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STAUGHTON'S
International Trade &
Anti-Dumping Advisory Group

ABN 40 156 647 988

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September 16, 2014

Director Operations 4
Anti-Dumping Commission
1010 La Trobe Street
Melbourne Vic 3008

By email as per SEF to:* operations3@adcommission.gov.au

Dear Director,

SEF 234

We write in response to the published SEF No 234 and on behalf of the Australian importer, Total Steel Australia Pty Ltd (TSA). We submit both the following general comments and a further, more specific claim concerning the validity of the Commission's comments contained in para 3.4.

As you are aware TSA fully complied with the Commission's request to provide responses to the Commission's Importer Questionnaire by the 29th January 2014 and this resulted in a verification visit by a Commission 'team' on the 17th February 2014.

TSA notes that the Commission's preliminary findings, Paras, 1.5.4 and 6.1 of the SEF, indicate the following Dumping Margins(DM):-

- JFE, exporter , Japan and supplier to TSA: DM - 27%
- All other Japanese Exporters: DM - 35.8%
- All exporters, Sweden: DM - 34%
- All Exporters, Finland: DM - 21.7%

The Commission however further states in sections 11 and 12 of the SEF, that the ACBPS will continue to take securities at the following, different levels to the above dumping margins:

- JFE-Japan: 24.5%
- Other Japan Mills: 26.1%
- Sweden exporters: 9.6%
- Finland exporters: 10.8%

PUBLIC RECORD VERSION

The Commission has also determined that as a consequence of the preliminary dumping margins the applicant has 'suffered' material injury in the following forms and will recommend to the Parliamentary Secretary that dumping duties should be imposed based on the 'lesser duty rule' :-

- Price depression
- Price suppression
- Reduced profits
- Reduced profitability
- Reduced Revenue

For reasons including an understanding that considerations such as the impact on downstream users and the wider economic affect are not within the scope of the Commission's jurisdiction we would like it recorded that should the imposition of the current indicative measures be imposed on JFE's exports to Australia ,any future supply would ,at best, only impose a revenue tax on industry inputs , and at worst, and the more likely outcome, result in JFE product being totally uncompetitive on price to Australian users which would exclude it from supplying the separate Australian market sector serviced by TSA (and Vulcan) . Such an outcome is considered to be contrary to the very principle of the WTO A-D Agreement and would obviously have an immediate, adverse impact on the downstream operations of Australian customers in the mining and resources sector .

We need to restate what we consider the Commission has failed to accept and that is the market reality of the majority of TSA imports from JFE do not compete in the same, 'distributor' market as the majority of the applicant's domestic sales do via its mainly, four, select distributor outlets.

The applicant's reported response in the SEF, as stated below, is clearly contrary to the real world situation and simply does not apply to All of JFE's imported product:-

- Bisalloy claims that the JFE product is "readily available from Bisalloy and compete directly with the Australian industry. Furthermore they are sold to the same end-use customer markets after being value added processed."

Whilst previously we have claimed the applicant's sales to its select Australian distributors accounted for 80% of its sales we have since determined that based on market intelligence information it is now estimated that during the Investigation Period of year 2013, the applicant's Australian sales totalled around 22,400 tonnes and of those sales, nearly 90%, or around 19,500 tonnes, were sales to its generally

PUBLIC RECORD VERSION

known but select distributors, and which in reality are the applicant's customers, namely the following:-

- 'Onesteel' - est 40% of sales
- 'Bluescope' - est 24% of sales
- 'Southern Group' - est 9% of sales
- 'Atlas' - est 2% of sales

Based on our market estimates, the fact that those four distributor customers account for an estimated 90% of the applicant's sales ,must, in our view, question the integrity of any market, pricing and injury analysis undertaken by the Commission , and especially since the majority of JFE's product sales in Australia are not sold by the Australian importers in the same condition in which the product is imported, in that as the Commission is fully aware, the majority of JFE product never enters the separate Australian distributor market supplied by Bisalloy.

It is not clear from the SEF if in fact the Commission undertook any sales and price analysis on the applicant's sales beyond its sales to the above named distributor customers.

We think it reasonable to claim that at least three of the above mentioned distributor customers possess the market power and thus the leverage on price arrangements with Bisalloy.

The price and product availability from Bisalloy is an issue. The SEF states on page 19 that Bisalloy claimed that " in the absence of dumping , it would be a competitive supplier to Vulcan Steel Pty Ltd and that import prices of dumped Q & T steel plate is a predominant factor influencing purchasing decisions". We submit that the Commission has received third party (user) statements that demonstrate price alone is not the determining factor on supply and usage of the product in question.

Also both [redacted] informed the Commission by way of documentary evidence that the market reality on Bisalloy product is that it's distributors, in this case' Bluescope', one of the four known select distributors for Bisalloy, are able to offer lower prices than offers direct from Bisalloy. Why then would value added processors want to buy direct from Bisalloy ? (names deleted)

It is our clear contention that contrary to Bisalloy's assertions that the imported JFE product is 'suppressing' it's market prices Bisalloy's own distributors, in our opinion, are simply cannibalising it's customer value by driving the market price.

PUBLIC RECORD VERSION

Whilst on the issue of accuracy, we also provided the Commission documentary evidence on the applicant's inability during the investigation period to offer product having a thickness exceeding 100mm and whilst the applicant has refuted the 'same 'claims relating to its standard market offer on product length, it does not appear to have refuted our claim on the thickness of its available product.

TSA does however welcome the Commission's preliminary assessment that product produced by the TMCP process are not the 'goods' under consideration.

Para 3.4 Tariff Classification.

[redacted] is compelled to respond to the Commission's views expressed in para 3.4 of the SEF on 'Tariff Classification'.

[redacted] position is contrary to that expressed by the Commission and we respectfully submit that there is more to this situation than the consideration of a Tariff Classification in that the essential issue is that of being accorded due process.

By way of introduction, the facts as we know and understand them include the following:

1. The applicant provided the goods description for this investigation.
2. The applicant also provided the Tariff Classification for this investigation.
3. The Commission has previously acknowledged it has no provision in the ACT to redefine a goods description or provision in the ACT to terminate or withdraw in respect of particular subcategories of the goods under consideration.
4. The goods description provided by the applicant included the words " not further worked than hot rolled".
5. The Tariff Classification provided by the applicant was Tariff subheading 7225 40 00.
6. The statistical codes to Tariff subheading 7225 40 00 have no relevance to tariff classification
7. The [redacted] in question is 'heat treated'.
8. The 'rules of tariff classification and explanatory notes' define that 'heat treated' is 'further worked'.
9. **Background and Relevance:**
10. [redacted] had the [redacted] 'Tariff Classified' to Tariff subheading 7225 99 00 prior to this investigation commencing. This fact is demonstrated by the [redacted] [redacted],which revealed [redacted] had 'Customs Entered' the [redacted] 7225 99 00 during year 2013.

PUBLIC RECORD VERSION

Following the [redacted]. The product is properly, and legally, Tariff classified 7225 99 00.The only product that can be classified to Tariff subheading 7225 40 00 is non heat treated product.(history on action)

The Commission's Views:

On the matter of 'heat treated' being defined as 'further worked' the Commission's view is that the term 'not further worked' was **intended** to describe further processing and workings such as drilling , countersinking, welding etc., and was not intended to exclude goods that are heat treated.

TSA Response:

Clearly tariff subheading 7225 99 00 was not included in the goods description which also included the words 'not further worked'. [redacted] maintains that 'heat treatments' are properly defined as being 'further worked' and that as such, product properly classified to 7225 99 00 does not come within the relevant, original description. Based on the premise that the 'goods description' frames the whole process and on advice provided to [redacted], it is our understanding that the relevant decision- maker only has the power to make positive findings based on an analysis of the goods as originally described in the application.

In conclusion, we respectfully submit that the 'intent of the Commission' is irrelevant as the goods description comes from the applicant and that the Commission has no authority to subsequently add a different tariff subheading as a means to change the goods description.Both the writer [redacted] are fully prepared to discuss the matter should the Commission consider it necessary.

We thank you for your consideration,

Regards

Director