

For Publication

The Director
Operations 3
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008

28 April 2014

Attn: Mr Matthew Williams

Dear Sir

Quenched and Tempered Steel Plate Investigation - submission replying to Bisalloy's claims concerning related parties.

As you know I act for Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Ltd. and refer to the two letters from Bisalloy Steel Group Limited (**Bisalloy**) dated 31 March 2014 - the first of which concerns the topic of "related parties" and the second being a reply to JFE's submission dated 7 March 2014.

In this letter I will only address Bisalloy's claims regarding the related parties issue. I will defer my clients' reply to Bisalloy's second letter.

Related Parties

In its submission, Bisalloy refers to ASIC company searches performed in relation to certain registered Australian companies who have imported goods from Japan during the POI - namely Total Steel of Australia Pty Ltd (**Total Steel**) and ASM Corporation Pty Ltd (**ASM**).

The data referred to by Bisalloy in its letter, but not included on the public record with the submission provided to the ADC, is interpreted by the applicant to evidence a commercial relationship between these named Australian importers and the Japanese entities identified as exporters of the goods during the POI - namely Marubeni Itochu Steel Inc. and Metal One Corporation.

Bisalloy then attempts to demonstrate that there is a relationship between the importers and exporters of the goods under consideration - that is, the parties are related parties. The information is relied upon by Bisalloy to support a number of allegations regarding the dynamics of trade between related parties (dealt with below).

My clients submit that the corporate information provided by the applicant is publicly available information and Marubeni Itochu Steel Inc. and Metal One Corporation make no secret of this fact. A cursory reading of the public file exporter questionnaire response supplied to the ADC by Metal One Corporation identifies the commercial affiliation between Metal One Corporation and ASM (<http://www.adcommission.gov.au/cases/documents/014-Questionnaire-Exporter-MetalOneCorporation.pdf>).

Further, whilst the corporate affiliations between Marubeni Itochu Steel Inc. and subsidiaries are not included in the public file version of their exporter questionnaire response, the company publicly identifies that Total Steel is an overseas subsidiary company within its global network.

The existence of commercial affiliations between overseas companies and their subsidiaries across global networks is by no means a new or unique phenomenon (as the applicant will be well aware).

Bisalloy's use of an ASIC company search in this instance to make disparaging assumptions regarding the trade of the goods to Australia between parent companies and Australian importers relies upon a wilful misinterpretation of the publicly available information.

Allegations regarding export price reliability

The applicant's submission, in summary, suggests that, due to the existence of a commercial relationship between the exporter and importer of the goods, the price of goods sold by the former to the latter is unreliable.

The assertion implied in this submission (as originally made in the application and rejected by the ADC) is that because transactions between the parties have not been made on arm's length terms the declared price paid by the importer to the exporter cannot be used to determine export prices in accordance with section 269TAB (1)(a).

The intended outcome of such an argument, whilst not clearly articulated by the applicant, is to suggest that the ADC must determine export prices in relation to exports of the goods by Metal One Corporation and Marubeni Itochu Steel Inc. in accordance with section 269TAB (1)(b) to be:

- the price at which the goods were so sold by the importer to a person who is not an associate of the importer (less the prescribed deductions); or
- in any other case - the price that the Minister determines having regard to all the circumstances of the exportation.

On the basis of the above, the allegation made (ie the declared prices are unreliable) is a very significant claim to make against Japanese exporters and their Australian importers. To support this claim the applicant has relied on the mere fact that the parties have a commercial affiliation to suggest that all transactions between these parties cannot be deemed to be arms length.

The submission reflects that the applicant has not given thought to the factors that must be considered by the ADC when determining whether transactions between parties are, or are not, arms length transactions.

Section 269TAA outlines the circumstances in which the price paid or payable shall not be treated as arms length. These are where:

- there is any consideration payable for in respect of the goods other than price;
- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller;
- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The above clearly articulates that the test is not merely whether a relationship exists between the buyer and the seller but whether, the price between the buyer and the seller is influenced by this relationship.

This question is one for the ADC to consider on the basis of purchase and sales data verified by the ADC during the course of its importer visit program. A number of factors can indicate that purchases are influenced by a commercial relationship but again, these are factors that can only be assessed by verifying the terms of sale between the parties.

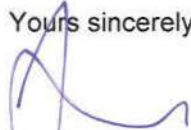
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My clients do not consider that the transactions have not been made on the basis of fair-market prices and in the same manner, and on the same terms, that would be applied if the purchaser was an unrelated party.

My clients consider the assertions made by Bisalloy, which wrongly interprets publicly available evidence and implies improper trade practices by Japanese mills, should be rejected.

Yours sincerely



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