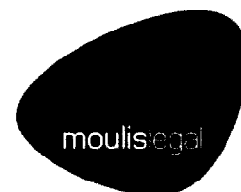


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24 October 2012

Mr John Bracic
Director
International Trade Remedies Branch
Australian Customs and Border Protection Services
Customs House
5 Constitution Avenue
Canberra
Australian Capital Territory 2601



commercial+international

By email

Dear Mr Bracic

Alleged dumping of hot rolled coil from Taiwan China Steel Corporation – response to SEF No 188 and PAD No 188

We write on behalf of China Steel Corporation (“CSC”) in relation to this matter.

Statement of Essential Facts No. 188 (“the SEF”) expresses the preliminary view of Australian Customs and Border Protection Service (“Customs”) that imports of hot-rolled coil (“HRC”) from the countries under investigation have caused material injury to the Australian industry (“BlueScope”).

CSC disagrees with this finding and conclusion, and appreciates this opportunity to present its views for your further consideration.

A Macro assessment does not show BlueScope suffered material injury

In assessing the question “has dumping caused material injury”, a “macro” as well as “micro” analysis of the HRC market and of BlueScope’s performance in the market was undertaken. The preliminary finding in the SEF is that BlueScope suffered injury in the form of:

- price suppression;
- price depression;
- lost revenue; and
- lost profit and profitability.

We note that other claims of injury made by BlueScope – of reduced volume; reduced employment; reduced wages expense; and reduced return on investment – were not established.

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With respect, we submit that the injury assessment in the SEF does not support a conclusion that BlueScope incurred material injury that was caused by dumped imports, and we ask that Customs carefully reconsider this finding in light of our following comments.

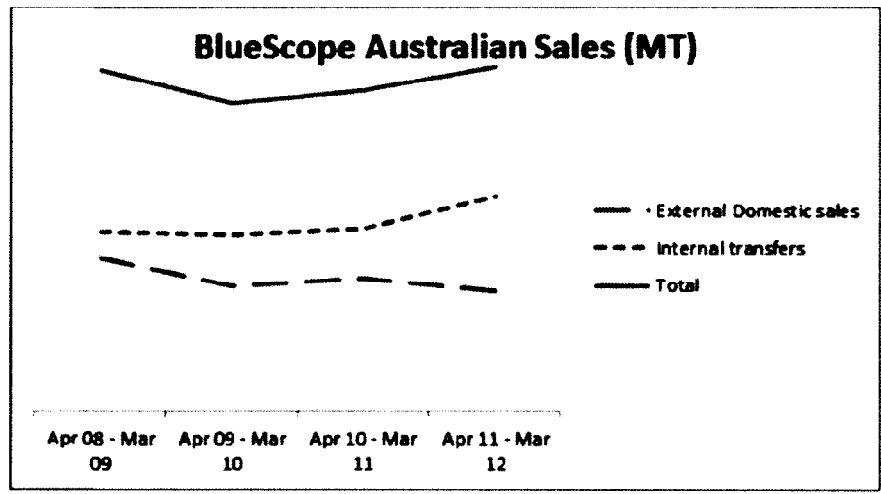
1. Finding of lost revenue, and lost profit and profitability

Customs found that BlueScope did not suffer injury in the form of reduced volume or market share in the investigation period. Of the other forms of injury that BlueScope claimed to have suffered by reason of dumping - reduced employment, reduced wages expense, and reduced return on investment - the SEF states that Customs could not come to a finding that dumping had been responsible "due to the impact of BlueScope's decision to close its export business".

The finding that BlueScope did not suffer injury in the form of reduced volume confirms – to an extent - our previous submission that

The alleged decline in domestic sales volume seems to be "optical" only. It is merely the result of the exclusion of BlueScope's growing volume of "internal transfers" from the actual sales. Those "internal transfers" made up a large proportion of BlueScope's total HRC production and sales. There is no reason why such sales should not be included in Customs' consideration of BlueScope's material injury claims and in assessing whether there is any causal link between such claimed injury and any alleged dumping.¹

This point is demonstrated by the below graph from the SEF:



Accordingly, the graph shows that BlueScope improved its total sales (external and internal transfers) throughout the injury assessment period, despite the dip in the 2009/10 period due to the effects of the global financial crisis.

Importantly, the graph constitutes an acknowledgement on Customs' part that the correct approach is to consider all of BlueScope's sales in assessing the material injury claim and the causation issues. However, the SEF does not consistently adopt this approach in its consideration of the other injury claims. Thus, the following observations are made in the SEF as part of its "macro analysis":

¹ CSC material injury submission to Customs dated 14 September 2012, page 11.

- in relation to revenue:

The following graphs show BlueScope's movements in total costs and revenue and unit costs and revenue for external sales of HRC produced in Australia. From 2010/11 to 2011/12, BlueScope's unit costs increased by 8% while its unit revenue decreased by 2%.² (emphasis added)

- in relation to profit:

The chart below shows BlueScope's profits and profitability for external sales of HRC produced in Australia... BlueScope's profits have fallen over the injury period and BlueScope made a loss on its HRC sales into the Australian market in 2011/12.³ (emphasis added)

In the paragraph in the SEF which subsequently expresses a conclusion in relation to these observations, it is said

The injury shown above is considered to be material. While BlueScope's sales volume and corresponding market share has grown over the injury analysis period this has come at the expense of reduced prices.⁴

The issue of "external sales" and their relevance to the question of whether material injury was caused by dumped imports is also evident in this extract from the SEF:

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.⁵ (emphasis added)

The SEF appears to consider revenue and profitability in the context of "external sales". However, there is some ambiguity to this which we believe should be better explained by Customs, and perhaps also some confusion in terms of principle which we believe should be better explored.

In considering impacts on revenue and profitability, Customs has previously decided that the movement of a product *within* a corporate entity does not constitute a "sale" for injury assessment purposes. Customs has also considered that the transfer pricing practice adopted within an entity is relevant to the injury analysis. For example, the loss realised on a transaction accounted for as a "loss", when transferring a product from one business unit to another business unit, is a factor "other than dumping" which is to be taken to have caused injury to the entity concerned. Injury arising by reason of that occurrence is not attributable to dumping.

In the same way, a transfer accounted for in a way which realises a profit is also a relevant consideration, and should be taken to be profit-making for revenue and profitability assessment purposes. The product concerned is of "like goods", and therefore if the movement of the

² Statement of Essential Facts No 188 ("the SEF"), page 35

³ SEF, page 36

⁴ SEF, page 38

⁵ SEF, page 53

product is accounted for as profit-making, then that profit must be considered to counteract losses made on so-called external sales.

In this case we would be concerned to find that BlueScope had quarantined "internal transfers" from the injury analysis. The exclusion of "painted steel" by BlueScope from the ambit of BlueScope's application for anti-dumping measures against coated steel – in circumstances in which painted steel sales may well be highly profitable – makes us curious about the way in which it accounts for HRC as a feedstock to the downstream processes of coating and painting. The visit report states that this transfer of HRC once took place "at cost" in an accounting system called "Cognos" but that this was changed to something called "reflect a monthly market price" in a "SAP" system. We also learn, from other parts of the SEF, that BlueScope has been selling below the prices of "imports". Nowhere is it made clear whether there are internal transfer prices of HRC which are profitable or not, or which are the same as BlueScope's actual prices of HRC.

Accordingly, we request that Customs advise interested parties:

- (a) whether, in working out revenue effects, revenue from internal transfers was included in the analysis;
- (b) whether, in working out the unit cost of HRC, a "cost of goods sold" approach was adopted which included the production of goods which were internally transferred;
- (c) whether, in working out profitability:
 - the profit from internal transfers (if there was such a profit) was taken into account as a relevant factor counteracting the proposition that injury was suffered by BlueScope;
 - the loss from internal transfers (if there was such a loss) was taken into account as a factor causing injury to BlueScope which was not attributable to dumping.

CSC is concerned to ensure that the assessment undertaken in the SEF accurately reflects the financial performance of the Australian industry in the context of its total business in the production and sale of the like goods. In this case it might become apparent that BlueScope is using its dominant position in downstream markets (such as in coated and painted steel) to suppress prices in the upstream (HRC) market.

The combining of sales and transfers is relevant to a better understanding of the finding that dumped imports allegedly accounted for 5% of BlueScope's lost HRC revenue (apart from the question of whether that is itself "material"). It would be wrong to adopt a blinkered approach in the injury analysis, such as would be the case if the findings are solely based on injury assessment for external sales, and only on the connection between "dumped exports" and BlueScope's HRC revenue for "external sales". BlueScope's external sales do not represent the totality of the performance of the Australian HRC industry. Indeed as illustrated in the graph above, such "external sales" only account for about 40% of BlueScope's total revenue of domestic sales. "Non-external" sales of HRC have in fact increased during the investigation period.

2. Finding of price depression and suppression caused by dumping

In relation to the finding of price depression and suppression, we note the following finding in the SEF:

When examined on a product level, ie, the price of all imported HRC compared to all locally produced HRC, imports were priced 3% above industry's price.⁶

In other words, overall BlueScope's price undercut the price of HRC from nominated countries by 3%.

This fact alone should preclude any conclusion that any injury suffered by BlueScope in the form of price depression and suppression is caused by dumped imports of HRC. This is particularly so given that BlueScope has increased its sales volume and market share during the injury assessment period.

Indeed, we note that Customs was not completely certain whether BlueScope suffered material injury that was caused by dumped imports. The SEF notes:

Taken as a whole, the above correlations suggest connections at the macro level between dumped imports and the eroded and suppressed prices in the Australian market over the investigation period. However, by themselves, they are not conclusive and may be the result of other factors.⁷

B Micro analysis does not show BlueScope suffered injury due to dumped imports

The SEF conducts a "micro analysis" of separate market sectors and states the following findings:

Market sector	Australian industry profitability	Price undercutting	Material injury caused by dumping?
"Pipe and tube sector"	"TUBEFORM" and "PIPESTEEL" product not profitable	BlueScope's price undercut the price of imported HRC by 4%	Yes
"Distribution and manufacturing sectors"	Profitable	Imported HRC's price undercut BlueScope's price by 11% in the "distribution sector"	Yes
"Automotive sector"	Profitable	Imported HRC price undercut BlueScope's price by 8%.	No

⁶ SEF, page 37

⁷ SEF, page 38

"Manufacturing sector and exports from Malaysia"	Profitable	Malaysia's price undercut the price of BlueScope regarding one customer by 4%	Yes
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We note that the price undercutting findings in the "distribution and manufacturing sector" and the "manufacturing sector and exports from Malaysia" segments were not in relation to the whole sector or segment. Rather, the price undercutting findings were in relation to the "distribution sector" in the former category, and "one customer who purchased both imported HRC from Malaysia and HRC from BlueScope" in the latter category.

Despite a price undercutting situation being found in three of the "sectors", Customs also found that BlueScope's price undercut the price of HRC imports by 3% in the overall market. In all three "sectors" in which Customs identified some forms of price undercutting by imported HRC, BlueScope was profitable. Together, these findings suggest that the price undercutting by the imported HRC in the three market sectors had little, if any impact overall.

In particular, we note the SEF finding in relation to the "automotive sector":

Consequently, Customs and Border Protection's preliminary view is that BlueScope has not suffered injury in the automotive sector due to dumped imports. What injury BlueScope may have suffered is due to the contraction of the automotive market.⁸

The SEF also notes:

Customs and Border Protection is of the view that some HRC required for the automotive sector requires certain characteristics and specifications that BlueScope, or indeed any one producer alone, cannot supply in its entirety.⁹

Various interested parties, including HRC exporters, distributors and downstream producers have expressed reasons why alternative supply and products to BlueScope's products are required. It has also been mentioned that BlueScope cannot produce HRC with certain characteristic or dimensions which customers can acquire from the imported source. Such statements were not exclusive to the "Automotive sector".

CSC itself produces numerous products that fall within the scope of the goods under investigation in the broad terms in which they were described in the initiation of this investigation, but which are simply not available from BlueScope.

Indeed, CSC submits that Customs should make the same "injury not caused by dumping" finding as it made for the "automotive sector" for each other of the other "sectors" and for the whole of the Australian HRC market, whether considered together or separately. This is explained in more detail below.

⁸ SEF, page 45

⁹ SEF, page 45

1. "Distribution and manufacturing sectors"

CSC believes that any connection between dumped imports and BlueScope's injury in the "distribution and manufacturing sector" is more remote than the connection in the "automotive sector".

The SEF identified that imported HRC prices undercut BlueScope's price by 8% in the "automotive sector" and by 11% in the "distribution sector" as part of the "distribution and manufacturing sectors". BlueScope has been profitable in both the "automotive sector" and the "distribution and manufacturing sectors". Therefore, it seems to us that the Australian industry's performance or the "degree of injury" was similar in both of these "sectors".

However, the price undercutting in the "automotive sector" is evidently more directly linked to dumping – because the dumping margin for exports from Japan is 7.5%. On the other hand CSC, as the major HRC exporter from Taiwan, and who sold most of its HRC to the "distribution and manufacturing sectors", has been determined by Customs to have a dumping margin just above the *de minimis* level.¹⁰ Accordingly, the price undercutting in "distribution and manufacturing sectors" – even if the 11% is representative of the situation for the whole sector, not just the "distribution sector" – can only be attributed to dumping to a very slight degree. Indeed, any impact of the imports of HRC from CSC, and to a large extent the imports of HRC from Taiwan, could only be said to have had a minor (ie *immaterial*) impact on BlueScope.

Accordingly, CSC considers that Customs should find that *material* injury has not been caused by dumping in relation to the "distribution and manufacturing sectors".

2. Pipe and tube sector

As shown in the table above, the "pipe and tube sector" was the only micro analysis sector in which BlueScope made a loss. In that sector Customs found that BlueScope's price undercut the price of imported HRC by 4%. In that part of section "8.5.4 Customs and Border Protection's assessment" of the SEF which deals with this sector, there is no conclusive finding as to whether dumped imports caused material injury to the Australian industry. Rather the SEF says:

An assessment of BlueScope's sales of TUBEFORM® and PIPESTEEL® HRC show that on average these sales were at a loss, which demonstrates that BlueScope was subject to severe price pressures in this sector.¹¹

It is not unusual for BlueScope or any HRC supplier to be subject to severe price pressure in an overall declining HRC market. However, in the "pipe and tube sector", it must be apparent that the pressure is mainly caused by the BlueScope's own strategy and faulty intelligence which has caused it to undercut the price of imported HRC by 4%. Such "price pressure" is self-generated, and cannot be attributed to dumping.

3. "Malaysia sector"

It is not clear to us why a sector referred to as "manufacturing sector and export from Malaysia" was considered to be a separate segment for micro analysis purposes. Nonetheless, we

¹⁰ Another Taiwanese exporter, Shang Chen, has had a low dumping margin of 3.3% applied against it.

¹¹ SEF, page 39

understand that the imports of HRC from Malaysia accounted for only a small proportion of the total HRC imports from the nominated countries, and BlueScope was profitable in this segment.

C Dismissal of effect of "other factors" in causing injury is unconvincing

CSC is concerned to ensure that the impact of "other factors" to BlueScope's injury claim is properly and adequately considered so that such impact is not incorrectly attributed to dumping. In particular, we draw Customs attention to the treatment of the following factors:

1. Currency fluctuation

Concerning the impact of currency fluctuations, the SEF states:

...given the basis on which BlueScope establishes its selling prices into the market, the strength of the Australian dollar does not weaken the assessment that BlueScope's prices are lower than what they otherwise would have been had HRC not been exported at dumped prices¹²

Whilst the assessment itself is not "weakened" by the appreciation of the AUD, the currency has certainly made HRC imports from all sources much more competitive, and therefore able to wedge more price pressure on BlueScope even without being at dumped prices. This is a factor and an impact that cannot be attributed to dumping.

From this perspective, the claim that BlueScope's lower price (presuming that this lower price is creative of "material injury") was caused by dumping, and not by other factors, must be examined with caution. As mentioned in the SEF, BlueScope acknowledged the impact of the high AUD as a separate factor to its performance - "...the stronger Australian dollar also detracts from BlueScope's profits."¹³

2. Decrease in demand

Concerning the impact of decreased demand for HRC, the SEF states:

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.¹⁴

This seems to suggest that the impact of depressed global steel prices, and "high raw material prices" (being the "other factors" in determining the question of "whether material injury has been caused by dumping") have not been excluded. Further, this suggests that the impact of such "other factors" were aggregated to dumping, and were considered to have made material injury "more attributable" to dumping. With respect, we do not think this is a correct approach to

¹² SEF, page 46

¹³ SEF, page 50

¹⁴ SEF, page 51

adopt in considering – and accepting – that acknowledged “other factors” have not had some impacts which detract from a finding that material injury has been caused by dumping.

Also, we find it curious that in an acknowledged environment of depressed steel prices, BlueScope can price its products at a 3% advantage to other products and still be found to have been injured by those other products. This is even more curious in the case of our own client, whose “dumping margin” has been assessed by Customs as being less than 3%.

3. Management decisions/closure of export business

Concerning the impact of BlueScope’s own business decisions, the SEF states:

After doing this [removal of the cost of restructure], it was found that costs at the end of the investigation period were noticeably higher, despite a reduction in raw material input costs. Customs and Border Protection concludes that this is a result of higher overhead costs due to decreased production volumes. However, when assessed over the course of the investigation period, the effect this has on costs is minimal.¹⁵

Finding that there was an increase in costs because volumes have been reduced for reasons unrelated to dumping means that no regard can be had to increased unit costs and to any reduction in profitability due to that factor.

4. Dumping investigations by other administrations

Concerning other dumping investigations:

The number of investigations into HRC shows the propensity for manufacturers of these products to engage in dumping...¹⁶

With respect, CSC does not consider the number of investigations by any other administrations has any relevance to a finding that material injury incurred by the Australian HRC industry has been caused by dumping.

5. Conclusion on the impact of dumping

In its conclusion, the SEF chooses a test of injury which is simplistic and which is not borne out by the evidence. The SEF states:

8.15 Injury to Australian industry caused by 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

¹⁵ SEF, page 51 and 52

¹⁶ SEF, page 52

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 dumping¹⁷

We note that the finding about BlueScope's pricing policy and the price it "could reasonably [have] expected" in the paragraphs cited above is contrary to other findings in other parts of the SEF that BlueScope's price was *below* the price of imported HRC in the overall HRC market as well as in the "pipe and tube sector". This suggests that injury incurred by BlueScope is at least *partly* due to factors other than dumping, and *partly* due to dumping. It is not correct to say that "but for HRC being exported at dumping margins of 5%, BlueScope could have reasonably expected to achieve 5% higher prices". In our view this appears to suggest that nothing other than dumping caused injury to BlueScope.

However as considered in the SEF, various "non-dumping" factors can have an impact on the Australian HRC market and on BlueScope's ability to "set" price. These include global and general financial and economic conditions, market demand, international prices, product quality and characteristics, the value of the Australian Dollar, and HRC's downstream industries. In particular, various parties have pointed out that there have been weaknesses in downstream markets - such as in housing, automotive and general manufacturing - during the period of investigation.

It is simply not realistic for BlueScope to expect and always be able to increase its price "but for" dumping. If the downstream market prices are depressed, then there will be a lid on the prices that BlueScope can demand. Simply assuming that its prices would have been 5% higher if there had not been dumping is not a conclusion based on the realities of commercial markets, and we see no positive evidence for that conclusion. In fact we have seen that BlueScope lowered its price *below* the imported prices, rather than on par with the "dumped imports". This is because price is not determined only by imports, whether dumped or not.

Lastly – we again point out that the dumping margin assessed by Customs in relation to our client's exports is only half of the 5% price rise that Customs assumes BlueScope would have achieved in the absence of that alleged dumping!

The legislation requires that injury caused by factors other than dumping must not be attributed to dumping. Indeed the individual dumping margins can only reflect the *maximum* amount of injury suffered by BlueScope that can directly be attributed to dumping.

D Overall finding

The SEF states that a conclusive finding that dumped imports caused material injury to the Australian industry could not be made by conducting a "macro analysis". Therefore a "micro

¹⁷ SEF, page 52 and 53

analysis" was conducted to see if the opposite could be established.

However, we respectfully submit that:

- the material injury finding in the SEF needs to be further considered, in relation to the whole of the Australian HRC industry;
- the micro analyses do not support a finding of material injury caused by dumping in the "distribution and manufacturing sectors" or in the "pipe and tube sector", or at least not a finding that is different to the finding for the "automotive sector";
- if the "automotive sector" can be considered not to have suffered injury caused by dumping, then the same conclusion should be reached for the other sectors too.

In our view, the micro analyses do not enable the making of a conclusion that material injury has been caused by dumping, and in fact confirm the conclusion that this was not evident on the basis of a macro analysis either.

For the purpose of making a finding that dumping has caused material injury to the Australian industry, it is not enough to find that there are "connections" between dumped imports and some form of injury suffered by the Australian industry. To reach a conclusion that dumping has caused material injury to the Australian industry, Customs must be satisfied that:

- injury has occurred;
- the injury is of material degree;
- the injury is to the whole of the "Australian industry" producing like goods;
- material injury has been caused by dumping; and
- injury caused by other factors is not attributed to dumping.

CSC requests Customs to carefully reconsider the preliminary findings announced in the SEF, and ultimately to find that any dumping has not caused material injury to the Australian industry.

Yours sincerely



Charles Zhan
Solicitor