

25 September 2012

MINTER ELLISON BUILDING
25 NATIONAL CIRCUIT FORREST
GPO BOX 369 CANBERRA ACT 2601 AUSTRALIA
DX 5601 CANBERRA www.minterellison.com
TELEPHONE +61 2 6225 3000 FACSIMILE +61 2 6225 1000

By EMAIL john.bracic@customs.gov.au

Mr John Bracic
Director Operations 1
International Trade Remedies Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601

Dear Mr Bracic

Alleged Dumping of Hot Rolled Coil Steel (HRC) from Japan

1. Introduction

We act for JFE Steel Corporation, Kobe Steel, Ltd. and Nisshin Steel Co., Ltd. (**the Co-Defence**) in relation to the current investigation by the Australian Customs and Border Protection Service (**Customs**) into alleged dumping of HRC exported from Japan, following an application lodged by Bluescope Steel Limited (**the Applicant**).

We refer to three submissions (#063, 064 & 065) dated 17 September 2012 by the Applicant – one attempting to address the issue of cumulation (**first submission**) one dealing with importer visit reports (**second submission**) and one dealing with submissions from interested parties (**third submission**).

Collectively the submissions contain a range of assertions that are either wrong, inconsistent or contradictory and which in a number of instances are made under cover of unjustifiable claims of confidentiality. This submission focuses on the applicant's assertions relating to confidentiality, cumulation, causation and material injury.

2. Confidentiality

In the first submission the Applicant claims to have conducted an analysis of domestic sales relating to alleged substitutability but refuses to reveal what specific types and grades of steel are involved. Then in section 4 of its second submission the applicant again claims confidentiality in relation to its product range. The only explanation for a major public company, especially one that requests protection from the Government for its locally produced range, refusing to reveal product specifications is that it is intent on frustrating interested parties pursuing the right to test and rebut the applicant's assertions. The information being withheld is central to the resolution in the current matter of a range of issues including like goods, cumulation, causation, material injury, and the scope of any dumping notices or ministerial exemptions from dumping duties.

Disclosure of the Applicant's product range and the different market segments to which it allegedly supplies items within that range could not possibly adversely effect its business or commercial interests as a producer and marketer of steel products and consequently the Co-Defence submits that, pursuant to section 269ZJ(5) of the *Customs Act 1901* Cth (**the Act**), the CEO must disregard all the applicant's assertions that are based on the undisclosed information.

3. Cumulation

Even if the CEO, contrary to domestic law and international obligations, does not disregard the applicant's assertions, the purported analysis of substitutability across segments must be dismissed because it is unsupported, it is contradicted by every other interested party commenting on the issue and is confined to alleged observations of inter-segment utilisation of Australian produced HRC types and grades. There is no analysis of, or reference to, such utilisation, if any, of exported goods from the nominated countries or Japan as required by the first arm of subsection 269TAE(2C)(e) of the Act. In addition the unsupported assertions relate only to alleged substitutability between the P&T or Auto segments and the GM segment; there is no claim of substitutability between the P&T and the Auto segment and indeed there can be no such claim when the evidence before Customs is that in the investigation period average export prices from Japan to the Auto segment were 35% higher than prices to the P&T segment.

The Applicant also claims that high performance and structural grade HRC... can be used... in applications requiring lesser performance standards or reduced minimum strength. Such a claim is refuted by merely posing the question of why would a user pay premiums for superfluous performance characteristics? The central point is that the Act establishes a clear default position that exports from more than one country are not to be cumulated unless certain competitive conditions exist. The detailed and persuasive analysis necessary to displace that default position cannot be based on a series of "can be's". It must be based on the realities of the market. The primary reality acknowledged by the Applicant, Customs and all interested parties is that the HRC market is segmented. The very notion of a segmented market is that the segments exhibit different market characteristics in relation to such features as cost, price, type, grade, specification or end use. The Applicant's position that the market is segmented but there are no differences between the segments must be dismissed as absurd.

The implausibility of the Applicant's position is underlined by the request in section 5 of the second submission, citing Japanese exports as an example, that separate normal values and export prices be established to take account of cost and price differences in steel grades. This perfectly reasonable proposition, supported by the Co-Defence and a number of other interested parties, is totally inconsistent with the Applicant's assertions relating to cumulation.

4. Causation and Material Injury

In section 2 of the third submission the Applicant attempts to rebut the earlier submission by the Co-Defence that injury, if any, caused by exports from Japan to the GM segment in the investigation period was negligible. The basis for the rebuttal appears to be that because the overall market declined in the investigation period the Applicant was *...more susceptible to injurious dumping...* and therefore the impact of exports from Japan on the local industry's economic performance in that period was greater than negligible. Leaving aside the casuistry implicit in the susceptibility proposition, this claim ignores a number of considerations essential to a proper assessment of causation and the materiality of any injury.

As the Applicant maintained overall market share in the investigation period while increasing market share in both the P&T and Auto segments, it is clear that any impact on the domestic industry's economic performance was focussed on the GM segment, where participation by the Japanese mills was negligible and there was a substantial increase in imports from other sources. In addition during the same period the volume and value of overall exports from Japan reduced by about 60% and 50% respectively, average export prices increased by about 15%. and Japanese exports to the GM sector declined by almost 80%.

Clearly in relation to the GM sector no claim of material injury attributable to Japanese exports can be sustained. We note further that the Applicant has not attempted to rebut the submissions by the Co-Defence that any coincidence analysis of Japanese exports and the economic performance of the domestic industry in any of the segments demonstrates significant negative correlations and that therefore material injury caused by allegedly dumped exports from Japan has not been established. Compared to the substantial reductions cited above in the volume and value of Japanese exports to Australia the reduction in the same factors of about 13% applying to the applicant can only be described as modest and they illustrate that the position of the Australian industry in the domestic market relative to Japanese producers has strengthened significantly.

5. Conclusion

Continuation of the current investigation, in so far as it relates to exports of HRC from Japan, would be a breach of the CEO's obligation to terminate under the Act and an unwarranted interference in an important element of the trading relationship between Japan and Australia. Consequently the Co-Defence again requests that the CEO fulfils this obligation immediately.

Yours sincerely

MINTER ELLISON



John Cosgrave
Director Trade Measures

Contact: John Cosgrave Direct phone +61 2 6225 3781 Facsimile +61 2 6225 1781
Email: john.cosgrave@minterellison.com.au
Partner responsible: Russell Miller Direct phone: +61 2 6225 3297
Reference: RVM/JPC: 26-7398234