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1 December 2014

House of Representatives Standing Committee
on Agriculture and Industry
PO Box 6021
Parliament House
Canberra ACT 2600

Via email: agind.reps@aph.gov.au

Dear Chairman

Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures

BlueScope thanks the House of Representatives Standing Committee for the opportunity to make a submission to the inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures.

BlueScope believes that a robust and effective Anti-Dumping System is essential to manufacturers continuing to invest in Australia and to sustaining local jobs.

We welcome reforms made to the Anti-Dumping System in recent years by the current and former governments, including those designed to address circumvention. However, the growing problem of circumvention, in particular through minor modifications to imported products to escape dumping measures, warrants urgent and additional measures that build on those bi-partisan reforms.

In this submission we put forward practical, evidence-based recommendations for reforms to the System. To assist the Committee's deliberations, we have drawn on our experience with Australia's system and also reviewed how other advanced economies are tackling circumvention more effectively in WTO-compliant ways.

We would be happy to provide further information to the Committee in support of this submission. BlueScope's key contact is Alan Gibbs, Development Manager – International Trade

Yours sincerely

Mark Vassella
CHIEF EXECUTIVE
BLUESCOPE AUSTRALIA AND NEW ZEALAND (BANZ)

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Executive summary

BlueScope Steel is Australia's largest steel manufacturer and its only flat steel producer. The company employs approximately 8,000 people in Australia, mostly in regional Australia and has facilities in every State. It is a key supplier to the building & construction, manufacturing, fabrication, infrastructure and distribution sectors.

BlueScope has an annual steel production capacity in Australia of 2.6 million tonnes. It exports approximately 400,000 tonnes of steel products annually to a diverse range of markets including the United States, Germany, Brazil, Thailand and New Zealand.

The Australian steel industry has undergone significant structural transformation in recent years, driven by the high Australian dollar exchange rate, global overcapacity in steelmaking and weakness in some key markets. In 2011 BlueScope closed one blast furnace at its Port Kembla Steelworks thereby halving its Australian steel production.

Competition is strong in the domestic steel market with over 20 countries regularly exporting flat steel products to Australia and imports supplying between 20 and 30 per cent of the domestic market. This includes steel products that are subsidised by foreign governments.

Importantly, there are few remaining steel tariffs in Australia and many of the major global steel producing countries (e.g. China) enjoy zero tariff access to the Australian market because they are considered to be developing countries. Recently concluded free trade agreements with Japan, South Korea and China will see most remaining tariffs abolished over the next 3 – 5 years.

Excess steel production capacity is a major cause of the depressed financial performance in much of the global steel industry. China alone is estimated to have up to 300 million tonnes of excess steel production capacity. Despite decades of economic liberalisation, China's steel industry is still majority state-owned and to date has not made the necessary cuts in production capacity that would help restore equilibrium to global steel markets.

In this environment, import prices have fallen - often unfairly as a result of dumping by foreign steelmakers to get rid of excess stockpiles – and there has been a surge in the number of unfair trade complaints worldwide.

Since mid-2012, BlueScope has made successful anti-dumping applications on four key products, with dumping duties applied at various rates to imports from Japan, Korea, Malaysia, Taiwan, Indonesia and China, and countervailing measures applied to China.

BlueScope rejects assertions by some commentators that Australia's anti-dumping system is 'anti-competition' and 'protectionist'. A robust, WTO-compliant anti-dumping system is essential to dealing effectively with predatory dumping by applying penalties and remedies commensurate with the injury, based on rigorous investigation of the evidence.

An effective anti-dumping system also sends a strong message that Australia will not tolerate or protect those who flout WTO rules and engage in unfair trade. Australia's system needs regular review to keep pace with practices in other WTO-compliant countries and avoid being the dumping ground for imports that those countries have forced off their home markets by imposing due penalties.

BlueScope supports free and fair trade – that is, the company supports the liberalisation of trade including the reduction of tariff and non-tariff barriers, provided that robust and effective WTO-compliant rules remain in place to address unfair trade practices such as dumping and subsidisation.

Circumvention of dumping measures undermines the effectiveness of Australia's Anti-Dumping System and harms local manufacturers through unfair trade.

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BlueScope is very concerned about the growing circumvention of anti-dumping measures on key steel products. This has occurred through deliberate minor modifications to like goods, to intentionally avoid dumping measures.

Unfortunately, the present circumvention provisions are inadequate to dealing with the problem of minor modifications to like goods exported to Australia that otherwise are subject to anti-dumping measures. The current provisions provide no remedy to the Australian steel industry.

It is our experience that increasing volumes of flat steel imports are being slightly modified by the addition of an alloy, principally boron, in minor quantities (commonly referred to as “Pixie dust”) and then reclassified under Australia’s tariff system so as to avoid or circumvent anti-dumping measures. The evidence indicates that this practice is deliberately and sometimes blatantly aimed at avoiding dumping duties, with the alloy goods being sold into the same end-use applications as non-alloy steel but without dumping measures being applied.

The influx of imported steel arriving under the ‘other-alloy’ tariff code is large-scale. The monthly ABS import data reflect a ninety-fold increase in import volumes classified under the ‘other alloy’ tariff code for galvanised steel for the 12 months to September 2014. We estimate interim dumping duties foregone by the Commonwealth for this period are in the range of \$1 million to \$3 million.

Circumvention is inflicting ongoing material injury on BlueScope’s Australian steel-making business, contrary to the intent of dumping duties imposed on dumped products following rigorous assessment. This injury manifests in artificially low selling prices and reduced profitability for BlueScope by having to match the unfair lower prices offered by circumventing exporters and importers that do not pay the imposed dumping duties.

For galvanized steel alone, we conservatively estimate the loss to revenue to BlueScope of circumvention by minor modification to be approximately \$15 to \$20 million in the past year.

While this circumvention is low cost and high gain to the exporter, it is increasingly costly to the Australian steel industry and undermines the integrity of Australia’s Anti-Dumping System. BlueScope believes that this major flaw in the anti-circumvention framework should be addressed with urgency by an administrative remedy to treat goods with minor modifications as “alike” to the goods that are the subject of measures.

BlueScope is also concerned about circumvention by ‘country hopping’ whereby exporters to Australia switch the sources of supply of goods to a country that is not the subject of measures. The current framework fails to allow timely application of remedies. Other deficiencies with Australia’s system, such as circumvention by interim duty absorption and ensuring the form of duty matches the circumstances of a particular dumping case, and proposed reforms, are detailed in our submission.

In summary, BlueScope believes that circumvention should be addressed by four reforms:

Policy and Procedural Reforms:

- The Anti-Dumping Commission (“the Commission”) undertake ‘Like Goods’ assessments on goods to which measures apply; and
- Limiting the use of measures based upon the *ad valorem* method in order to discourage circumvention activities.

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Legislative Reforms:

- Amending Division 5A of the *Customs Act* to include further circumvention activities, namely “minor modifications” of goods the subject of measures, and “country hopping”; and
- Defining “country hopping” to include the activities of exporters and importers.

BlueScope submits that there are two other areas requiring urgent attention to ensure Australia’s Anti-Dumping System is effective:

- Requiring the publication of a Preliminary Affirmative Determination (PAD) and the imposition of provisional measures from Day 60 of an investigation, which would re-affirm the Parliament’s intention for this requirement; and
- Reducing the prevalence of timeframe extensions in investigations to ensure that the legislated 155-day timeframe is achieved.

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1.0 Introduction

BlueScope welcomes the opportunity to provide this submission and address the Inquiry's Terms of Reference concerning Australia's Ant-Circumvention Framework on anti-dumping measures. Specifically, BlueScope seeks to detail to the Inquiry:

- Its experience of the manner in which anti-dumping measures are circumvented by foreign exporters and Australian importers, including through the avoidance of interim duties, the addition of minor low-cost alloys to alter the physical composition of the goods, country hopping, and further reductions of export prices to reduce the effectiveness of *ad valorem* measures imposed;
- The effectiveness of the recently introduced anti-circumvention provisions on measures imposed, including the inability to address certain circumvention activities;
- The practices of other jurisdictions including the use of "Scope Determination" inquiries that examine the intended scope of goods covered by the measures and those not explicitly covered; and
- Suggested areas for improving the anti-circumvention provisions that include the introduction of scope determination inquiries and caution about the use of certain forms of anti-dumping measures.

2.0 About BlueScope Steel

BlueScope Steel Limited ("BlueScope") is listed on the Australian Stock Exchange and is in the top 100 companies by market capitalisation.

BlueScope is Australia's largest steel manufacturer and its only flat steel producer. The company manufactures and markets steel products for the building & construction industry, such as steel roofing, walling, fencing, guttering, framing, beams and structural decking; pipe and tube products (through its Orrcon subsidiary); and finished and semi-finished steel products for the manufacturing, fabrication, distribution and infrastructure sectors.

The company's well-known brands include COLORBOND® steel, ZINCALUME® steel and the LYSAGHT® range of steel building products.

BlueScope employs approximately 8,000 people in Australia, mostly in regional areas and has facilities in every State. Its major Australian manufacturing facilities are: an integrated steelworks at Port Kembla, New South Wales; the adjacent Springhill metal coating and painting plant; the Western Port cold rolling, coating and painting plant in Victoria; and metal coating/painting plants at Erskine Park (Western Sydney) and Acacia Ridge (Brisbane). BlueScope's operations around Australia are responsible for the indirect employment of thousands of contractors and suppliers.

The company has an annual steel production capacity in Australia of 2.6 million tonnes and exports approximately 400,000 tonnes per annum (comprising about 40% of Australia's steel exports) to a diverse range of markets including the United States, Brazil, Thailand, New Zealand and Germany.

BlueScope has extensive global operations with manufacturing plants in 17 countries, including ASEAN, China, India, New Zealand and the United States. The company employs over 9,000 people in these overseas markets.

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3.0 Rationale for a strengthened Anti-Circumvention Framework in Australia

The Australian steel industry has gone through significant structural transformation in recent years. Since 2011 BlueScope Steel's production has halved and the company has formally exited the export market of commodity steel (although exports continue due to weaknesses in key domestic markets). The industry is affected by a structural transformation currently underway in the global steel industry as world demand for steel is slowing and pockets of excess capacity are redirected to reduce steel stockpiles.

The global structural transformation is largely explained by China's growth: China alone has seen annual steel industry production capacity grow by 200 million tons since late 2012 to 1.14 billion tonnes today, and in July this year China's daily steel output reached 2.28 million tonnes. Overcapacity is estimated at 300 million tonnes. In parallel, slowing economic growth is resulting in Chinese steel mills lifting exports to counter a weakening domestic market. The industry is characterized by aggressive pricing strategies that yield less revenue despite higher export volumes.

Globally, imported steel prices are falling, and falling unfairly. Declining sales prices of imports (with underselling taking place around the world, compared to domestic prices) and a surge in the number of unfair trade complaints has occurred in the past year.

Incidents of circumvention of trade measures are growing, and countries around the world are strengthening domestic anti-dumping and countervailing systems in response. In 2013, metal producers around the world filed 93 anti-dumping and countervailing duty cases, up from 24 cases five years earlier.

At the multilateral level, the World Trade Organization ("WTO"), and its predecessor the General Agreement on Tariffs and Trade ("GATT"), recognizes the need to address circumvention and has sought an agreed framework on the matter since the mid 1990s. At present, the Chair's first draft text of the WTO Negotiating Group on Rules remains under consideration (see the Agreement on implementation of Article IV of the GATT 1994, Article 9bis).

BlueScope supports the direction of the WTO to address anti-circumvention, and believes that a strengthened system in Australia, in line with practice in other jurisdictions, is required in order to provide relief from unfair and injurious trade practices.

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4.0 BlueScope's recent experience with Australia's Anti-Dumping System

Since mid-2012, BlueScope has made application for anti-dumping measures on four key products manufactured in Australia. Following formal inquiries, anti-dumping (and countervailing) measures have been imposed as follows:

- Hot rolled coil exported from Japan, Korea, Malaysia and Taiwan;
- Galvanized zinc coated steel exported from China, Korea and Taiwan;
- Aluminium zinc coated steel exported from China, Korea and Taiwan; and
- Hot rolled plate steel exported from China, Indonesia, Japan, Korea and Taiwan.

Countervailing measures (measures to address subsidies to exporters) also apply to the above exports from China only.

4.1 Circumvention impact on BlueScope

Following the imposition of measures on the above products, it has been BlueScope's experience that in certain instances the anti-dumping measures have been avoided resulting in a recurrence of material injury to the Australian industry.

The monthly ABS import data reflects a ninety-fold increase in import volumes as classified under the '*other alloy*' statistical tariff code for galvanised steel for the period October 2013 to September 2014.

BlueScope estimates the interim dumping duties foregone to the Commonwealth on these circumvented import volumes is around \$1 million - \$3 million for the same period.

The cost of the circumvention to BlueScope has been the ongoing injury in the form of lost domestic sales, reduced selling prices and reduced profitability from the lower price offers from circumventing exporters and importers that do not pay the imposed dumping duties. BlueScope is consequently forced to price-match against the measures-free imports in the commodity product market in Australia, even though the modified goods have been sold to the same customers and same end-use applications as was the subject of Investigation No. 190.

Even taking the most conservative approach, using the smallest avoided dumping margin of 2.6% on imported galvanised steel, over the past twelve months this translates to an annual loss of revenue to the company of approximately \$15 to \$20 million. If based on highest margin of 8.5 per cent for exports from Taiwan, the price-impact would be up to \$50 million.

Further details and evidence of circumvention and its impact on BlueScope are detailed in Appendices 1, 2 and 3.

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5.0 Key circumvention issues and BlueScope recommendations

The recent (June 2013) amendments to the *Customs Act 1901* (a new Division 5A – Anti-Circumvention inquiries - Section 269ZDBB) provide legislative relief to Australian industry in the case of certain circumvention activities, as follows and detailed in Appendix 4:

- Where the assembly of imported parts within Australia circumvents duties payable;
- Where the assembly of imported parts in a third country circumvents duties payable;
- Where goods are exported to Australia through one or more third countries to circumvent duties payable;
- Where arrangements are made between exporters to circumvent duties payable; and
- Where the intended effect of the dumping/countervailing duty is avoided (i.e. duty is paid, but not passed on as a price increase in the Australian market).

The legislative amendments do not address four key circumvention strategies employed by steel exporters and importers. It is in these four areas that circumvention is occurring and continues to cause injury to the Australia steel industry. The four circumvention issues and BlueScope's recommendations to address these are outlined below.

5.1 Minor modification and 'like goods'

Issue

The recently introduced circumvention provisions do not provide a remedy for the Australian steel industry in the case of minor or slight modifications to goods that are the subject of measures. These minor modifications, including the addition of low-cost alloys (e.g. boron at \$0.45/tonne) can result in a change of tariff classification and subsequent statistical code so that the goods in question are not covered by the anti-dumping measures, even though the end-use application of the imported goods has not changed.

The inability of the newly-introduced circumvention provisions to address minor modifications of goods exported to Australia that are otherwise the subject of measures is a significant flaw in the legislative framework, and one requiring immediate redress.

In 2012, during the consultative phase on the proposed circumvention remedies, the Australian Customs and Border Protection Service (ACBPS), the then administrator of the Anti-Dumping System, proposed to members of the International Trade Remedies Forum (ITRF) in its third meeting (ITRF 3 - Agenda Item 4a - *Anti-circumvention framework*) an approach to circumstances involving minor modifications to goods the subject of measures:

"Additionally, the framework will address goods which have been slightly modified. Customs and Border Protection intends to address this through existing 'like goods' provisions in the Customs Act rather than by legislative amendment, which would raise complex definitional issues and some serious operational challenges. As a result, slight modification will not be a ground for an anti-circumvention enquiry under the proposed new Division. Instead, Customs and Border Protection, in consultation with stakeholders, will consider modifying or clarifying its current approach to 'like goods' under section 269T and make any necessary administrative changes. As a result, affected parties will be able to notify Customs and Border Protection that relevant goods have been slightly modified so that those goods may be considered in the context of 'like goods' in relation to a specific dumping duty notice."

We understand that no action has been taken to date on implementing this 2012 initiative.

Imported modified goods continue to compete directly with the Australian produced like goods in all end-use applications previously considered as comprising the Australian market in the lead-up to the imposition of the measures. This issue requires immediate attention.

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Recommendation

BlueScope remains wholly supportive of the 2012 ACBPS' original administrative remedy to treat goods with minor modifications as 'alike' to the goods the subject of measures. The adoption of this approach would ensure that the Anti-Dumping System is able to swiftly address circumvention activities involving the slight modification of goods and that further material injury to the Australian industry is minimized.

5.2 Country hopping

Issue

A further form of circumvention encountered involves the switching of sources of supply of goods to a country not the subject of measures. The central issue in circumstances described as 'country hopping' is the inability of the Anti-Dumping System to quickly apply remedies to address the new source of dumping.

Recommendation

BlueScope recommends that the Australian provisions should reflect the EU or South African provisions, and be extended to include circumstances where importers who were involved in the original inquiry seek out new sources of supply from exporters in countries not the subject of measures. Full details of the EU and South African legislation are contained in Appendix 5.

5.3 Interim duty absorption

Issue

A further form of circumvention involves the absorption of the provisional measure/interim duties applied on exported goods. Where a measure is applied, it is expected that the selling price on the Australian market would increase by at least the amount of the measure.

The new legislation [s.269ZDBB(5A)] permits an application for a circumvention inquiry where it can be demonstrated that there is an avoidance of the intended effect of the duty. Often establishing prima facie grounds that duty absorption is occurring is difficult, as market offers for imported goods the subject of the measures are not as freely available post the imposition of measures.

Recommendation

BlueScope considers that a circumvention inquiry into duty absorption should ensure that the importer does not absorb the measure to displace the importer's profit, as the selling price continues to cause injury to the Australian industry. A mechanism deeming an appropriate amount of profit to be included as the importer's margin is required in interim duty absorption inquiries.

BlueScope recommends that the Australian provisions should reflect the South African Regulation 60.7, and be extended to include circumstances where importers who were involved in the original inquiry seek to absorb the measures imposed.

5.4 Use of the ad valorem method only

Issue

Where only *ad valorem* (or a percentage of the export price) measures are imposed there exists a high risk that the export price for the goods can be reduced further - resulting in a proportional reduction in the measures collected that are intended to remove the injurious effects of dumping.

BlueScope does not consider that the Commission has factored into its recommendations that exporters can reduce the export price post the imposition of interim measures without any

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penalty. This results in a circumvention of the intended full coverage of the proposed measure. The legislative provisions do not enable the Minister or the Commission to seek a “top-up” of measures short-paid.

Recommendation

In the case of the Australian steel industry, the most effective measure to minimize injury involved duties based on the “Combination Method” (this includes fixed and variable components, and prior to 2014 was the preferred form of measure).

5.5 Recommendations for amendments to Division 5A

BlueScope makes the following recommendations for amendments to Division 5A of the *Customs Act* to address circumvention by the minor modifications of like goods and country hopping:

- Adopt the intent of the U.S. provisions concerning the tariff classification of subject goods, that is, the Harmonized Tariff Sub-headings do not define the goods covered by measures, rather it is the description of the goods that determines whether goods are covered by the measures. It is recognized that the goods description is often generic – this is intended so that slight modifications to goods do not exclude those goods from the goods description.
- Amend Division 5A to include provisions that permit the Anti-Dumping Commission to undertake like goods assessments and, where appropriate, conduct inquiries where it is unclear whether the slightly altered or modified goods are not specifically included within the goods description.
- Further expand the definition of circumvention activities that takes account of the nature of the trade in goods between the exporting country and Australia that may result from the “practice, process or work” involving exported goods, including assessments of the economic justification for changes that may arise as a consequence of the imposition of measures. The adoption of this consideration would be consistent with the assessment criteria examined in other jurisdictions.
- BlueScope submits that the recent recommendation of the Commission to apply measures on an *ad valorem* basis has had the unintended consequence of enabling exporters to further reduce export prices post the impost of measures and result in a recurrence of injury to the Australian industry that the measures were intended to prevent. BlueScope submits that *ad valorem* duties can encourage circumvention activities where the exporter further reduces export prices, resulting in a reduced proportion of anti-dumping measures payable by the importer and the recurrence of injury to the Australian industry.

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6.0 Practices of other jurisdictions

Australia's antidumping system needs regular review to keep pace with practices in other WTO-compliant countries and combat unfair trade practices, including circumvention that those countries have addressed through effective and timely reforms to laws and processes. Jurisdictions that address circumvention include the European Union, the United States, Canada and South Africa. A detailed summary of relevant practices in other comparable jurisdictions is contained in Appendix 4.

The EU circumvention provisions address:

- Article 13 of Council Regulation (EC) No. 1225/2009 on protection against dumped imports from countries not members of the European Community, covering:
 - imports of like goods from third countries (whether goods are modified or not);
 - slightly modified goods from the country the subject of the measures; and
 - parts of goods.

The United States circumvention provisions address:

- Regulation 781(c) that reflected "the concern of Congress that foreign producers were circumventing AD duty orders by making minor alterations to products falling within the scope of an order in an effort to take these products outside of the literal scope".

The Canadian circumvention provisions address:

- The Special Import Measures Act ("SIMA") permits the Canadian International Trade Tribunal ("CITT") to review a dumping order or a finding. Subsection 76(2) provides "At any time after the making of an order or finding described in any of sections 3 to 6 [of SIMA], the tribunal may, on its own initiative or at the request of the Deputy Minister or any other person or of any government, review the order or finding and, in the making of the review, may re-hear any matter before deciding it."
- Further, the CITT will conduct a review of "any matter" including circumvention matters brought to it.

The South African circumvention provisions address:

- The full range of circumvention activities envisaged by other jurisdictions, including the minor modification of goods, country-hopping, and absorption of duty (Regulation 60).

7.0 Other areas for improvement to the Anti-Dumping System

BlueScope's exposure to the trade remedies investigation process since 2012 in five investigations provides it with a good understanding of the key issues confronting stakeholders of the Anti-Dumping System. BlueScope has identified the following other matters that it believes require urgent attention to improve the effectiveness of the System and that do not require legislative change:

- (i) access to a Preliminary Affirmative Determination and provisional measures in a timely manner;
- (ii) reduced timeframe extensions in investigations; and
- (iii) preferred use of the Combination Method.

The above enhancements only require the timely and effective application of *existing* policies and procedures. For details on the above recommendations, please see Appendix 5.

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8.0 Conclusion and summary of recommendations

BlueScope welcomes this opportunity to detail to the Inquiry its concerns about the circumvention of anti-dumping measures and its recommendations for reform. Circumvention of measures undermines a robust Anti-Dumping System and contributes to the ineffectiveness of the process and the measures.

BlueScope believes that circumvention should be addressed by the following four reforms:

Policy and procedural reforms:

- The Commission to undertake 'Like Goods' assessments that examine on an administrative basis whether goods in question are included within the goods description to which measures apply; and
- Limiting the use of measures based upon the *ad valorem* method as this encourages exporters to further reduce export prices to reduce liabilities to circumvent the full extent of the measures (and results in a recurrence of injury to the Australian industry).

Legislative reforms:

- Division 5A of the *Customs Act* requires amendment to include further circumvention activities namely "minor modifications" of goods the subject of measures, and "country hopping"; and
- "Country hopping" to be clarified to include exports from associated companies in countries not the subject of measures and, reference to the activities of importers involved in the original investigation that seek out new sources of supply (from countries not covered by measures).

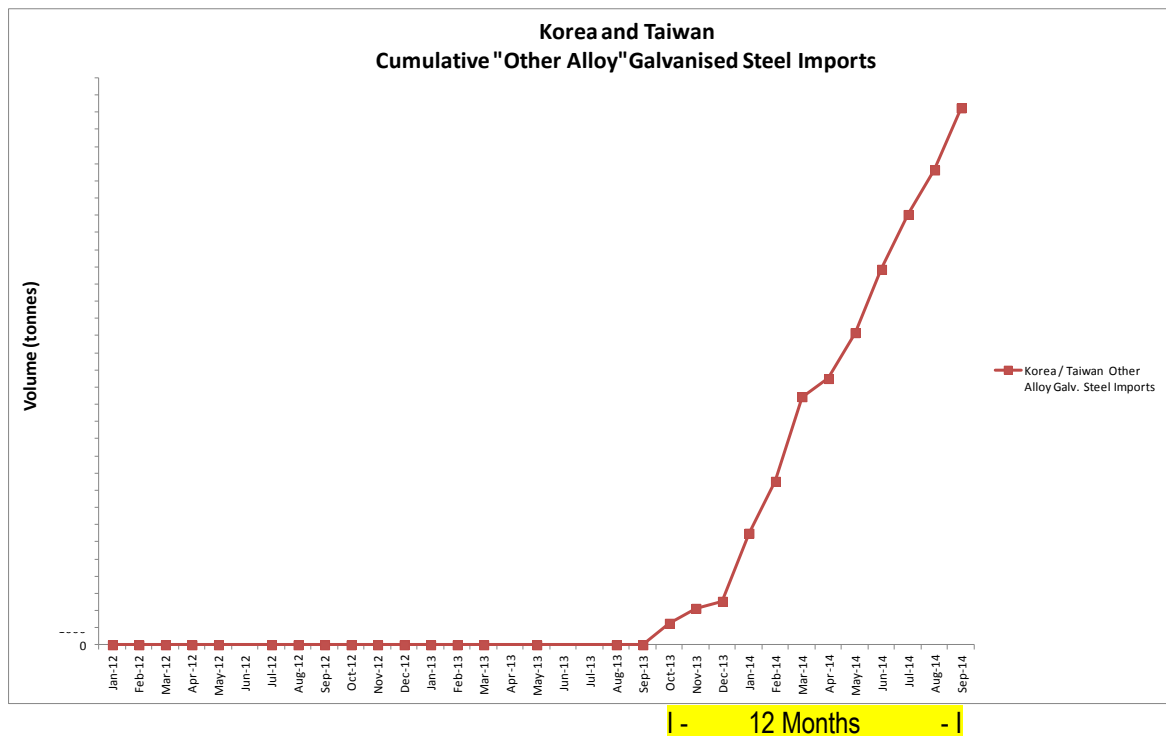
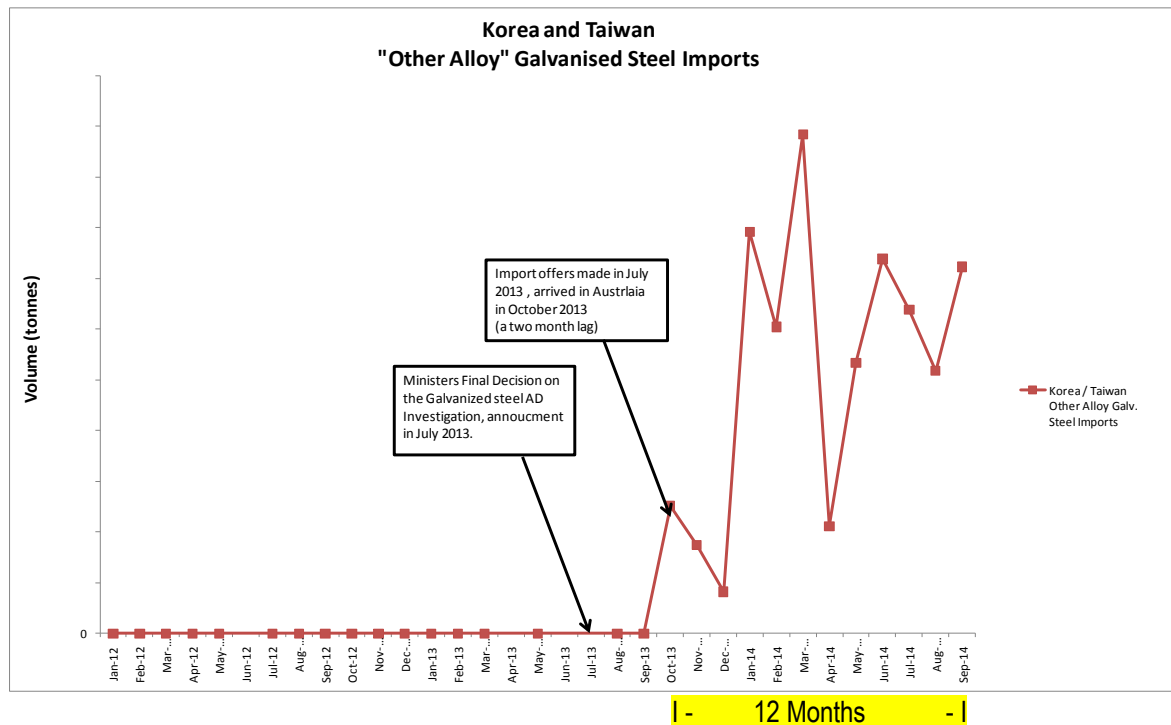
To improve the overall efficiency and effectiveness of the Anti-Dumping System, BlueScope also supports:

- The publication of a Preliminary Affirmative Determination and the imposition of provisional measures from Day 60 of an investigation (re-affirming the Parliament's desire for this requirement);
- Reducing the prevalence of timeframe extensions in investigations to ensure that the legislated 155-day timeframe is achievable:
 - this would also include the elimination of extensions to exporters to complete Exporter Questionnaire Responses beyond Day 40 of an investigation;
 - ensuring that the 20-day pre-screening period is adhered to for new applications;
- Refraining from utilizing measures based upon the *ad valorem* method as further reductions in export prices will cause further injury to the Australian industry.

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Appendix 1 – Impact of “Other Alloy” Galvanized steel imports from Korea and Taiwan

Data source: ABS



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Appendix 2 – Confidential Email re. boron

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Appendix 3 – Circumvention Issues, Case Studies and Impacts

The recent (June 2013) amendments to the *Customs Act 1901* (a new Division 5A – Anti-Circumvention inquiries - Section 269ZDBB) provide legislative relief to Australian industry in the case of certain circumvention activities, as follows:

- Where the assembly of imported parts within Australia circumvents duties payable;
- Where the assembly of imported parts in a third country circumvents duties payable;
- Where goods are exported to Australia through one or more third countries to circumvent duties payable;
- Where arrangements are made between exporters to circumvent duties payable; and
- Where the intended effect of the dumping/countervailing duty is avoided (i.e. duty is paid, but not passed on as a price increase in the Australian market).

Goods manufactured by BlueScope (i.e. flat steel products) do not involve “assembly” operations. Hence the first two circumvention activities of S. 269ZBB cannot be applied to imported flat steel products.

As at the date of submission, BlueScope is not aware of transshipment arrangements between exporters where the subject goods have been exported through one or more countries to avoid the anti-dumping and/or countervailing duties (“the measures”).

Similarly, BlueScope is not aware of any “arrangements” between exporters to circumvent measures. Nevertheless, it is recognized by BlueScope that the circumvention of measures via transshipment and/or collaboration between exporters remains a *potential* circumvention activity for flat steel exports to Australia.

Of the prescribed circumvention activities, the final activity associated with the avoidance of the intended effect of the dumping/countervailing duty that is not passed on as a price increase in the Australian market, is a remedy that would provide BlueScope’s flat steel products the subject of measures with the best outcome. However, BlueScope believes that this final remedy does not address the circumvention of measures where there is a minor modification of the goods the subject of the measures.

Minor modifications and ‘like goods’

The current circumvention provisions do not provide a remedy for the Australian steel industry in the case of minor modifications to goods that are the subject of measures. These minor modifications can result in a change of tariff classification and subsequent statistical code so that the goods in question are not covered by the anti-dumping measures, even though the end-use application of the imported good has not changed.

The minor modification does not alter the overall manufacturing process of the goods, the channel to market of the goods, the substitutability of Australian goods for the imported goods, the marketability of the goods, or the end-use application of the goods. The imported modified goods continue to compete directly with the Australian produced like goods in all end-use applications previously considered as comprising the Australian market in the lead-up to the imposition of the measures. In other words, for all practical purposes they are ‘like goods’ to the goods that are the subject of measures.

The inability of the newly-introduced circumvention provisions to address minor modifications of goods exported to Australia that are otherwise the subject of measures is a significant flaw in the legislative framework, and one requiring immediate redress.

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International Trade Remedies Forum (ITRF) proposal to deal with minor modification

During the consultative phase on the proposed circumvention remedies in 2012, the Australian Customs and Border Protection Service (ACBPS), the then administrator of the Anti-Dumping System, proposed to members of the International Trade Remedies Forum (ITRF) in its third meeting (ITRF 3 - Agenda Item 4a - *Anti-circumvention framework*) an approach to circumstances involving minor modifications to goods the subject of measures:

“Additionally, the framework will address goods which have been slightly modified. Customs and Border Protection intends to address this through existing ‘like goods’ provisions in the Customs Act rather than by legislative amendment, which would raise complex definitional issues and some serious operational challenges. As a result, slight modification will not be a ground for an anti-circumvention enquiry under the proposed new Division. Instead, Customs and Border Protection, in consultation with stakeholders, will consider modifying or clarifying its current approach to ‘like goods’ under section 269T and make any necessary administrative changes. As a result, affected parties will be able to notify Customs and Border Protection that relevant goods have been slightly modified so that those goods may be considered in the context of ‘like goods’ in relation to a specific dumping duty notice.”

It is important to note the administrator of the Anti-Dumping System recognised that slightly modifying goods was a form of circumvention and it intended to address this behaviour via the anti-circumvention framework. However, unlike the other circumvention activities (assembly of goods; exports transhipped via third countries; arrangements between exporters; and duty absorption) the minor modification of goods was to be addressed by administrative treatment rather than legislative amendment.

BlueScope was assured at the time that this administrative approach would be capable of addressing known examples from other jurisdictions involving the minor modification of products in the steel industry. The proposed approach would also have been able to address minor modifications of products in the food processing industry, such as the addition of spices in canned tomatoes.

BlueScope is unsure whether the ACBPS or the Anti-Dumping Commission has taken any action to date on implementing the proposed 2012 initiative.

Minor modifications – practical examples

The recent experience of the Australian steel industry involving the circumvention of measures is where the goods are slightly modified by the addition of an alloy in the manufacturing process. The alloy used is principally Boron (but can also include other elements, such as Chromium) in minor quantities: e.g. 0.0008 per cent, but sufficient to result in the goods incorporating this very minor amount of alloy being re-classified under Schedule 3 of the *Customs Tariff* - from flat rolled products of ‘iron or non-alloy’ steel to flat rolled products of ‘other alloy’ steel. The ‘other alloy steel’ classification does not attract anti-dumping measures.

The addition of Boron (or any other) alloy at such *minute* levels involves minimal cost. Steelmakers only need to add 25kg of Ferro-Boron into a ladle of 280 tonnes of molten steel (or 0.09/ kg Ferro-Boron into 1 tonne of molten steel) to achieve this >0.0008% Boron chemistry requirement. The Ferro-Boron costs \$A5.06 per kg, so the added cost is only \$A0.45/tonne of steel.

Critically, the imported goods that have been subject to minor modification are not used in any new end-use application, or applications other than those original goods were intended for. Similarly, the manufacturing process and the distribution channels to market for the slightly modified goods are the same as for the “non-alloyed” goods the subject of measures.

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The addition of minor amounts of alloy elements is designed purposefully to achieve a change in tariff classification to avoid (or circumvent) anti-dumping measures. Due to the low cost involved, minor modification has become the circumvention strategy of choice for steel exporters.

BlueScope was aware of the practice of exporters slightly modifying steel products via the addition of boron in cases in the United States more than five years ago. It was this understanding that BlueScope raised with the ACBPS in ITRF discussions preceding the legislative amendments on circumvention.

Since the imposition of measures on the above-mentioned 'iron or non-alloy' flat steel products, BlueScope has witnessed a significant and deliberate shift towards blatant circumvention practices. BlueScope is able to evidence this as follows:

- Competitive import offer documentation clearly indicating exporter/importer intent to circumvent in-force anti-dumping measures (Confidential Appendix 2); and
- Statistical import data obtained from the Australian Bureau of Statistics ("ABS"), quantifying a dramatic increase in imports of "alloy" galvanised steel post the imposition of dumping and countervailing measures in July 2013 (Confidential Appendix 1).

The following case study example demonstrates the growth in "alloy" galvanized steel imports following the imposition of measures on countries the subject of anti-dumping measures (i.e. Korea and Taiwan).

Case Study Example: Galvanised steel exported from Taiwan

BlueScope made application for anti-dumping measures on galvanized steel exported from China, Korea and Taiwan on 5 September 2012. A Preliminary Affirmative Determination (PAD) was published on 6 February 2013, imposing provisional securities on exports from China, Korea and Taiwan (with the exception of Unions Steel Co., Ltd of Korea, and Sheng Yu Steel Co., Ltd and Yieh Phui Enterprise Co., Ltd of Taiwan).

The Minister imposed interim measures on 25 July 2013.

In 2011/12 and 2012/13, there were no imports of galvanized steel (i.e. 'alloyed' galvanized steel from either Korea or Taiwan). There were no volumes imported prior to the PAD on 6 February 2013.

In the 2013/14 year, imports of galvanized steel including boron from Korea and Taiwan commenced and surged from zero to 1,073 tonnes and 8,446 tonnes, respectively. For the most recent 12 month period to September 2014, exports have dramatically increased to 3,260 and 27,995 tonnes (from Korea and Taiwan, respectively). The current rate of importation is trending at approximately 40,000 tonnes per annum.

The measures applied to all galvanized steel exporters from Korea and Taiwan – other than those mentioned above. The 27,995 tonnes from Taiwan are understood to have been exported by producers subject to measures on "non-alloyed" galvanized steel.

The trend immediately following the Minister's decision to impose interim measures demonstrates a consequential shift to slightly modified goods not the subject of the measures exported from Korea and Taiwan (i.e. circumvention).

Following the imposition of interim measures by the Minister, market intelligence confirms the availability of slightly modified (i.e. boron-added) galvanized steel on the Australian market

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from the countries to which measures apply (i.e. Korea and Taiwan). The alloy goods are sold into the same end-use applications as non-alloyed galvanized steel and, as measures are not applied, circumvention occurs.

Case Study Example: Hollow structural sections from China and Malaysia

BlueScope is also aware of similar activities involving the addition of boron in hollow structural sections ("HSS") (i.e. pipe and tube) exported to Australia from China and Malaysia. BlueScope's subsidiary company Orrcon Operations Pty Ltd is a manufacturer of HSS.

Following the imposition of measures on exports from China, Korea, Malaysia and Taiwan in July 2012, exports of boron-added HSS commenced from China and Malaysia.

Exports of boron-added HSS now account for approximately 20 per cent of the Australian HSS market, and are not the subject of anti-dumping measures due to the boron additive qualifying the goods as classified to an "alloy" tariff sub-heading not covered by measures.

The HSS example highlights that circumvention of the measures has occurred for the last two years. The Australian industry raised this issue with the Commission in November 2013, however, no resolution has occurred.

Injury to BlueScope from minor modification

BlueScope believes that the then Minister for Justice's decision to impose measures in July 2013 on the Zinc coated (galvanised) and Aluminium Zinc coated steel exported from China, Korea and Taiwan (International Trade Measures Report 190) was the catalyst for the influx of imported steel arriving under the 'other-alloy' statistical tariff code.

The monthly ABS import data reflects a ninety-fold increase in import volumes as classified under the 'other alloy' statistical tariff code for galvanised steel for the period October 2013 to September 2014.

Country	2011/12	2012/13	2013/14	12 mths to Sept. 2014
Taiwan (boron)	0	0	18,937	27,995
Korea (boron)	0	0	2,920	3,260

BlueScope estimates the interim dumping duties foregone to the Commonwealth on these circumvented import volumes is circa \$1 million - \$3 million for the above-mentioned period.

The cost of the circumvention to BlueScope has been the ongoing injury in the form of artificially low selling prices and reduced profitability from the lower price offers from circumventing exporters and importers that do not pay the imposed dumping duties. BlueScope is consequently forced to price match against the measures-free imports in the commodity product market in Australia, even though the modified goods have been sold to the same customers and same end-use applications as was the subject of Investigation No. 190.

Even taking the most conservative approach, using the smallest avoided dumping margin of 2.6% (the largest dumping margin is 9.1%) on imported galvanised steel, over the past twelve months this translates to an annual loss of revenue to the company of approximately \$15 to \$20 million¹.

¹ If based on highest margin of 8.5 per cent for exports from Taiwan, the price-impact is up to \$50M.

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Where circumvention of measures due to slight modification occurs, the Australian industry producing like goods is exposed to further injury and the effectiveness of the Anti-Dumping System to address the issue is seriously questioned.

BlueScope remains wholly supportive of the then ACBPS' original administrative remedy to treat goods with minor modifications as 'alike' to the goods the subject of measures. The adoption of this approach would ensure that the Anti-Dumping System is able to swiftly address circumvention activities involving the slight modification of goods and that further material injury to the Australian industry is minimized.

Circumvention by 'country hopping'

A further form of circumvention encountered involves the switching of sources of supply of goods to a country not the subject of measures. In many instances, it is an importer that will seek out a new supplier of the goods in a country to which the measures do not apply. On other occasions, an exporter may export goods to Australia from an affiliate in a country not the subject of measures.

The central issue in circumstances described as 'country hopping' is the inability of the Anti-Dumping System to quickly apply remedies to address the new source of dumping.

BlueScope has recently encountered 'country hopping' following the imposition of measures on galvanized steel exported from China, Korea and Taiwan. The following analysis highlights the emergence of new exports from India and Vietnam that were not previously observable on the Australian market.

Case study example: Galvanized steel from India and Vietnam

A PAD was published in respect of exports of galvanized steel from China, Korea and Taiwan on 6 February 2013. The Minister imposed interim measures on 25 July 2013.

The following Table 1 highlights the 'switch' in exports away from the countries the subject of the measures to the new sources of supply – India and Vietnam following the imposition of provisional measures in early 2013. BlueScope has since made application for measures against the newly-emerged sources of supply, India and Vietnam (Investigation No. 248).

Table 1 – Country hopping – switch to exports from India and Vietnam

Country	2011/12	2012/13	2013/14	% increase in 2013/14
India	890	3,164	30,596	867 %
Vietnam	175	978	12,524	1,180 %

The Anti-Dumping System includes remedies such as retrospective measures (s.269TN) that can be used to deter the practices of country hopping. An importer that has sought out a new source of supply from a country or countries not the subject of the measures cannot plead ignorance that it was "unaware" the goods were dumped. Experience from an earlier investigation would provide sufficient insight as to what steps the importer should follow to discount injurious dumping from the new source of supply.

BlueScope is aware that South Africa's Anti-Dumping Regulations include provisions for circumvention reviews involving country hopping. South African Regulation 60.8 defines country hopping as follows:

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“Country hopping shall be deemed to take place if imports, following the imposition of anti-dumping duties or provisional payments or the initiation of an anti-dumping investigation switch to a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted and that is based in another country or customs territory.”

The South African regulation is limited to an associated or affiliated party of the exporter in another country. BlueScope submits that this deeming provision is somewhat limited and that the importer is a central figure in most cases involving country hopping. BlueScope recommends that the Australian provisions should reflect the South African regulation 60.8, and be extended to include circumstances where importers who were involved in the original inquiry seek out new sources of supply from exporters in countries not the subject of measures.

Circumvention by interim duty absorption

A further form of circumvention involves the absorption of the provisional measure/interim duties applied on exported goods. Where a measure is applied, it is expected that the selling price on the Australian market would increase by at least the amount of the measure. In some instances, however, this does not occur.

Where the selling price of goods post the imposition of measures does not increase to reflect the measure imposed, the Australian industry is left to ponder whether the importer is:

- (i) absorbing the amount of the measure by foregoing profit; or
- (ii) receiving a rebate from the exporter for the amount of the penalty paid.

The new s.269ZDBB(5A) permits an application for a circumvention inquiry where it can be demonstrated that there is an avoidance of the intended effect of the duty. Often establishing prima facie grounds that duty absorption is occurring is difficult, as market offers for imported goods the subject of the measures are not as freely available post the imposition of measures.

BlueScope considers that a circumvention inquiry into duty absorption should ensure that the importer does not absorb the measure to displace the importer's profit, as the selling price continues to cause injury to the Australian industry. A mechanism deeming an appropriate amount of profit to be included as the importer's margin is required in interim duty absorption inquiries.

Impact of ad valorem form of duties

The forms of duty to be applied by the Minister were extended on 11 June 2013 via amendments to the Customs Tariff (Anti-Dumping) Regulation 2013. The forms of duty now include:

- combination of fixed and variable duty method;
- fixed duty method;
- floor price duty method; and
- *ad valorem* duty method.

Australian Dumping Notice No. 2013/98 dated 28 November 2013 notified the “*Guidelines on the Application of Forms of Dumping Duty*”. The Guidelines indicate that “*These forms of duty calculation all have the purpose of removing the injurious effects of dumping. However, in achieving this goal certain forms of duty will better suit the particular circumstances of some dumping cases more so than other forms of duty*².”

² Guidelines on the Application of Forms of Dumping Duty, P.2.

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BlueScope is aware that the Commission has recommended the imposition of *ad valorem* measures applicable to exports of Quenched and Tempered Steel Plate exported from two of the three exporting countries (i.e. Finland and Japan – refer International Trade Measures Report No. 234). For exports from the third country – Sweden – the combination method of dumping duty was recommended.

By notice published on 5 November 2014, the Parliamentary Secretary accepted the Commission's recommendation and applied the forms of dumping duty as proposed.

The Australian industry had written to the Commission during the inquiry (in response to the publication of SEF No. 234, and by further submission thereafter) and highlighted with the Commission that the imposition of *ad valorem* duties was insufficient to remove the injurious effects of dumping, particularly where export prices are reduced following the imposition of the measures.

BlueScope views the further reductions of export prices where *ad valorem* measures are applied as a further instance of "circumvention" of the measures. The combination method of dumping duties particularly addresses further reductions in export prices; the Australian industry had sought the imposition of the combination form of measures, however, the Commission rejected the industry's representations and recommended *ad valorem* measures.

Where *ad valorem* measures are imposed there exists a high risk that the export price for the goods can be reduced further - resulting in a proportional reduction in the measures collected that are intended to remove the injurious effects of dumping.

BlueScope does not consider that the Commission has factored into its recommendations that exporters can reduce the export price post the imposition of interim measures without any penalty. This results in a circumvention of the intended full coverage of the proposed measure. The legislative provisions do not enable the Minister or the Commission to seek a "top-up" off measures short-paid. In these circumstances the most appropriate measure to be applied is that based upon the combination method, where further reductions in the export price (without penalty) cannot occur.

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Appendix 4 – Recently introduced anti-circumvention provisions

BlueScope understands that only one circumvention inquiry³ has commenced following the introduction of the s.269ZDBB Circumvention provisions into the *Customs Act 1901*. It is understood that the inquiry is based upon an application by the Australian industry concerning “sales at a loss”. The investigation is continuing with a further extension in time for the final report to the Parliamentary Secretary scheduled for 12 December 2014.

The s.269ZDBB Circumvention provisions address five sets of circumstances involving the avoidance of duties (See 4.1 above). Of the five sets of circumstances, the circumstance relating to the avoidance of duty where there exists grounds to demonstrate that the goods have not increased in price commensurate with the total amount of duty, is likely to attract greatest interest.

The difficulty confronting Australian industry is accurately demonstrating that the selling prices of the imported goods have increased commensurate with the measures applied. The level of information sought by the Commission to warrant the commencement of an investigation may prevent applications proceeding on these grounds.

BlueScope has not encountered the prescribed circumvention circumstances as detailed in the new Division 5A of the Customs Act 1901, and can provide no further comment on the operation and effectiveness of the measures to date.

As indicated above, it was BlueScope's understanding in the ITRF consultation phase of the circumvention provisions that the ACBPS confirmed it could address any minor modifications to exported goods on an administrative basis under the ‘like goods’ provisions. This has not occurred as at the date of this submission.

³ Investigation No. 241 – Anti-Circumvention Inquiry – Aluminium extrusions from P R China.

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Appendix 5 – Practices of other jurisdictions in addressing Circumvention

European Union

The EU's circumvention provisions are contained in Article 13 of Council Regulation (EC) No. 1225/2009 dated 30 November 2009 on *protection against dumped imports from countries not members of the European Community*.

The EU circumvention provisions address:

- imports of like goods from third countries (whether goods are modified or not);
- slightly modified goods from the country the subject of the measures; and
- parts of goods.

Circumvention is defined in Regulation 13.1 as:

“a change in the pattern of trade between third countries and the Community or between individual companies in the country subject to measures and the Community, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product”.

Where circumvention is proven, anti-dumping duties not exceeding the residual anti-dumping duty may be imposed.

The EU Regulation further establishes what constitutes “the practice, process or work” of the product including:

“inter alia, the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics, the consignment of the product subject to measures via third countries, the reorganization by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Community through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers, and, in the circumstances indicated in paragraph 2, the assembly of parts by an assembly operation in the Community or a third country.”

The EU provisions therefore do address the circumvention activities included in Division 5A of the *Customs Act* including extending to the slight modifications of the exported goods (not covered by Division 5A of the *Customs Act*).

The EU will commence an investigation into the circumvention of measures on the initiative of the European Commission (“EU Commission”), the request of any Member State (of the EU), or from an interested party, on the basis of sufficient evidence in accordance with Article 13.1.

United States

The U.S. anti-dumping provisions include well-defined procedures for addressing goods covered by the anti-dumping measures that it refers to as “Scope Determinations”. Under U.S. statute, the scope of the anti-dumping measures *“may be amended at such time, and upon such conditions as the Department [of Commerce] and the ITC [International Trade Commission] may permit”*.

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The US Department of Commerce (“US DOC”) is empowered with the authority to assess the parameters of the investigation, including the scope of products the subject of the measures. Specifically, *“Commerce retains broad discretion to define and clarify the scope of an anti-dumping investigation in a manner which reflects the intent of the petition”⁴*. US DOC is vested with the authority to not only define the scope of an investigation but to also clarify the scope of the goods the subject of investigation.

Scope determination proceedings can be initiated by the US DOC or following a scope ruling request from an interested party. US DOC will determine whether a formal inquiry is warranted. Where an inquiry is not warranted US DOC *“issues a final ruling as to whether the merchandise which is the subject of the request is included in the existing order”* and the goods are treated as like goods. Where a formal inquiry is justified, US DOC will seek input from interested parties.

There are two categories of scope determinations in the US. These are:

- (i) Goods that were originally intended to be included in the scope of an inquiry; and
- (ii) Goods that are not explicitly covered by the goods description, however, the applicant considers should be included within the goods description.

The US DOC guidelines highlight that the descriptions of goods to be investigated are written in generic terms. Further, the *“inclusion of various Harmonised Tariff System US headings in a petition ordinarily should not be interpreted to exclude merchandise determined to be within the scope of the antidumping or countervailing duty orders but classified under HTSUS heading not listed in the petition”⁵* and “scope determinations are independent from classification determinations” by Customs.

This same interpretation of the goods as detailed in the goods description applies to investigations in Australia.

US DOC will rule on the goods description and issue a final determination. Where it is not clear from the description, US DOC will further take account of:

- the physical characteristics of the product;
- the expectations of the ultimate purchasers;
- the ultimate use of the product;
- the channels of trade in which the product is sold; and
- the manner in which the product advertised and displayed.

Following assessment of the above criteria in relation to the subject goods, the USDOC will need to only determine whether the general physical characteristics of the goods are “sufficiently similar” to the goods the subject of the original inquiry.

The U.S. provisions also consider scope determinations based upon circumvention activities. A “Section 781 Circumvention Proceeding” is a *“clarification or interpretation”* of goods to *“include products that may not fall within the order’s literal scope”*. These proceedings are different to the scope rulings that address whether the goods were intended to be included in the original description of the goods.

The circumvention activities covered by U.S. inquiries include:

⁴ Mitsubishi Heavy Indus. Ltd., v United States, 21 CIT 1227, 1232, 986 F. Supp. 1428, 1433 (1997) as reported in Chapter 26 – Scope and Anti-Circumvention Determinations” US Department of Commerce, P 2.

⁵ Ibid, P.5.

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- Merchandise completed or assembled in the United States;
- Merchandise completed or assembled in other foreign countries;
- Minor alterations of merchandise;
- Later-developed merchandise; and
- Notification of ITC.

The assembly assessments are similar to the provisions included within Division 5A of the Customs Act. The “Minor alterations to merchandise” relates to the alteration or modification of goods so that they no longer meet the physical description contained in the goods description. By the conduct of a scope inquiry US DOC can “*determine if this merchandise should nevertheless be included within the scope of the AD/CVD order if those alterations or modifications are deemed to be minor*”⁶.

The U.S. Regulation 781(c) was introduced to reflect “the concern of Congress that foreign producers were circumventing AD duty orders by making minor alterations to products falling within the scope of an order in an effort to take these products outside of the literal scope”⁷. The intent of the provision “*includes within the scope of an antidumping duty order products that are so insignificantly changed from a covered product that they should be considered within the scope of the order even though the alterations remove them from the order’s literal scope*”⁸.

This provision included in the U.S. Regulations addresses the addition of low-cost boron (or other alloys) that result in a very minor – in essence an insignificant – change to the exported goods.

It is also noted that the U.S. recognizes that the expansion of the scope of the measures could extend the measures beyond the end-use applications as originally considered. It may be necessary – in limited circumstances – to examine the injury implications of broadening the coverage of goods the subject of the measures.

BlueScope understands that the scope determinations are more prevalent than circumvention inquiries in the U.S. BlueScope further understands that there have been five investigations where goods were altered marginally to fall outside the goods description of the original measures. These were:

- (i) carbon steel plate from Canada (2001) – small amount of boron added to steel;
- (ii) folding metal tables from China (2009) – cross-bars added to table legs;
- (iii) steel threaded rod from China (2012) – chromium levels increased to marginally above maximum threshold;
- (iv) wire rod from Mexico (2012) – rod diameter reduced to marginally below minimum threshold; and
- (v) graphite electrodes from China (2013) – electrode diameter increased to marginally above maximum threshold.

BlueScope highlighted with the ACBPS the US experiences involving the addition of low-cost boron in products the subject of measures, in the ITRF consultations in 2012. The prevalence of minor alterations or modifications of products by exporters to goods the subject of measures in other jurisdictions should have alerted the ACBPS to the problems of circumvention via minor changes to the goods the subject of measures.

⁶ Ibid, P.8.

⁷ Ibid, P.8.

⁸ Ibid, P.8.

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Canada

Canada's Special Import measures Act ("SIMA") permits the Canadian International Trade Tribunal (CITT) to review a dumping order or a finding at the request of a person or government. Subsection 76(2) of SIMA provides:

"At any time after the making of an order or finding described in any of sections 3 to 6 [of SIMA], the tribunal may, on its own initiative or at the request of the Deputy Minister or any other person or of any government, review the order or finding and, in the making of the review, may re-hear any matter before deciding it."

The CITT will conduct a review of "any matter" including circumvention matters brought to it.

South Africa

South Africa's Anti-Dumping Regulations include provisions to address the circumvention of measures by exporters and importers of subject goods. Sub-Part V of the South African Regulations deems circumvention to have taken place where one or more of the following occurs:

- (a) a change in the pattern of trade between third countries and South Africa or the common customs area of the Southern African Customs Union:
 - (i) which results from a practice, process or work;
 - (ii) for which there is no or insufficient cause or economic justification other than the imposition of the anti-dumping duty;
- (b) remedial effects of the anti-dumping measure are being undermined in terms of the volumes or prices of the products under investigation;
- (c) dumping can be found in relation to normal values previously established for the like or similar products.

Circumvention activities involve the following:

- improper declaration of the value, origin, nature or classification of the good (Regulation 60.2);
- minor modifications to the goods (Regulation 60.4);
- sub-assembly (i.e. separate export of components or parts, etc) (Regulation 60.5);
- absorption of the anti-dumping duty (Regulation 60.7);
- country hopping (Regulation 60.8);
- misclassification under different tariff subheadings to the goods covered by the measure; and
- any other form of circumvention submitted to the Commission.

South Africa's provisions cater for the full range of circumvention activities envisaged by other jurisdictions, including the minor modification of goods.

Regulation 60.4 deems minor modification to have taken place where the exported good:

- (a) *has materially the same production processes, uses the same raw materials and have basically the same physical appearance or characteristics; or*
- (b) *is a substitute for the product on which anti-dumping duties have been imposed.*

Regulation 60.4 introduces the concept of *substitutability* of the slightly modified goods and the original goods the subject of the measures.

PUBLIC FILE**Appendix 6 – Other areas for improvement of the Anti-Dumping System****Preliminary Affirmative Determination (PAD) and provisional measures**

It has been BlueScope's experience that accessing a PAD and the imposition of provisional measures is being further delayed in recent investigations. The imposition of provisional measures provides relief to Australian industry from the injurious effects of dumping, and can be imposed from Day 60 of an investigation. In circumstances where an Exporter Questionnaire Response ("EQR") establishes that exports throughout the investigation period have not been at dumped prices, the Commission will be reluctant to make a PAD and impose provisional measures. Timeframe extensions granted to exporters to complete EQR's will extend the period to a PAD, often well beyond the original SEF deadline of Day 110 of the inquiry.

The following Table summarizes the timeframes to a PAD and provisional measures in the investigations in which BlueScope has been involved.

Table 2 – Length of time to Preliminary Affirmative Determination and Provisional Measures

Product	Date of Lodgement	Initiation Date	SEF (Date & Days Post Initiation)	PAD (Date & Days Post Initiation)	Inquiry Length (Days)
Hot Rolled Steel Coil	10 May 2012	15 Jun 2012	3 Oct 2012 (110)	5 Oct 2012 (112)	17 Nov 2012 (155)
Galvanised Zinc Coated Steel (Dumping)	3 Aug 2012	5 Sep 2012	16 Mar 2013 (192)	6 Feb 2013 (154)	30 Apr 2013 (199)
Aluminium Zinc Coated Steel (Dumping)	3 Aug 2012	5 Sep 2012	16 Mar 2013 (192)	6 Feb 2013 (154)	30 Apr 2013 (199)
Hot Plate Steel	21 Dec 2012	12 Feb 2013	1 Aug 2013 (169)	18 Jul 2013 (156)	16 Sep 2013 (214)
Galvanised Coated Steel	8 May 2014	11 Jul 2014	18 Mar 2015 (244)	Not yet published (but currently at 143 days)	Scheduled 2 May 2014 (289)

Notes:

1. The first galvanized zinc coated steel investigation involved exports from P R China, Korea & Taiwan.
2. The second galvanized zinc coated steel involves exports from India & Vietnam.
3. Extended delays are also occurring from lodgement to initiation – see galvanized coated steel lodged on 8 May and initiated on 11 July – 65 days.

Table 2 confirms that since 2012, investigations are continuing over extended periods, with access to provisional measures also further delayed. The most recent galvanized zinc coated steel inquiry (involving exports from India and Vietnam) will likely extend to 244 days before a PAD and provisional measures. This represents a stark contrast to the Parliament's stated intention to require provisional measures as close as possible from Day 60 of the investigation.

The recent delays in receiving relief from injurious dumping undermine a robust anti-dumping system. The emerging trend of ongoing extensions and delays must be urgently reviewed and reversed.

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Investigation timeframes

A disturbing trend of extended investigation timeframes has emerged since mid-2013. These further delays are costly to Australian industry and cause further sustained injury from dumping.

BlueScope's experience with investigation timeframes is summarized in Table 2. In the hot rolled steel coil investigation the legislative 155 day investigation timeframe was achieved. In subsequent investigations, extensions to the inquiry timeframes have been in the range of 44 days to 134 days.

Timeframe extensions invariably delay access to remedies from dumping. BlueScope is aware that in two recent investigations - Quenched and Tempered Steel Plate, and Hot Rolled Structural Sections - four separate timeframe extensions have been approved including to the date of acceptance of the Commission's recommendations by the Parliamentary Secretary.

Ad valorem duties

BlueScope believes that the application of *ad valorem* measures provides an opportunity for exporters to reduce export prices to circumvent the intended impact of measures. BlueScope is concerned that the Commission has recently recommended that measures be applied on an *ad valorem* basis. BlueScope does not believe that *ad valorem* measures can effectively address injurious dumping. Where export prices are further reduced, the proportion of the export price represented by measures is also reduced. Reductions in export prices (without commensurate reductions in production costs) result in the recurrence of injury to the Australian industry.

BlueScope believes that *ad valorem* measures are not effective in removing injury to the Australian industry where export prices are further reduced (when there is no commensurate reduction in production costs).