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By email

Dear George

Anti-circumvention inquiry - ADC 306 Quenched and tempered steel exported from Sweden

On 19 August 2015, following an application lodged by Bisalloy Steel Pty Limited, the Anti-Dumping Commission ("the Commission") initiated an anti-circumvention inquiry in relation to quenched and tempered steel ("Q&T steel") exported from Sweden.

We write on behalf of SSAB Swedish Steel Pty Limited in relation to that inquiry.

There is no legal basis for the maintenance of the inquiry.

The specific anti-circumvention activity to which the inquiry applies is that referred to in Subsections 269ZDBB(1) and (5A) of the *Customs Act 1901* ("the Act"), which together provide as follows:

(1) This section sets out when circumvention activity, in relation to a notice published under subsection 269TG(2) or 269TJ(2), occurs.

...

(5A) Circumvention activity, in relation to the notice, occurs if the following apply:

- (a) goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice applies;*
- (b) the exporter is an exporter in respect of which the notice applies;*
- (c) either or both of sections 8 and 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia;*
- (d) the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act;*
- (e) the circumstances covered by paragraphs (a) to (d) occur over a reasonable period.*

The "total amount of duty payable... under the Dumping Duty Act" on Q&T steel imported from Sweden is a fact that presently does not exist. Absent a final assessment of the duty liability in respect of the Q&T steel exported to Australia during the period 1 January 2015 to 30 June 2015 the amount of duty (if any) incurred under the Section 269TG(2) notice cannot be known.

The notice to which the inquiry relates was published on 5 November 2014. An importer has the right to request that the Minister make an assessment of the liability of goods upon which interim duties have been paid in a given importation period, provided that the application is made not more than six months after the end of the particular importation period (Section 269V(2)(a) of the Act refers).

In accordance with Section 269T(1) of the Act, the first two importation periods following the publication of the notice were 6 November 2014 to 5 May 2015 and 6 May 2015 to 5 November 2015. The total amount of duty payable under the Dumping Duty Act on the Q&T steel exported to Australia during the period 1 January 2015 to 30 June 2015 in accordance with the Section 269TG(2) notice (if any) will not be known until after 6 May 2016.


In these circumstances the inquiry cannot continue. Having identified this legal obstacle, there is nothing to inquire into and the circumvention activity cannot be found to exist.

We respectfully submit that the Commissioner cannot be satisfied that circumvention activity within the meaning of subsection 269ZDBB(5A) has occurred.

Accordingly, the investigation must be terminated under Section 269ZDBEA(2) of the Act.

SSAB Swedish Steel Pty Limited reserves all of its rights with regard to this matter.

Yours sincerely



Alistair Bridges
Senior Lawyer