



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

Operations3@adcommission.gov.au

16 September 2014

Dear Sir or Madam

NON-CONFIDENTIAL – FOR PUBLIC RECORD

Submission by ASM Corporation

Dumping investigation ADC 234 - Quenched and tempered steel plate exported from Finland, Japan and Sweden

1. INTRODUCTION

This submission is made by ASM Corporation (**ASM**) in response to the Statement of Essential Facts (**SEF**) issued by the Anti-Dumping Commission (**Commission**) on 27 August 2014 in relation to investigation 234 – Quenched and Tempered Steel (**Q & T steel**) from Finland, Sweden and Japan.

Where appropriate, these submissions also make reference to the Preliminary Affirmative Determination report (**PAD**) issued by the Commission on 19 May 2014.

2. EXECUTIVE SUMMARY

In summary, ASM submits that:

- (a) the Commission's calculation of normal value and export price for Nippon Steel and Sumitomo Metal Corporation (**NSSMC**) is infected with error, because:
 - (i) necessary adjustments were not made to ensure that normal values were properly comparable with export prices; and
 - (ii) no adequate explanation was provided by the Commission for the significant increase in the dumping margin for NSSMC between the PAD and the SEF, so as to permit ASM and other interested parties a proper and fair opportunity to respond;
- (b) the use of Bisalloy's average weighted selling price for the years 2010 to 2012 is an inappropriate measure of the selling prices Bisalloy could reasonably expect in the current market for Q & T steel. The unsuppressed selling price (**USP**) should be calculated on the basis of undumped Q & T steel imports in the 2013 year; and
- (c) the Commission ought to revisit its finding of material injury.

3. DETERMINATION OF EXPORT PRICES, NORMAL VALUES AND DUMPING MARGINS FOR NSSMC

ASM purchases Q & T steel from Metal One, who in turn purchases steel to be sold to ASM from NSSMC.

Dumping margins found for NSSMC during the course of the investigation are as follows:

Party	PAD Dumping Margin	Verification Visit Dumping Margin	SEF Dumping Margin
NSSMC	26.1%	N/A	35.8%

As the above table demonstrates, the Commission found a substantially higher dumping margin for NSSMC in the SEF than it did in the PAD.

3.1 Identification of exporter

For the reasons given in its submission to the Commission dated 18 July 2014, ASM submits that Metal One is in fact the true exporter of the goods to Australia, and accordingly, export prices should be determined for it under section 269TAB(1)(a), and normal values should be determined for it under section 269TAC(1), with adjustments made under section 269TAC(8).

The Commission appears to have had no regard to the factors set out in ASM's submission dated 18 July 2014 that distinguish Metal One's position as an exporter from the circumstances of trading house intermediaries in other cases.

Without derogating from those earlier submissions, ASM makes the following submissions with respect to export price and normal values determined for ASM.

3.2 Failure to consider all relevant information

The Commission purportedly determined export price and normal value for NSSMC under sections 269TAB(3) and 269TAC(6) respectively. Those sections require the Minister (and by extension, the Commission) to determine export prices and normal values "having regard to all relevant information".

In the SEF, the Commission:

- (a) determined the export price for NSSMC as the weighted average export price of Japanese exporters (which we assume to be a reference to JFE Corporation (**JFE**)); and
- (b) determined normal value for NSSMC as the weighted average domestic selling price of JFE, "without negative adjustments" made for JFE as outlined in Table 6 (that is, adjustments that would lower the normal value and thereby reduce the dumping margin). It appears (although it is not clear) that the positive adjustment to normal value made for JFE on account of specification differences was, however, applied to NSSMC.

Export price

ASM submits that the Commission was required, by section 269TAC(3), to have regard to, and adjust NSSMC's export price to account for, the price paid by ASM and others to Metal

One for Q & T steel (which ASM understands was disclosed in Metal One's questionnaire). Failure to adjust for the difference between the price paid by importers and the ex-works price charged by JFE and NSSMC results in an artificially depressed export price that does not reflect the actual free-on-board (**FOB**) price paid by the importer for the goods. To the extent that the Commission has not made allowance for the difference between NSSMC's ex-works price and the FOB price paid by importers, ASM submits that the Commission has fallen into error.

Normal value

It appears that, to determine normal value for NSSMC based upon JFE's weighted average domestic selling price, the Commission may have applied a positive adjustment to account for specification differences, but not negative adjustments to account for inland transport and selling costs. If that is the case, ASM submits that the Commission has fallen into error.

As noted above, section 269TAC(6) requires the Commission to determine normal value having regard to all relevant information. If a positive adjustment made to JFE's normal value is relevant and applicable for the purpose of determining a normal value for NSSMC under section 269TAC(6), then negative adjustments made to JFE's normal value must also be relevant and applicable when determining normal value for NSSMC.

It may alternatively be the case that the Commission in fact made no adjustments at all to JFE's weighted average domestic selling price to determine the normal value found for NSSMC. If that is the case, ASM submits that the Commission fell into error by not having regard to and applying to NSSMC, adjustments applied to JFE. ASM submits that the type and quantum of the adjustments made to JFE's domestic selling prices is "relevant information" to which the Commission was, under section 269TAC(6), required to have regard.

The type and quantum of the adjustments made for JFE are relevant to the determination of normal value for NSSMC under section 269TAC(6) because it is fundamental to the anti-dumping system that normal values be comparable with export prices (that is, that they be determined for comparable goods sold at a comparable level of trade). By failing to have regard to the adjustments made for JFE when determining normal value for NSSMC, the Commission has produced a normal value that is inflated and not comparable to export prices, because, among other things, the normal value includes inland domestic freight, and domestic marketing and selling costs that are not paid where goods are exported.

As the Commission notes at page 34 of the SEF, the adjustments to JFE's domestic selling prices to arrive at normal value were applied "to ensure the comparability of normal values to export prices". By failing to make any adjustments for NSSMC, the Commission has arrived at a normal value that is not comparable to export price, and that therefore results in an inflated dumping margin for NSSMC.

The Commission may be of the view that where a manufacturer or exporter fails to fully complete a questionnaire, then no adjustments should be made. If that is the case, ASM points out that section 269TAC(6) imposes a positive obligation on the Minister and, by extension, the Commission, to have regard to all relevant information. It is not a provision that was intended to be used to punish importers (who ultimately pay any duty imposed) for the actions of producers, and it certainly does not authorise the Commission to ignore relevant information (including ignoring the fact that the "normal" value being considered by the Commission includes irrelevant factors) merely on the basis of procedural issues that may arise in the course of the Commission's investigation.

Accordingly, ASM submits that the normal value determined for NSSMC ought to be adjusted, having regard to the adjustments made for JFE, to ensure that the normal value

and export price found for NSSMC are comparable. ASM submits that, to the extent the Commission has failed to take that approach to date, it has failed to comply with the positive obligation to have regard to all relevant information imposed upon it by section 269TAC(6).

3.3 Procedural fairness

As noted above, the Commission found a significantly higher dumping margin for NSSMC in the SEF than it did in the PAD.

The increase in dumping margin can only have occurred if:

- (a) the normal value determined for NSSMC in the SEF was higher than the normal value for NSSMC in the PAD; and/or
- (b) the export price determined for NSSMC in the SEF was lower than the export price determined in the PAD.

The Commission does not appear to have given any explanation in the SEF for the increase. Similarly, the verification report for JFE (upon whose data NSSMC's export price and normal value was based) sheds no light upon the reasons for the significantly higher dumping margin found for NSSMC in the SEF.

The Commission's failure in this regard has denied ASM and other interested parties a fair opportunity to make informed submissions in response to the Commission's preliminary finding in the SEF.

ASM respectfully submits that, in these circumstances, the most appropriate course would be for the Commission to either:

- (a) recommend to the Minister that he find a dumping margin for NSSMC of at most 26.1%, in accordance with the finding contained in the PAD; or
- (b) revoke and issue an amended SEF that properly explains the reason for the increase and provides the parties with a fair opportunity to make submissions in response.

4. NON-INJURIOUS PRICE

In light of the dumping margin found by the Commission (and without derogating from ASM's submissions as to the problems with that finding, ASM agrees that the use of a non-injurious price (**NIP**) as the basis for determining the level of dumping duties to be imposed on Q & T steel exported to Australia from Japan is appropriate. However, ASM has some concerns in relation to the methodology adopted by the Commission to determine the NIP, and the amount of the NIP-derived dumping duty imposed on Q & T steel exported by NSSMC.

4.1 Calculation of NIP

As the Commission notes at section 10.2 of the SEF, "[the] NIP is the price that would be sufficient to remove the injury caused to the Australian industry by dumping" and that "[the] Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP."

In the PAD, the Commission calculated USP by uplifting Bisalloy's cost to make and sell in 2013 with its profit per unit from 2012 (**CTMS method**).

In response to criticism of this approach by some interested parties, the Commission reconsidered its position and concluded in the SEF that the USP should be calculated as Bisalloy's average weighted selling price over the period 2010 to 2012 (**AWSP method**). The use of the AWSP method resulted in a one point reduction in the USP.

ASM submits that the AWSP method over this period is also inappropriate.

Market conditions

As the Commission's own analysis shows, the market for Q & T steel in Australia "increased [in size] significantly in 2011 from 2010 and remained constant in 2012 before a rapid contraction in 2013".¹ Bisalloy's sale volumes between 2010 and 2012 grew very significantly.² The year 2010 was Bisalloy's peak year for unit revenue, which then declined slightly in 2011 and remained reasonably constant in 2012.³ The year 2012 was Bisalloy's most profitable year per unit⁴ and overall⁵.

In contrast, and as noted by the Commission, the market for Q & T steel in Australia contracted rapidly between 2012 and 2013. The rapid contraction resulted in Bisalloy's cost to make and sell increasing between 2012 and 2013.⁶

At the time of this rapid contraction in 2012-2013, there remained a significant level of supply of Q & T steel in the Australian market which placed downward pressure on prices for Q & T steel, evidenced by:

- (a) the fact that Bisalloy's stock-on-hand grew by 114% between 2010 and 2013;⁷ and
- (b) the statement of Bisalloy's Chairman in 2013 that "many companies are overstocked due to rapid decline in demand which increased the pressure for lower prices as excess inventory is cleared from the supply chain".⁸

It therefore seems highly likely (and certainly more probable than not) that, even in the absence of dumping, prices for Q & T steel in the Australian would have fallen, quite dramatically, between 2012 and 2013.

The Commission's conclusions regarding the impact of market contraction on Australian industry

The Commission's analysis of the impact that market conditions had on the price for Q & T steel in Australia is at best unclear, and at worst, contradictory.

At page 56 of the SEF, the Commission concedes that excess supply in the Australian market, combined with reduced demand, would result in prices for Q & T steel falling between 2012 and 2013. The Commission states:

"The Commission acknowledges that reduced demand has flow on effects to other injury factors claimed by Bisalloy, such as:

¹ SEF page 28.

² SEF page 39.

³ SEF page 41.

⁴ SEF page 41.

⁵ SEF page 42.

⁶ SEF page 41.

⁷ SEF page 43.

⁸ SEF page 54.

- reduced capacity utilisation due to reduced sales volumes. The lower throughput of goods is likely to have contributed to higher CTMS;
- increased stock levels of inventory based on reduced demand;
- increased price competition due to the market's reaction in demand; and
- reduced profitability and revenue from reduced sales volumes.

However, the Commission notes that dumping need not be the sole cause of injury to the Australian industry."

However, at pages 49 and 50 of the SEF, the Commission asserts that Bisalloy would have been able to "maintain pricing at levels necessary to cover the increase in CTMS" and could have "[operated] profitably during the investigation". In other words, the Commission is saying that Bisalloy would have been able to charge *more* for its Q & T steel in 2013 than it did in 2012, notwithstanding the presence of falling demand and excess supply. The Commission provides no explanation or reasoning for this conclusion.

ASM's view

ASM submits that the use of the AWSP method is inappropriate because it is unreasonable to expect, given the rapid contraction of the market for Q & T steel in 2012-2013 and significant residual supply (briefly discussed above), that the Australian industry would be able to sell its Q & T steel for prices identical to, or higher than, the average prices it obtained for its Q & T steel in the period 2010-2012. Certainly, it would not have been possible for the Australian industry to maintain or increase its 2012 prices without risking significant loss of market share.

ASM also notes that the use of the AWSP method means that, in effect, importers of Q & T steel are being held responsible for the whole of the injury to the Australian Q & T steel industry, including that caused by economic and market factors for which they are not to blame. That is a wholly unacceptable outcome. The purpose of anti-dumping regulation is to remedy and deter injury to Australian industries caused by the dumping of goods onto the Australian market. It is not intended to insulate Australian industry from the effects of changes in market conditions.

Whilst ASM accepts as correct the statement in the SEF that, "dumping need not be the sole cause of injury to the Australian industry", ASM submits that dumping must be a material cause and the Commission has a duty to identify the extent of that cause – otherwise the Minister cannot properly be satisfied as to the need to impose dumping duties and their measure.

ASM therefore respectfully requests that the Commission reconsider its assessment of the NIP. ASM submits that the Commission ought to use selling prices of undumped Q & T steel in 2013 as the basis for the USP.

5. HAS THE AUSTRALIAN INDUSTRY SUFFERED MATERIAL HARM, AND WAS THAT INJURY CAUSED BY THE IMPORTATION OF Q & T STEEL?

ASM refers to, without repeating, its consideration of the Commission's conclusions at pages 49 and 50 of the SEF above. In ASM's submission, and in the light of the Commission's own analysis of the market for Q&T steel in Australia, those conclusions are not supported by the evidence, are unreasonable, and cannot stand. ASM requests that the Commission revisit its analysis of material harm.

Yours sincerely,



Mitsuhiro Fujita
Director, CEO / ASM Corporation Pty Ltd