers ensuring that they have another source of HRC as it may be competing with the Applicant in the downstream manufacturing market.<sup>12</sup>
- 6.15 There is no evidence that the Applicant was compelled to lower its prices to defend its market share under these circumstances as any lowering of price would have been irrelevant and unnecessary.
- 6.16 Interested parties have stated that they did not reduce their historical levels of purchases from the Applicant, nor did they intend to. This, combined with the fact that during the actual investigation period, imports from the nominated countries actually declined, is contrary to the argument that the Applicant had to lower its prices.

---

<sup>11</sup> Application- Hot Rolled Coiled Steel from Taiwan, Korea , Japan and Malaysia, page 30

<sup>12</sup> SEF, page 43.

- 6.17 There is no evidence of price depression being caused by the dumped imports.
- 6.18 In relation to the question of price suppression, in essence the chief claim for material injury, the assumption being made by both the Applicant and Customs is that because of the Applicant's import price parity policy, that it can be assumed that it can achieve these prices in the current market.
- 6.19 No evidence has been provided during the injury period of whether or not the Applicant always obtained import price parity for its products, nor whether import price parity was possible during the investigation period.
- 6.20 No consideration has been given to any assessment of the level of cost recovery that was possible through a price increase which may well have to have been above non-dumped parity price. Customs made no analysis of this question other than a generalised comment of the Applicant being impacted due to the high raw material prices. Customs was in a position to measure this impact but has declined to do so.

*Inadequate non confidential summary of confidential information*

- 6.21 Our client has made submissions during the course of the investigation about the inadequate nature of the non-confidential summaries, indeed the total failure of the Applicant to supply such summaries. This applies in particular to the question of import price parity (see 4.2 above).
- 6.22 The failure of Customs to ensure that such documents were placed on the public file has prejudiced our client as it is not in a position to adequately defend its interests.

**7. Material Injury**

- 7.1 The Applicant has claimed that it has suffered material injury in the form of:
- (a) reduced revenue;
  - (b) price depression;
  - (c) price suppression; and
  - (d) loss of profit and profitability.
- 7.2 In making its assessment on material injury, Customs stated that it had regard to a macro as well as micro approach in conducting its analysis.

*Macro Analysis*

- 7.3 In relation to the question of market share, Customs stated that:

*"This market share chart shows that despite the contraction in the market, BlueScope maintained a steady market share, with a slight increase in 2011/12, at the expense of imports from sources other than those named in the application."*



*Exports from the nominated countries have also maintained a steady market share.*<sup>13</sup>

- 7.4 These findings are not supportive of a finding of a decline in market share. The overall trend in the market sales chart simply reflected the usual ebb and flow of the market over the investigation period which was to be expected.
- 7.5 It is of particular note that during the investigation period, the Applicant's market share actually increased slightly, whilst exports from the nominated countries remained steady. In other words, there was no increase in market share from the dumped imports.
- 7.6 The Applicant's response and the heart of its case on material injury was its argument that it maintained market share only by lowering its prices in response to dumped imports. As noted, the Applicant's market share actually increased slightly over the investigation period, so they did more than maintain market share.

Price depression

- 7.7 One of the key indicators on price is whether or not there is price undercutting. It is difficult to sustain an argument that the impact of dumped goods caused material injury when there was no price undercutting which would require the Applicant to lower its prices to compete with dumped imports.
- 7.8 The finding of Customs overall was that there was no price undercutting. This undermines any finding of price depression at the macro level.
- 7.9 Indeed, Customs stated that:
- "When examined on a product level, i.e., the price of all imported HRC compared to all locally produced HRC, imports were priced 3% above industry's prices."*<sup>14</sup>
- 7.10 Our client notes that Custom stated that it carried out a price undercutting analysis based on finish and found:
- (a) that imports undercut the Applicant's prices by approximately 8% for pickled and oiled HRC; but
- (b) were 2% above industry's prices for dry HRC.
- 7.11 No analysis of the percentage of pickled and oiled versus dry were given, accordingly, in light of Customs' finding, it is presumed that the majority of the imports were dry.
- 7.12 It is clear that there is no basis for an argument of price depression based on these figures that can be attributed to dumped imports.

---

<sup>13</sup> SEF, page 34.

<sup>14</sup> SEF, page 37.

Price suppression

- 7.13 It is clear from the chart on Total Revenue and Costs and Unit Revenue and Cost and Profit and Profitability, show that BlueScope's costs having been rising over this period and its revenue has not been able to increase at the same rate as costs. These charts illustrate that there were other factors at play prior to the investigation period that were causing price suppression. Indeed it is clear that as costs started to increase and as revenues flattened out the inevitable consequence is that profits were going to be affected and that at some point losses would be incurred.

Macro analysis conclusion

- 7.14 Customs states that the injury shown by its macro analysis is material because, although the Applicant has grown its market share over the injury analysis period, it has come at the expense of the company's inability to increase prices - resulting in significant losses during the investigation period.<sup>15</sup>
- 7.15 It is noted that the only finding made by Customs at this stage is that of price suppression and not price depression for which there is simply no evidence.
- 7.16 Our client agrees with Customs that any findings are not conclusive.

Micro analysis- Pipe and Tube Sector

- 7.17 Reference is made by Customs to two pricing models used by the Applicant, one based on import price parity, the other based on other factors. In particular, Customs found that as import price parity did not apply to the Applicant's small and medium range of products, that no effects from dumped imports could be attributed to it.
- 7.18 Customs stated, after carrying out a price undercutting analysis of both TUBEFORM and PIPESTEEL product offers, that the Applicant undercut imported HRC in the pipe and tube sector by 4%. This is an unusual utilisation of the term 'undercutting'. To put it more correctly, the dumped HRC was priced 4% higher than the TUBEFORM and PIPESTEEL products.
- 7.19 Customs ultimately found that, in effect, no price undercutting had occurred and that small and medium products were excluded as they were not based on import price parity.
- 7.20 It follows that there was no price undercutting by Nippon Steel as had been alleged by BlueScope in its application.
- 7.21 Customs stated that the Applicant and "interested parties" agreed that a local producer should be entitled to a local premium for the additional services and benefits that they have provided and that it therefore follows that at a minimum, the Applicant would expect a price equal to the import price.
- 7.22 It is of concern to our client that such a generalisation on premium price is made without any reference to any factual basis for the statement that "interested parties" agree with this

---

<sup>15</sup> SEF, page 38.

entitlement. Given that the statement was contained in the SEF, it is expected that the factual basis would be set out, and references given to where these statements are made by the interested parties. It is not sufficient to allude to these statements in such a manner when Customs is purporting to use them to support its position on a key fact.

- 7.23 Customs stated that, as small quantities of dumped imports were being imported and although it may be only to maintain a second source of supply, ongoing purchase of imported HRC gave purchasers leverage when negotiating prices with the Applicant. To the extent that reference is made to price negotiations, it is based on reference to the Applicant's evidence.
- 7.24 This conclusion is not based on reference to any particular facts on the record, nor is any evaluation of those facts made in the SEF. All the evidence found by Customs points the other way, namely that there is no evidence of price undercutting, no evidence that parties did not buy fewer products from the Applicant, no evidence that the goods were brought in for any purpose other than to have a legitimate alternative source of supply of a key product.
- 7.25 As stated above, Customs found that the Applicant had relied on faulty intelligence and/or over-reacted to the legitimate needs of parties to have alternative source of supplies. Indeed, given that the evidence points to no desire on behalf of major customers to change the volume of HRC they brought from the Applicant, the Applicant's premise that it had to maintain market share is likewise faulty.
- 7.26 Reference is made to the Applicant's sales of TUBEFORM and PIPESTEEL, which allegedly show that on average these sales were at a loss, demonstrating that BSL was subject to severe price pressure. Our client questions the relevance of this, given that it does not address the issue of the alleged price impact of dumped imports.

Micro analysis-Distribution and Manufacturing Sector

- 7.27 Customs states that, as there was a finding of dumping, it followed that the Applicant was required to set lower prices so as to not risk losing market share.
- 7.28 There does not appear to be any factual evidence to support this statement. Indeed, on the basis of its assertion, dumping necessarily results in material injury and causation is simply assumed.
- 7.29 This is illustrated by Custom stating that it did find that there were a range of reasons other than simply price that some customers may purchase imported HRC (see 6.14 above). Customs has made no attempt to evaluate these other factors, rather, it simply stated that the purchasing of these dumped HRC contributed to the lower price imports that the Applicant benchmarked against. This statement disregards the very obligation imposed on Customs to consider the role of other factors.

Micro analysis – Automotive Sector

- 7.30 Our client acknowledges that the Applicant has never stated that it has suffered injury in the automotive sector, or provided any evidence to suggest that this is the case.
- 7.31 Detailed submissions have been provided by Ford, Toyota, Toyota Tshusho, Tokyo Boeki, GMH, POSCO, JFE Steel, Kobe Steel and Nisshan Steel that imports have not caused injury to the automotive sector.

Ms Lydia Cooke, Australian Customs and Border Protection Service

23 October 2012

- 7.32 Customs has also noted that end users such as Ford and Toyota Tsusho have in their submissions pointed out that the Applicant cannot meet all their requirements.
- 7.33 Finally, as has been noted, any drop in sales volume experienced by the Applicant is due to the overall decline in production of cars in Australia.
- 7.34 Our client questions Customs' finding of price undercutting of 8% given that no details are provided as to what sales were relied on in making that assessment and the relevance of those sales in circumstances where the type (or grade) of product imported is not supplied by the Applicant.
- 7.35 We note that the conclusion on price undercutting is highly qualified given the statement that Customs could only compare a limited number of grades. Further, Customs found that there was no material injury when considering the non-injurious price.

Micro analysis- Manufacturing Sector and Exports from Malaysia

- 7.36 We notes that in the overall assessment of the volume of dumped imports, the volume of imports from Malaysia are insignificant.

**8. Other causes of injury**

Impact of currency fluctuations

- 8.1 Our client's submissions regarding currency fluctuations is not that this is the reason why the Applicant has not been able to recover all its costs, but that it made imports more competitive and that some attribution needed to be made to this affect.
- 8.2 This was acknowledged by the Applicant who stated that although it did have an impact, it was not significant. It estimated that it impacted some 2% on its calculation of the dumping margin it had calculated.
- 8.3 Customs' position appears to be that it is not required to conduct any sought of sensitivity analysis to measure the impact of currency fluctuations because it would not "weaken" its overall findings. However, as a matter of law, it is required to consider other factors such as currency fluctuations and it cannot simply state that the factor in question does not "weaken" without conducting a proper evaluation.

Increased raw material costs

- 8.4 The first point that needs to be made is that the Applicant has never explained, for the purpose of this dumping investigation, how and why it uses import price parity mechanism. Even if it is commonly understood in the industry, it needs to be explained for the purpose of this investigation.
- 8.5 Our client has made it clear that the application was deficient in its consideration of the impact of cost increases, to the point that iron ore and coking coal prices were not even mentioned in the application. Furthermore, this issue was not adequately addressed by Customs during its verification visit with the Applicant.
- 8.6 It remains unclear what particular investigation and verification process Customs has undertaken on this issue. Customs does not refer to information it obtained from its

verification visit to the Applicant but refers to a general presentation by the Applicant's Chairman which is based on indicative prices of iron ore and coal prices. Customs does state that it asked the Applicant to provide information on actual coal and iron costs which were found to be similar to cost shown in the indicative table.

- 8.7 Our client requests that for the purpose of the final report, Customs indicate whether or not it obtained this information as part of any verification process.
- 8.8 Customs notes that raw material prices were high in the investigation period. Customs states that it expects that these higher raw material prices would have contributed to the Applicant's weaker performance during the investigation period and that:

*"Whilst BlueScope's costs may have been directly impacted by higher raw material prices Customs and Border does not consider that this detracts from the assessment that dumped exports directly impacted on BlueScope's price and revenue over the investigation period"* (emphasis added)

- 8.9 Given that that the cost of raw materials in question constituted 70% of the cost of producing HRC, it is surprising that Customs found that the costs may have been impacted.<sup>16 17</sup>
- 8.10 Again, Customs dismissed the higher costs of raw materials as not detracting from the direct impact of dumped imports on the Applicant's price and revenue.

*Decrease in demand for steel and low steel prices*

- 8.11 Customs makes reference to the presentation of a chart by the Applicant on East Asia prices and the issue of the spread i.e. the difference between raw material cost and prices.
- 8.12 Customs acknowledges that although the Applicant does set its price according to import price parity and therefore, while steel prices have been depressed globally, the presence of dumped imports in the market have further suppressed the Applicant's prices as it was unable to increase its prices. This, Customs states, has particularly impacted the Applicant due to the high raw material prices.<sup>18</sup>
- 8.13 As acknowledged by Customs, our client has previously made a submission that the Applicant cannot assume that it will always achieve a static ratio between cost and revenue. The response is in effect that it can because it has a policy of setting its price based on import price parity. However, the following contradicts such a finding as:

<sup>16</sup> *The resulting low steel prices due to low demand, coupled with the higher raw material prices resulted in a decreased spread (the spread being the difference between the raw material costs and price). This depression on prices, coupled with the high input costs, resulted in the raw material costs per tonne of steel increasing from approximately 30% of cost to 70% of total cost – see SEF, page 49.*

<sup>17</sup> *Customs and Border Protection has found that BlueScope does set its prices according to import parity pricing. Therefore while steel prices have been depressed globally, the presence of dumped imports in the market has further suppressed BlueScope's prices and made it unable to increase its prices to the extent it would have when competing with undumped prices. This has particularly impacted BlueScope due to the high raw material prices.*

<sup>18</sup> SEF, page 51.

- (a) the cost of iron ore and hard coking coal had dramatically increased during the injury investigation period;
- (b) as demonstrated by the charts submitted by the Applicant, profit margins have eroded over time; and
- (c) although the Applicant's costs were on average above unit revenue, it is clear that this was caused by the continuing downward trending in unit revenue and unit costs going up over the injury analysis period.<sup>19</sup>

8.14 The question which remains to be answered is whether the presence of dumped imports further suppressed the Applicant's prices, and if so, whether this price suppression was significant. Customs does not answer this question by reference to any factual analysis but rather assumes so given that the Applicant has not been able to increase its prices to the same extent that it otherwise would have.

8.15 Our client submits that there has been no attempt to:

- (a) compare the difference between what is acknowledged to be the difference between the globally depressed price and the Applicant's price in Australia;
- (b) factor in the effect of currency fluctuations; and
- (c) factor in the absence of any indication of price undercutting at the macro level.

## 9. Conclusion

9.1 There is no basis for the claim that Nippon Steel products undercut those of BlueScope as had been alleged in the Application either in the automotive sector, nor in the pipe and tube Sector.

9.2 There is no evidence of material injury in the automotive sector.

9.3 In the largest sector, pipe and tubing, there was no evidence of price undercutting from any of the nominated countries.

9.4 In the distribution and manufacturing sector, the driving force for the purchase of HRC from the nominated countries was a range of non price factors making import price parity an irrelevant consideration. Nor was BlueScope required to lower its prices to defend a market share that it could not supply and in some cases refused to supply.

9.5 The finding of some price undercutting in the distribution and manufacturing sector, does not mean that the price undercutting can be considered significant in coming to an assessment of its impact on BlueScope price for HRC.

9.6 There is no evidence of price depression being caused by dumped imports. There is also no credible evidence of purchasers' engaging in a negotiating strategy to use imports to lower prices charged by the Applicant.

---

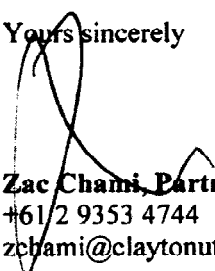
<sup>19</sup> See SEF, page 49.

Ms Lydia Cooke, Australian Customs and Border Protection Service

23 October 2012

- 9.7 No factual basis has been established to show that price suppression was caused by the impact of dumped imports or, if it was, the nature and extent of that impact and whether the suppression alleged to have been caused by dumped imports was significant or not. There has been no consideration of the impact that exports from non dumped sources which comprised some 22% of all imports had on BlueScope prices.
- 9.8 Given the presence of "*other factors*" and the acknowledgement that the Applicant either over-reacted or was using wrong market intelligence, combined with a false strategy of defending market share in a declining market, these factors show that apart from no volume impact from dumped imports, there was no price impact either.
- 9.9 The case against exports of HRC steel from Japan should be terminated as there is no evidence that these exports caused material injury to BlueScope.

Yours sincerely

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

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