

**APPLICATION FOR REVIEW OF
DECISION OF THE COMMISSIONER TO TERMINATE AN
INVESTIGATION**

Under s 269ZZQ of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Anti-Dumping Commissioner (the Commissioner) to terminate an investigation into whether the Minister should publish:

- a dumping notice(s); and/or
 a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds for a review to be undertaken;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

I have included the following formation in an attachment to this application:

- Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- Full description of the imported goods to which the application relates.
- The tariff classification/statistical code of the imported goods.
- A copy of the reviewable decision.
- Date of notification of the reviewable decision and the method of the notification.
- A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.
- [If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature: *Ashraf J. Gedi*

Name: *Ashraf G. Gedi*

Position: *Development Manager - International Trade Affairs*

Applicant Company/Entity:

Bluescope Steel Limited

Date: *8 / 10 / 2013*



BlueScope Steel Limited
Sirius Building
Five Islands Road, Port Kembla NSW 2505
PO Box 1854, Wollongong NSW 2500
P +61 2 4275 7843 | M +61 419 427 730
E Alan.Gibbs@bluescope.com

8th October 2013

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601

Email: ADRP_support@customs.gov.au

Dear Sir/Madam

Request for Review of a Decision – Dumping of Hot Rolled Plate Steel exported from the People’s Republic of China, The Republic of Indonesia, Japan, The Republic of Korea, and Taiwan – Termination of part of an Investigation

Please find attached for your consideration an application by BlueScope Steel Limited (“BlueScope”) concerning the decision dated 10 September 2013 by the Anti-Dumping Commissioner (“the Commissioner”) to terminate parts of an investigation into hot rolled plate steel exported from the People’s Republic of China, The Republic of Indonesia, Japan, The Republic of Korea, and Taiwan.

Specifically, the Commissioner terminated investigations into exports of hot rolled steel plate to the following parts of the investigation:

- the dumping investigation so far as it relates to exports by Shandong Iron and Steel Company (“JIGANG”) from China;
- the dumping investigation so far as it relates to exports by Hyundai Steel Company (“Hyundai”) and POSCO from Korea; and
- the dumping investigation as it relates to all exporters from Taiwan.

By the attached application, BlueScope requests that the Anti-Dumping Review Panel review the Commissioner’s decision to terminate investigations into exports by JIGANG of China, Hyundai and POSCO of Korea, and all exporters from Taiwan.

If you have any questions concerning this application for review or would like to discuss this application 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

Application Particulars

1. Contact Details

1.1 Name, street and postal address, and form of business of the applicant

This application for review of a decision of the Delegate of the Anti-Dumping Commissioner to terminate an investigation into whether to impose antidumping measures on exports of hot rolled plate steel exported from the People's Republic of China ("China") by Shandong Iron and Steel Jinan Company ("JIGANG"), Hyundai Steel Company ("Hyundai") and POSCO of Korea, and all exports from Taiwan (including by Shang Chen Co., Ltd ("Shang Chen") and China Steel Corporation/China Steel Global Trading ("CSC/CSGT"), is made by BlueScope Steel Limited (hereafter referred to as "BlueScope").

BlueScope's postal address is:

P.O. Box 1854
Wollongong NSW 2500
Tel: (02) 4275 3859
Fax: (02) 4275 7810

BlueScope is a fully integrated manufacturer of hot rolled plate steel in Australia.

1.2 Name, title/position, telephone and facsimile numbers, and email address of contact within the organisation

The relevant contact detail at BlueScope for this application for review is:

Contact Name:	Mr Alan Gibbs
Company and position:	Development Manager – International Trade Affairs
Address:	Five Islands Road, Port Kembla, NSW, 2505.
Telephone:	(02) 4275 3859
Facsimile:	(02) 4275 7810
E-mail address:	Alan.Gibbs@bluescopesteel.com

1.3 Name of consultant

BlueScope has engaged the following consultant to assist with this application:

Name:	Mr John O'Connor
Representative's business name:	John O'Connor & Associates Pty Ltd
Address:	P.O. Box 329, Coorparoo Qld 4151
Telephone:	(07) 3342 1921
Facsimile:	(07) 3342 1931
E-mail:	jmoconnor@optusnet.com.au

A copy of the signed authorisation nominating Mr O'Connor as BlueScope's representative is included at Confidential Attachment 1.

2. Full Description of the Goods

The goods the subject of BlueScope's application for anti-dumping measures were described as follows:

"Flat rolled products of:

- *iron;*
- *non-alloy steel; or*
- *non-heat treated alloy steel of a kind commonly referred to as Quench and Tempered ("Q&T") Green Feed,*

of a width greater than 600 millimetres(mm), with a thickness equal to or greater than 4.75mm, not further worked than hot rolled, not in coils, with or without patterns in relief.

Goods excluded from the investigation are:

- *250 megapascals (MPa) yield strength grades of plate steel with a thickness greater than 150mm;*
- *350 megapascal (MPa) yield strength grades of plate steel with a thickness greater than 100mm;*
- *Q&T Green Feed grades of plate steel with a thickness greater than 105mm; and*
- *heat treated Q&T grades of plate steel."*

3. Tariff Classification

Hot rolled plate steel is classified to the following tariff subheadings:

- 7208.40.00 statistical code 39;
- 7208.51.00 statistical code 40;
- 7208.52.00 statistical code 41; and
- 7225.40.00 statistical codes 22 and 24.

For tariff subheadings:

- 7208.40.00 statistical code 39;
- 7208.51.00 statistical code 40; and
- 7208.52.00 statistical code 41

the general rate of duty is 5 per cent for goods imported from Japan and free for imports from China, Indonesia, Korea and Taiwan.

For goods imported under the tariff subheading 7225.40.00 statistical codes 22 and 24, the general rate of duty for goods imported from Japan, Korea and Taiwan is 5 per cent and 4 per cent for imports from China and Indonesia.

4. A copy of the written advice from the CEO of the decision to terminate the investigation

BlueScope was notified of the Delegate's decision to terminate investigations into exports by JIGANG of China, Hyundai and POSCO of Korea, and all exporters from Taiwan, the publication of Australian Customs Dumping Notice ("ACDN") No. 2013/67 on 10 September 2013 and by notice that appeared in *The Australian* newspaper on that date.

A copy of ACDN No. 2013/67 and the notice from the Australian newspaper are included at Non-Confidential Attachment 2.

- 5. A detailed statement setting out the grounds upon which the Review Officer is being asked to review a decision by the Commissioner to terminate an investigation into whether a dumping duty notice or countervailing duty notice should be published.**

Introduction

BlueScope Steel Limited ("BlueScope") is the applicant company that sought the anti-dumping measures on hot rolled plate steel exported to Australia from China, Indonesia, Japan, Korea and Taiwan. The application also requested the imposition of countervailing measures on hot rolled plate steel exported from China.

On 10 September 2013 the Anti-Dumping Commission published Australian Customs Dumping Notice No. 2013/67 and a notice in *The Australian* newspaper notifying the Delegate's decision to terminate part of an investigation into hot rolled plate steel exported as follows:

- the dumping investigation so far as it relates to exports by Shandong Iron and Steel Company ("JIGANG") from China;
- the dumping investigation so far as it relates to exports by Hyundai Steel Company ("Hyundai") and POSCO from Korea;
- the dumping investigation as it relates to all exporters from Taiwan.

The Delegate relied upon the following and was satisfied that:

No dumping

- goods exported by Hyundai from Korea during the investigation period were not dumped;
- goods exported by POSCO from Korea during the investigation period were not dumped;
- goods exported by Shang Chen Steel Co., Ltd ("Shang Chen") during the investigation period were not dumped;

Dumping but with a negligible margin

- goods exported by JIGANG from China during the investigation period were dumped but the dumping margin was negligible;
- goods exported by China Steel Corporation/China Steel Global Trading ("CSC/CSGT") from Taiwan were dumped but the dumping margin was negligible;

Dumping but with a negligible volume

- goods exported by Chung Hung Steel Corporation from Taiwan during the investigation period were dumped, but the volume of dumped goods was a negligible volume;
- the volume of exports to Australia by all exporters from Taiwan (other than Shang Chen) – even if dumped – was less than 3% of the total volume of plate steel.

BlueScope contends that the Delegate of the Commissioner has erred in the assessment that exports of hot rolled plate steel by Hyundai and POSCO of Korea, and Shang Chen of Taiwan were not at dumped prices. BlueScope also submits that the findings of dumping with negligible margins for JIGANG of China and CSC/CSGT of Taiwan are flawed, and that margins of dumping greater than 2 per cent should have been established. The correction of

the incorrect dumping margins determined for Shang Chen and CSC/CSGT to margins above negligible levels will impact the "dumping with negligible volume" findings for Chung Hung of Taiwan and all remaining Taiwanese exporters of the goods under consideration such that the margins for the Taiwanese exporters will exceed negligible levels and anti-dumping measures should apply.

Particulars

1. Exports by Hyundai

The Anti-Dumping Commission ("the Commission") determined that Hyundai only made a small volume of sales on the domestic market in the ordinary course of trade. In Termination Report No. 198 ("TER 198") the Commission stated that "*Considering the small volume of domestic sales and the significant number of adjustments required to make the sales comparable to the export sales, normal values were determined under s.269TAC(2)(c) using the cost to make and sell plus an amount for profit*".

The Commission has determined normal values for Hyundai under s.269TAC(2)(c) on the grounds of the "low volume" of domestic sales made in the ordinary course of trade. BlueScope submits that the Commission could have determined Hyundai's normal value(s) for hot rolled plate steel on the basis of domestic sales made in the ordinary course of trade by other sellers on the Korean domestic market (i.e. domestic sales by POSCO), however, this option available under s.269TAC(1) was not considered.

In TER 198 the Commission has also stated that "*the significant number of adjustments required to make the sales [under s.269TAC(1)] comparable to the export sales*" was also a consideration. BlueScope contends that the number of adjustments required to normal value for fair comparison purposes cannot be dismissed as a basis for determining normal value under s.269TAC(1). If the adjustments were not reasonable or did not reflect the commercial circumstances of the grade of hot rolled plate steel being considered, it may be appropriate to reject a normal value determination under s.269TAC(1). However, the quantum of the adjustments to a s.269TAC(1) normal value are not grounds for not determining a normal value under this provision.

BlueScope is concerned that the purported adjustments required to account for different grades exported where there is an absence of domestic sales on the Korean domestic market is inconsistent with the knowledge that the 250 grade and 350 grade plate steel represents around 75 per cent of total industry sales in the Korean market. Further, BlueScope questions the absence of a model matching methodology for Hyundai (and POSCO) that was undertaken by the exporter visit team at PT Gunung Raja Paski¹ in Indonesia, where it is clear to all interested parties all grades sold by the Indonesian producer. It is BlueScope's view that similar grade comparisons should have been prepared by the verification team for exports by Hyundai (and POSCO). The disclosure of this relevant information would enable interested parties the opportunity to comment on whether adjustments to grades where no domestic sales was apparent was a more suitable approach (than using CTMS data for that grade).

TER 198 references BlueScope's response to Statement of Essential Facts No. 198 ("SEF No. 198") and dismisses the issues raised concerning the determination of normal values for Hyundai. The Commission maintains that in respect of Selling, General & Administration ("S,G&A") expenses, the exporter visit team's treatment does not require amendment. BlueScope does not agree. In its response to SEF No. 198, BlueScope detailed its concerns with the following issues:

- warranty expenses;
- advertising expenses;
- S,G&A;
- third country sales;

¹ Refer Pt Gunung Raja Paski Exporter Visit Report, P 10.

- non-arms length sales; and
- profit.

BlueScope raised its concerns with the negative adjustments to normal value for warranty and advertising expenses as these were considered to be inconsistent with industry practice (and illogical). The allowed adjustments confirm that the Commission has viewed the costs as identifiable only with domestic sales. In terms of warranty expenses, it is industry practice to rebate or credit the customer with the value of the product that is defective, irrespective of customer. The issue of concern is whether the exporter had sufficiently evidenced to the Commission that the claimed warranty expense related specifically and only to domestic sales of hot rolled steel plate. On the basis that the adjustment made reflects warranty expenses incurred on domestic sales, the absence of a warranty adjustment on export sales suggests that for the volumes sold to Australia there was not a single warranty claim across the investigation period. This would seem unlikely!

In respect of the adjustment for advertising expenses, BlueScope queried whether the claimed expenses were specifically evidenced for domestic advertising for hot rolled plate steel. As indicated by BlueScope in its response to SEF 198, there may be marketing and advertising expenses associated with coated steel products (where customers can identify the benefits of the coating medium, for example) however, for the intermediate hot rolled plate steel, advertising expenses are not usually incurred. TER 198 does not provide any indication that the Commission re-examined the basis for Hyundai's claims that it had incurred warranty and advertising expenses that relate uniquely to domestic sales of hot rolled steel plate.

BlueScope stated in its response to SEF No. 198 that it had made previous representations concerning the Commission's verification of Hyundai's S,G&A expenses. In TER198, the Commission has stated that the "*S,G&A allocation methods were reviewed and the approach taken by the visit team is considered appropriate*". BlueScope does not accept the Commission's dismissal of its concerns with the allocation of Hyundai's S,G&A expenses as sufficient or reasonable. BlueScope does not consider that a simple high-level allocation of S,G&A expenses on the basis for sales value and margin is appropriate for a large steel conglomerate such as Hyundai where a broad range of unrelated expenses are potentially included in the company's S,G&A records. A more detailed evidencing of Hyundai's S,G&A expenses as they relate to the domestic sales of hot rolled plate steel is required (as sought by BlueScope).

BlueScope notes in TER 198 that the Commission dismissed a comparison of Hyundai's export sales to Canada and Japan with Hyundai's export sales to Australia (in accordance with s.269TAC(2)(d)) as it considered "*the volumes and nature of trade exported to Australia by Hyundai*" were not similar. BlueScope detailed Korean export data that it could access in its response to SEF No. 198. The Commission's comments concerning the "volumes and nature of trade" are not sufficiently detailed to provide any indication as to whether the comparison was undertaken on the basis of Hyundai's total hot rolled steel plate exports to both countries or, relevantly, whether grade comparisons were undertaken. It is BlueScope's view that the exports to Canada are likely to be of the commodity grades, whereas Hyundai's exports to Japan are understood to be of specific grades. No detail as to the relevant considerations in assessing whether Hyundai's export sales to Canada and Japan were appropriate on the basis of the grades exported to Australia appears to have been considered by the Commission.

BlueScope identified its concerns with the basis for allocating a level of profit to Hyundai's constructed normal value in its response to SEF No. 198 and an earlier submission (dated 4 July 2013). BlueScope reiterates its concerns with the determination of a level of profit on the basis of returns achieved on low volume sales that are not representative of Hyundai's broader domestic sales profit – that is, at a loss. BlueScope strongly rejects the outcome that it is required to compete with exports by Hyundai that are based on an artificially low normal value. The level of profit applied by the Commission to Hyundai's normal value is a key determinant of the negative 7.9 per cent dumping margin for Hyundai and is considered unreasonable.

It was suggested by BlueScope that the level of profit to be applied to Hyundai's normal value should reflect a level of profit adequate for re-investment purposes. In TER 198, the Commission states there is no provision in the Act that permits the calculation of profit for reinvestment purposes. It is further stated that Regulation 181A of the *Customs Regulations 1926* requires "the Minister to calculate the profit using data relating to the production and sale of like goods by the exporter or producer of the goods, in the ordinary course of trade". However, in a recent decision involving the review of measures on canned pineapple exported from Thailand² where there was a low volume of profitable sales on the domestic market for consumer pineapple, the Minister determined a level of profit for one exporter on the basis of domestic sales made in the ordinary course of trade for like goods by another exporter. The Commission could have had regard to the level of profit achieved by POSCO or DSM on domestic sales of hot rolled plate steel and applied that profit to Hyundai's normal value. This available course for Hyundai's profit determination was not considered.

BlueScope maintains that the level of profit to be applied to Hyundai's constructed normal value under s.269TAC(2)(c) should reflect a level of profit adequate for reinvestment purposes. As a minimum, however, the Commission has failed to consider the use of a level of profit achieved by another seller (i.e POSCO or DSM) for Hyundai's normal value.

Finally, BlueScope highlights with the Anti-Dumping Review Panel ("ADRP") the disparity associated with the determination of a negative 7.9 per cent dumping margin for Hyundai and the positive 18.4 per cent dumping margin for another Korean exporter Dongkuk Steel Mill Co., Ltd ("DSM"). The former's normal value is on the basis of a constructed methodology, whereas the latter is on the basis of domestic selling prices made in the ordinary course of trade. The disparity associated with the broad margin differentials did not set off any alarm bells for the Commission, which it surely should have. BlueScope submitted to the Commission that the Korean domestic market for hot rolled steel plate is extremely competitive (refer submission dated 31 July 2013) and that it would reasonably be expected that normal values for the Korean exporters (Hyundai, POSCO and DSM) would be within close proximity. Additional to the three domestic Korean plate producers it is well known that Japan exports significant volumes of hot rolled steel plate into the Korean domestic market annually (1.6 million tonnes across the investigation period). The dumping margin outcomes determined by the Commission for Hyundai and DSM should have alerted the Commission to conclude that Hyundai's normal value is understated – reflecting a low level of profit included in the constructed normal value.

BlueScope requests the ADRP to review the low level of profit included in Hyundai's constructed normal value and consider whether the level of profit applicable to POSCO or DSM could be included in Hyundai's constructed normal value for hot rolled steel plate.

2. Exports by POSCO

TER 198 has affirmed the Commission's position concerning the determination of POSCO's normal value as detailed in SEF No. 198. POSCO's normal values have been determined under s.269TAC(1) for domestic sales of those models of hot rolled plate steel where available. For those models where suitable domestic sales were not available, normal values have been established under s.269TAC(2)(c).

BlueScope provided the Commission with two submissions concerning POSCO's normal values and dumping margins³. In its 4 July 2013 submission BlueScope queried POSCO's S,G&A expenses, warranty expenses, the duty drawback on certain raw material input, and the absence of an upwards adjustment for warehousing costs associated with export sales.

BlueScope notes the comments of the Commission in TER 198 concerning the matters raised by BlueScope that were the subject of adjustments. Specifically, the Commission has stated that it is satisfied with the S,G&A adjustment as "in accordance with the Commission's

² Thai Pineapple Canning Industry Corp, Trade Measures Report No. 195B.

³ Refer submissions dated 4 and 31 July 2013.

guidelines and does not warrant amendment". A further statement intended to assure interested parties that "Adjustments made to normal value are made where the Commission has sufficient supporting evidence to satisfy the Commission of the accuracy of such adjustment figures" does not justify whether the adjustment should have been made in the first instance.

As indicated in respect of Hyundai above, BlueScope rejects the basis for a negative adjustment to normal value for warranty expenses. Warranty expenses are addressed by manufacturers through the return of defective goods with a subsequent credit issued to the customer. A warranty provision that is limited to domestic sales is generally inconsistent with industry practice.

In respect of the absence of a positive adjustment for warehousing costs for export sales, BlueScope queries whether the cost of warehousing hot rolled plate steel for export has been included in the S,G&A expenses associated with domestic sales. It is well established that POSCO is a major exporter of steel products (including hot rolled steel plate) and that it would incur costs warehousing associated with the export of those goods. It is insufficient for the Commission to state the "verification team did not find any evidence of POSCO incurring warehousing costs for export sales" as legitimate grounds for not questioning POSCO in respect of the expense associated with export sales.

The Commission's comment concerning the adjustment for duty drawback – i.e. *"In any case, the adjustment for duty drawback was of an immaterial amount and its removal would not alter POSCO's dumping margin"* is informative, but disappointing. The adjustment is only made because it can be substantiated. There is no requirement to state the materiality (or otherwise) of the adjustment and raise further doubt as to whether the adjustment should have been made in the first instance.

BlueScope requests the ADRP to also examine the normal values as determined by the Commission for POSCO's export models where there was an absence of domestic sales by POSCO in the corresponding quarter. It is stated by the Commission that *"a significant number of adjustments would be required to be made for grade, length, width, thickness, surface and edge in order to make the domestic sales of similar models comparable to the export model."* The number of adjustments required to enable a fair comparison between export and domestic sales should not be justification for not determining a normal value under s.269TAC(1).

As indicated above in respect of Hyundai, BlueScope understands that 250 grade and 350 grade hot rolled plate steel accounts for around 75 per cent of total hot rolled plate steel sales in Korea. This means that adjustments required for sales that are not sold domestically are small or limited. BlueScope is aggrieved by the absence of a contrasting analysis (to assess whether adjustments are considered more appropriate than using CTMS data) by the verification team of the grades sold domestically and for export – as was detailed by the verification team in the PT Gunung Raja Paski exporter visit report.⁴

It is BlueScope's view that the adjustments should have been made and the Commission could then have assessed whether the adjusted sales was made in the ordinary course of trade. The Commission has failed to follow this methodology.

3. JIGANG normal value

BlueScope refers to the ADRP's recent decision concerning the Review of Decisions to Terminate an investigation to Publish a Countervailing Duty Notice in respect of galvanised and aluminium zinc coated steel exported from China.

In the ADRP's 11 September 2013 decision, the ADRP member has rescinded the Commissioner's decision to terminate the countervailing investigation into exports by the integrated producer Angang Steel Company Limited ("ANSTEEL"). Specifically, the ADRP

⁴ Refer PT Gunung Raja Paski Exporter Visit Report, P 10.

considered that the Commission could have referred to a benchmark other than the Chinese export prices for coking coal when seeking to establish whether coking coal sold in China was at less than adequate remuneration. China's production of coking coal is a low grade coal, whereas data available to the Commission during the investigation represented different grades of coking coal, including premium hard coking coal exported from Australia. It was established by the ADPR that had the benchmark taken account of alternate prices for coking coal, for example, the Australian export price for coking coal, a higher subsidy margin of greater than 2 per cent would have been determined.

In light of the ADPR's decision to rescind the subsidy termination decision on galvanised and aluminium zinc coated steel exported from China by ANSTEEL due to the incorrect benchmark used for determining coking coal at less than adequate remuneration, BlueScope contends that the same principle applies in respect of JIGANG and the appropriate benchmark for its purchases of coking coal used in the production of hot rolled plate steel exported to Australia.

A change in the benchmark used for assessing whether JIGANG purchased coking coal at less than adequate remuneration for its production of hot rolled plate steel, would also influence the dumping margin for JIGANG (as the Commission would surrogate in the higher benchmark price for coking coal, thereby resulting in a change in JIGANG's dumping margin).

The ADPR is requested to review the determination of JIGANG's normal value for hot rolled plate steel so that it takes account of the benchmark price for coking coal which includes varying grades such as premium hard coking coal exported from Australia during the investigation period (when surrogating the benchmark price for coking coal into JIGANG's constructed normal value).

BlueScope requests the ADPR to further review the incremental costs associated with JIGANG's Q&T Green Feed production as detailed in BlueScope's submission dated 21st August 2013, included in Confidential Attachment 3. In light of the minimal dumping margin determined for JIGANG, BlueScope considers that the Commission did not take full account of the costs referred to in the above noted submission.

BlueScope also seeks a review of the level of profit applied to JIGANG's sales of non-commodity product – i.e. Quench and Tempered ('Q&T') Green Feed hot rolled plate steel. BlueScope provided the Commission with a submission⁵ demonstrating that the level of profit to be applied to JIGANG's CTMS for Q&T Green Feed should be at a level exceeding the level of profit applicable to commodity grades of hot rolled plate steel (i.e. 250 and 350 grades). The Commission did not accept BlueScope's representations that the further value-added Q&T Green Feed hot rolled plate steel attracted a higher level of profit – as evidenced from BlueScope's own recent experience over the period 2010 to 2012.

It should be noted that there are no domestic sales of Q&T Green Feed hot rolled plate steel in China, hence it is not possible to distil representative profit values from JIGANG data for Q&T Green Feed CTMS analyses.

4. Shang Chen normal value

The Commission established normal values for Shang Chen under s.269TAC(1) using domestic selling prices. The dumping margin determined for Shang Chen was negative 3.1 per cent. BlueScope sought clarification in its response to TER 198 the basis for adjustments to normal value for certain physical and timing differences. The Commission indicated in TER 198 that adjustments for physical differences were made on the basis of Shang Chen's domestic extras price listing sheet, reflecting market price differentials between grades.

Timing differences, however, were made on the basis of costs. The methodology of the Commission was as follows⁶:

⁵ BlueScope submission dated 20 August 2013.

⁶ Termination Report No. 198, P.15.

"The adjustment was made by applying the difference in domestic CTMS for that model plus the company's gross margin derived from its 2012 income statements. Where the adjustment was for a negative cost difference, no gross margin was applied".

It is considered that the decision not to apply the gross margin to the adjusted CTMS is incorrect. The adjustment to the CTMS for the relevant grade of hot rolled steel plate takes account of the production cost changes over different time periods. The exclusion of a gross margin fails to take account of any profit for the production of the goods, and should also have been made. The ADRP is requested to review this oversight.

BlueScope is further concerned by the remaining adjustments made to Shang Chen's normal values. BlueScope is seeking a review of the following adjustments:

- (i) credit terms – no adjustment was made for credit extended on export sales. It is understood that the importer purchases on a letter of credit of at least 30 days, and an upward adjustment to normal value is therefore required;
- (ii) inland freight – adjustments were made to normal values, however, a variable that influences the inland freight costs is the width of the goods. There was no indication as to whether the adjustments made take account of the higher cost associated with transporting hot rolled plate steel of greater than standard widths;
- (iii) commissions – an adjustment was made for commissions paid on export sales. Was this a flat rate commission, or averaged across all export tonnes. If the latter, how did the Commission satisfy itself that the full extent of the commission was not understated? and
- (iv) trade promotion charge – an upward adjustment was made by the Commission, however, the basis for the charge is not clear. Is the charge levied across all exports on a rate per tonne basis?

BlueScope understands that the trade promotion charge is a compulsory government charge for all Taiwanese exports (therefore ALL Taiwanese exporters should have had their normal values adjusted upwards for this export cost). It is further understood that this would be a consistent charge on all exports by Shang Chen – however, whether a consistent adjustment has been made is not clear.

The impact of the above adjustments to the Shang Chen normal value will influence the dumping margin determined. BlueScope respectfully requests the ADRP to review each of the adjustments to confirm that the correct values have been determined.

5. China Steel Corporation and China Steel Global Trading normal value

The Commission has treated CSC and CSGT as a single entity for the purposes of determining dumping margins. The dumping margin determined for CSC/CSGT was 0.9 per cent.

BlueScope has significant reservations with the approach followed by the Commission for determining a combined dumping margin for CSC and CSGT. It is evident from SEF No. 198 that the Commission determined separate normal values and export prices for both entities, however, the Commission then elected to combine the dumping margin calculations. It is presumed that the aggregating of the dumping margins was undertaken to overcome an apparent anomaly whereby one company in the group was found not to be dumping whilst the other entity was (above a negligible margin).

BlueScope disagrees with this approach. The Commission should have determined separate dumping margins for CSC and CSGT for transparency purposes.

BlueScope would also highlight the absence of an upward adjustments to either of the CSC or CSGT normal values for export credit terms, export warehousing expenses and the trade promotion charge (as adjusted for Shang Chen). As indicated with Shang Chen above, export sales do include a letter of credit where a minimum 30 days of credit is involved. It is further

submitted as an export agent for its related company CSC, the latter would be holding goods for the former prior to export. If the cost is not borne by CSGT, it is certainly borne by CSC. This warehouse cost has not been reflected via a positive adjustment to either the CSC or CSGT normal values. The Shang Chen exporter visit report confirmed an adjustment made to all exports for the trade promotion charge. As this a Government of Taiwan levy on exports, an upwards adjustment was required to the CSC and CSGT normal values. The ADRP is requested to examine the absence of adjustments for export warehousing expenses and the trade promotion charge, along with that of the export credit expenses.

6. Chung Hung normal values

The Commission established that Chung Hung did not have any domestic sales of hot rolled plate steel during the investigation period and determined normal values for Chung Hung under s.269TAC(2)(c) using the company's cost of production, as well as administrative, selling and general costs ("S,G&A") associated with the sale. The dumping margin assessed for Chung hung was 5 per cent.

The Commission stated in SEF No.198 that it did not assess normal values for Chung Hung using sales by other sellers on the Taiwanese market as it had established the volume of exports by Chung Hung and remaining exporters, even at dumped prices, were negligible.

The methodology of the Commission (in relation to Chung Hung) presumes that the normal values and dumping margins for the other exporters Shang Chen, CSC and CSGT, do not change. BlueScope has identified shortcomings with the normal values established for Shang Chen and CSC/CSGT. Changes to the normal values for Shang Chen and CSC/CSGT arising from the identified shortcomings impact the dumping margin for each entity and could result in exports from Taiwan being above negligible volume levels.

BlueScope does not consider that it is good administrative practice for the Commission to presume the normal values it has assessed (i.e. for Shang Chen and CSC/CSGT) will not change and therefore not undertake normal value assessments in accordance with the legislative requirements for other exporters (i.e. Chung Hung) from the same country on the basis that it has preliminarily determined those other exporter's volumes are negligible. A change in the normal value for Shang Chen and/or CSC/CSGT that alters the determined dumping margin to above negligible levels will therefore influence whether the exports by Chung Hung at dumped prices are negligible in volume.

BlueScope requests the Commission to review the basis for normal value for Chung Hung.

7. Remaining exports from Taiwan

Following review of each of the normal values for Shang Chen, CSC, CSGT and Chung Hung by the Commission, it is requested that the Commission further review whether the volume of dumped exports from Taiwan is above the negligible 3 per cent level. On the basis that dumped exports from Taiwan account for more than 3 per cent of the total import volume into Australia during the investigation period, the ADRP is requested to rescind the Commission's decision to terminate the investigation into hot rolled plate steel exported from Taiwan.

8. Summary and Conclusions

By this application, BlueScope has requested the ADRP to review the normal values and dumping margins determined for certain exporters by the Commission in respect of hot rolled steel plate exported to Australia that form the basis for the decisions contained in Termination Report No. 198.

BlueScope is seeking the ADRP to review the following:

- Hyundai of Korea – adjustments to normal value for advertising and warranty expenses, S,G&A, third country sales and the level of profit applied;
- POSCO of Korea – certain adjustments including the allocation of S,G&A expenses, warranty expenses, duty drawback, and the absence of an adjustment for export warehousing expenses. It is also requested that the ADRP review the Commission's decision not to determine normal values under s.269TAC(1) where there was an absence of domestic sales for a grade of product, as it considered the number of adjustments was significant;
- JIGANG of China – the appropriate benchmark to be used for coking coal and its impact on the dumping margin determined by the Commission; the incremental costs of Q&T Green Feed production over 250 commodity grade hot rolled plate steel; and the level of profit to be applied to JIGANG's CTMS normal value for Q&T Green Feed hot rolled plate steel;
- Shang Chen of Taiwan – adjustments for timing differences, export credit terms, inland freight, commissions and trade promotion charge;
- CSC/CSGT – separate normal values and dumping margins for the related entities, as well as adjustments for export credit, export warehousing expenses and trade promotion charge;
- Chung Hung – determination of normal value under s.269TAC(1) using sales by other sellers (including appropriate adjustments); and
- Review of dumped exports from Taiwan above negligible volumes.

Following review of the above issues, the ADRP is further requested to rescind the decision to terminate all, or part, of the decisions that relate to the nominated exporters as detailed in TER 198.

If you have any questions concerning this review application, please do not hesitate to contact Mr Alan Gibbs on (02) 4275 3859.



ANTI-DUMPING NOTICE NO. 2013/67

Hot rolled plate steel Exported from the People's Republic of China, the Republic of Indonesia, Japan, the Republic of Korea and Taiwan

Termination of part of Investigation

Customs Act 1901 – Part XVB

On 12 February 2013 the Anti-Dumping Commission (the Commission) initiated investigations into the alleged:

- dumping of hot rolled plate steel exported to Australia from the People's Republic of China (China), the Republic of Indonesia (Indonesia), Japan, the Republic of Korea (Korea) and Taiwan; and
- subsidisation of hot rolled plate steel exported from China;

following an application lodged by BlueScope Steel Limited.

The Commission published a notice in *The Australian* on 12 February 2013 notifying of the initiation of the investigations, and issued Australian Customs Dumping Notice (ACDN) 2013/18 and ACDN 2013/20, which contained further details on the investigations, available at www.adcommission.gov.au.

As a result of the Commission's investigation, the delegate of the Anti-Dumping Commissioner:

- is satisfied that the total volume of goods that have been exported to Australia over a reasonable examination period from Taiwan that have been dumped from all Taiwanese exporters is negligible and, therefore, has decided to terminate the dumping investigation so far as it relates to Taiwan in accordance with subsection 269TDA(3) of the *Customs Act 1901* (the Act);
- is satisfied that, in relation to Hyundai Steel Company and POSCO, there has been no dumping by those exporters of any of those goods the subject of the application and, therefore, has decided to terminate the dumping investigation in accordance with subsection 269TDA(1) of the Act so far as it relates to those exporters; and
- is satisfied that, in relation to Shandong Iron and Steel, Jinan Company (JIGANG), the goods exported by that exporter have been dumped, but the dumping margin is less than two per cent and, therefore, has decided to terminate the dumping investigation in accordance with subsection 269TDA(1) of the Act so far as it relates to that exporter.

In making the decisions to terminate part of the investigation, the delegate of the Commissioner had regard to the application, submissions from interested parties, the Statement of Essential Facts no. 198 (SEF 198) and submissions in response to SEF 198.

Termination Report no. 198a, which sets out reasons for the termination decisions, including the material findings of fact or law upon which the decisions are based, has been placed on the Commission's public record, available at www.adcommission.gov.au. Alternatively, the public record may be examined at the Commission's office by contacting the case manager on the details provided below.

A notice of the decision to terminate part of the investigation was published in *The Australian* newspaper on 10 September 2013.

The investigation into the alleged subsidisation of the goods from China will continue. The investigation into the alleged dumping of the goods from all other exporters (except JIGANG) from China, Indonesia, Japan and Korea (except Hyundai Steel Company and POSCO) will continue. The Commission is due to report to the Minister for Home Affairs in respect of this investigation on or by 16 September 2013.

The applicants may request a review of the delegate's decision to terminate the investigation by lodging an application with the Anti-Dumping Review Panel in the approved form and manner within 30 days of the publication of the public notice.

Enquiries about this notice may be directed to the case manager on telephone number 02 6275 6129, fax number 1300 882 506 or operations2@adcommission.gov.au.

Kim Farrant
National Manager Policy
Anti-Dumping Commission

10 September 2013



Australian Government

Anti-Dumping Commission

Customs Act 1901 – Part XV B

Hot rolled plate steel Exported from the People's Republic of China, the Republic of Indonesia, Japan, the Republic of Korea and Taiwan

Termination of part of an investigation

Public notice under subsection 269TDA(15) of the Customs Act 1901

On 12 February 2013 the Anti-Dumping Commissioner initiated investigations into the alleged dumping of hot rolled plate steel exported to Australia from the People's Republic of China (China), the Republic of Indonesia (Indonesia), Japan, the Republic of Korea (Korea) and Taiwan, and subsidisation of hot rolled plate steel exported to Australia from China, following an application lodged by BlueScope Steel Limited.

The Anti-Dumping Commission (the Commission) published a notice in *The Australian* on 12 February 2013 notifying of the initiation of the investigations, and issued Australian Customs Dumping Notice (ACDN) 2013/18 and ACDN 2013/20, which contain further details on the investigations, available at www.adcommission.gov.au.

As a result of the Commission's investigation, the delegate of the Commissioner:

- is satisfied that the total volume of goods that have been exported to Australia over a reasonable examination period from Taiwan that have been dumped from all Taiwanese exporters is negligible and, therefore, has decided to terminate part of the investigation so far as it relates to Taiwan in accordance with subsection 269TDA(3) of the *Customs Act 1901* (the Act);
- is satisfied that, in relation to Hyundai Steel Company and POSCO, there has been no dumping by those exporters of any of those goods the subject of the application and, therefore, has decided to terminate part of the investigation in accordance with subsection 269TDA(1) of the Act so far as it relates to those exporters; and
- is satisfied that, in relation to Shandong Iron and Steel, Jinan Company (JIGANG), the goods exported by that exporter have been dumped, but the dumping margin is less than two per cent and, therefore, has decided to terminate part of the investigation in accordance with subsection 269TDA(1) of the Act so far as it relates to that exporter.

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Joanne Reid
Delegate of the Anti-Dumping Commissioner
Anti-Dumping Commission
10 September 2013

