

The Director, Operations 4,
Anti-Dumping Commission,
1010 La Trobe Street
Melbourne VIC 3008

BY email to: operations3@adcommission.gov.au

Dear Director,

RESPONSE TO SEF 234

JFE STEEL CORPORATION.

PUBLIC RECORD VERSION

Dear Director,

This response to SEF 234 is on behalf of JFE Steel Corporation of Japan (JFE)

It will be no surprise to the Commission that JFE, having been invited to cooperate with this investigation and after having dedicated significant resources and exhaustive efforts in satisfying the Commission's requirements, considers the preliminary finding on JFE to be totally unacceptable and JFE seriously questions the Commission's methodology used to create those findings when viewed in the context of both the WTO Agreement and Australia's legislative requirements.

Central to the question of the Commission employing a reasonable and real world methodology on product comparisons is the Commission's practice of model matching on quarterly periods of the I.P.

SEF states that for JFE, normal values for exported models with sufficient comparable domestic sales volumes were determined under s269TAC (1) based on quarterly weighted average domestic sales of like goods sold in the ordinary course of trade, and were sold in sufficient volumes. For exported models with insufficient comparable domestic sales volumes, an alternate model was used to establish quarterly weighted average normal values pursuant to s269TAC(2)(c) with adjustments for specification differences as required under s269TAC(9).....(TABLE 6 followed)

It is the treatment of sufficient domestic sales volumes and the Commission's uplift amounts it applied to reflect the so termed price differences between surrogate grades and the required export models that we most object to.

It was clearly evidenced that JFE has no price lists.

The Commission however has relied on what the Visit team clearly acknowledged was only an [REDACTED] to apply an uplift amount of [REDACTED] JPY per tonne on the most critical of the so termed model, namely the [REDACTED] having an insufficient volume of comparable domestic sales.

It also seems that the SEF statement on JFE's normal value determination methodology, as stated previously, would appear to be different to that expressed in the Visit report.

Section 9 of the JFE Visit report states that JFE domestic sales "are suitable for assessing normal value under s269TAC(1). We have calculated normal values using JFE's sales to all sectors, with adjustments to ensure fair comparison with the EXW export prices under s269TAC(8)."

We would have expected the Commission to treat the JFE product in question in a more global context rather than its unreasonable model matching of domestic versus Australian sales.

Apart from the issue of what constitutes a low volume of domestic sales, we cannot accept the treatment applied under s269TAC (2) and s269TAC(9) in respect to what the Commission regards as being domestic sales of less than 5%.

The SEF has altered one factor in this consideration in that its preliminary assessment that TMCP steel plate is excluded from the GUC and since JFE had exports of [REDACTED] it now means domestic sales of [REDACTED] are of sufficient volume based on the Commission's view of 'sufficiency'.

Our understanding of s269TAC(2) (c) is that a constructed cost to make and sell is applied and in respect of s269TAC(9) an adjustment needs to be made for purposes of ensuring the constructed normal value is **"properly comparable with the export price of those goods"**-emphasis added.

Table No 1:

Commission's Surrogate model treatment:

Australian EXPORT Actual Cost to Make per quarter (JPY per tonne)

Quarter>	Jan-March	April-June	July-Sept	Oct-Dec	WAV -Year
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Notes: (1) K = Keihin Plant; F =Fukuyama Plant

(2) [REDACTED] is produced by the TMCP manufacturing process-"excluded" from GUC.

Table No 1 is based on the data provided the Visit team –Attachment G 3.2.3.

Table No 1 clearly illustrates the following:

- The actual cost to make [REDACTED] is factually LESS than the actual cost to make [REDACTED] grade.

Also;

- [REDACTED] is also produced by the TMCP process [REDACTED] which the Commission has assessed to be non GUC, and thus the surrogate model issue is irrelevant.

Relevance:

The Commission has applied a [REDACTED] JPY 'loading' on the [REDACTED] to determine a constructed normal value for the [REDACTED]

As stated above ,Table No 1 clearly demonstrates that the actual cost to make the [REDACTED] is less than the actual cost to make the [REDACTED] being the surrogate model selected by the visit team and, obviously the [REDACTED] JPY per tonne 'adjustment' is a [REDACTED] % loading that , in our view, cannot be justified in terms of s269TAC (2) and s269TAC (9).

Table No 2 :

Outline of Commission's Adjustments by product grade.

Product grade	WAV CTM/Tonne	Surrogate CTM	Adjustment-JPY/T	Justified ?
██████████	██████████	██████████	██████████	
██████████	██████████	██████████	██████████	NO
██████████	██████████	██████████	██████████	YES
██████████	██████████	██████████	██████████	NO
██████████	██████████	██████████	██████████	NO
██████████	██████████	██████████	██████████	
██████████	██████████	██████████	██████████	NO
██████████	██████████	██████████	██████████	NO

NOTE: As previously outlined, the ██████████ adjustment, based on 'sufficiency of domestic sales' is no longer considered to be an issue due to the Commission's ██████████ assessment.

Relevance:

The essential cost component in any pricing consideration is the actual cost to make. Selling, General and Admin expenses and profits, apply, in most cases, equally to all grades of the product and for purposes of illustrating the unreasonableness of the current determinations, we believe the actual costs to make clearly demonstrate our rationale on why we object to the current treatment.

Based on the data JFE provided in its Income Statement for the I.P, the SGA component of domestic sales is ██████████ of sales revenue and the net profit margin is ██████████

Detailed SGA expenses were provided to the Commission.

On the issue of low volume of domestic sales s269TAC (14) (c) of the 'ACT' clearly states –

- “the volume of sales of like goods for home consumption in the country of export by the exporter or another seller of like goods is less than* **5% of the volume to Australia** by the exporter;

“the volume of sales referred to in paragraph (c) is taken, for the purposes of paragraph (2) (a), to be a low volume unless the Minister is satisfied that it is still large enough to permit a proper comparison for the purposes of assessing a dumping duty margin under section 269TACB.”

REQUEST:

*Emphasis added.

The Minister, in this case the Parliamentary Secretary, does therefore have a discretion on the question of any low volume and in this respect we submit that the final report to the Parliamentary Secretary on the JFE investigation include our request that JFE's product be considered in a global context.

We also consider the more relevant interpretation of the above legislation is the 'volume of sales of like goods' and in respect of the JFE situation there can be no issue with domestic sales of like goods being less than 5% of the volume exported to Australia.

The Australian 'ACT' refers to sales of like goods whilst the WTO AD Agreement (Agreement) refers to sales of* like product.

Both however, in our view, clearly refer to 'volume' in the context of product and not, as the Commission has determined, on a model by model basis.

* Article 2.2 of the Agreement refers.

Given Australia is bound by the WTO Agreement the Commission's practice and policy should be consistent with both the Agreement and the Australian legislation.

We clearly consider that in this case the Commission's adopted methodologies are inconsistent with our interpretation of the Agreement.

For purposes of having it on the record we also take this opportunity to provide the following extract from Article 2.2 of the Agreement on the 'Determination of Dumping', which reads, inter alia:-

- "When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when , because of the particular market situation or the **low volume of the domestic sales in the domestic market of the exporting country(*)**, such sales do not permit a proper comparison , the margin of dumping shall be determined by **comparison with a comparable price of the like product when exported to an appropriate third country**, provided that this price is representative , **or with the cost of production in the country of origin plus a reasonable amount of administrative , selling and general costs and for profits.**"

-emphasis added:

- * footnote to above quoted article 2.2 reads:-

"Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value* **if such sales constitute 5 per cent or more of the sales of the product under consideration in the importing Member** , provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison"

*-emphasis added:

Meaning:

The ordinary meaning of both the Australian legislation and the Agreement can only be interpreted as the 5% applying to the total volume of the **product** under consideration and not some 'rogue' interpretation of applying it on a model by model basis as is the policy outlined in the Commission's Dumping and Subsidy Manual.

The Commission's Manual does state that low volume is defined in s269TAC(14) as being less than 5% of the total volume of the goods under consideration that are exported to Australia by the exporter, but then the Manual then further states that" if the aggregate volume is greater than 5% , the test is applied individually for each model or type of like goods" and it is this methodology that we object to on the basis of fairness, reasonableness and, in for reasons previously expressed, being contrary to both the Australian legislation and the WTO Agreement.

In effect it is considered to be a convenient but invalid approach for creating technical dumping margins and JFE has no option but to challenge the methodology applied on its domestic sales of like product or like goods in determining normal values.

We also interpret the following year 2000 WTO Panel statement on a case involving Bed Linen from India as being supportive of our interpretation on the determination of dumping duty. That statement, inter alia, reads:

- “In light of the AD Agreement , we consider that the ‘margins of dumping’ established under Article 2.4.2 based on the comparison methodologies set forth, must relate to the ultimate question being addressed; whether the product at issue is being dumped. Thus ,in our view , a margin of dumping , that is a determination that there is dumping, can only be established for the product at issue, and not for individual transactions concerning that product or discrete models of that product.”
- “While the comparisons required under Article 2.4.2 yield margins of price difference, there are not, properly speaking, margins of dumping to the extent that they relate to discrete models of or transactions concerning the product under investigation, rather than the product under investigation as a whole.”

If ,for argument sake the Commission’s model matching methodology is deemed to be consistent with the legislation and the Agreement, then, as we outlined previously , both the legislation and the agreement also provide for a determination of dumping to be based on one of the following:

- (1) ‘by comparison with a comparable price of the like product when exported to an appropriate third country’ or:
- (2) ‘with the cost of production in the country of origin plus a reasonable amount for administrative , selling and general costs and for profits’.

The Australian legislation, and the Commission’s policy place both of the above methods on an ‘equal footing’ .

JFE supplied all the necessary cost and transaction data for either method to be used should it have been necessary to resort to such methods of determination.

In any event the Commission opted for it’s own version of the cost of production method by selecting what it viewed as the domestic sell price of surrogate models and by uplifting those prices by arbitrary ‘price’ adjustments, the most significant of which , namely on the EH SP grade, had no evidential basis other than a reference to an internal price guidance.

As we outline in Table No 1, we claim that the Commission did not apply the cost of production option as intended by the ACT and the Agreement and the option of comparing third country sales to, say, the USA, was ‘rejected’.

The essential issue and the basic objection JFE has to the Commission’s methodology is it’s resort to so termed model matching criteria for determining dumping duty margins when our interpretation of the ACT and the Agreement provide for any determination to be based on the product or the total volume of domestic sales.

Also, in applying it’s methodology on sufficiency of sales, the Commission, has in our opinion, wrongly applied s269TAC (2) (c) and s269TAC (9) of the Act.

Comparable Sales:

The Commission , in our view has also unfairly rejected our claims regarding comparable domestic sales being considered appropriate for normal value determinations.

We re-assert that s269TAC(8), based on Article 2.4 of the Agreement should have applied to the JFE domestic sales in that allowances should have been made for price comparability being affected because of function and costs.

The data provided, and verified by the Commission , clearly evidenced consistent and distinct price differences and we claim that the most comparable domestic sales to the exported sales to Australia are the JE domestic sales to its construction customers.

JFE's domestic price differences to its three third party group of customers are clearly a function of of each group requiring very different physical characteristics resulting in different price levels because of the greater gross value added dimensional requirements that result in the domestic sales having much lower yields than the product produced for Australia.

As we have stated previously to the Commission, Japan has no mining or resource sector and what it produces for the Australian market, being a sector of the global market, is , relative to the domestic requirements of the JFE customers, more a commodity product rather than specific order requirements.

Our analysis, based on EX WORKS pricing, is that when compared to the comparable domestic sales the indicative margin of dumping is around [REDACTED] %.

Even when including all of the JFE domestic sales , on an EX WORKS basis, as outlined in Table No 3, the apparent dumping margin is [REDACTED] % compared to the current 27% determined by the Commission.

In support of our claims on the appropriate domestic sales being the most comparable domestic sales, we quote the following WTO statement relating to an Argentina case on ceramic tiles;-

WTO Panel statement –

“Article 2.4 places the obligation on the investigating authority to make due allowance , in each case on its merits, for differences which affect price comparability, including differences in physical characteristics. The last sentence of Article 2.4 provides that the authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison. We believe that the requirement to make due allowance for such differences in each case on its merits , means at a minimum that the authority has to evaluate identified differences in physical characteristics to see whether an adjustment is required to maintain price comparability and to ensure a fair comparison between normal value and export price under Article 2.4 of the AD Agreement, and to adjust where necessary.”

We submit that the Commission was in possession of all the relevant data on differences in physical characteristics that affected price comparability.

Table No 3 details the total domestic sales , Australian sales and third country sales during the I.P with their respective aggregated EX WORKS sales value .

Table No 3.

Product type	Domestic tonnes	Australian tonnes	Third Ctry tonnes	Domestic VALUE	Australian VALUE	Third Ctry VALUE	Transition & % to 3 rd
							y-82%
							y-81%
							n-51%
							y-91%
							y-91%
							y-63%
							n-12%
							n-82%
							y-49%
							n-30%
							n-97%
							y-49%

Notes: final column indicates if the grade is in the 'transition' of phasing out and the % exported to third countries, supporting the claim on 'global context' and normal value option.

TABLE No 3 demonstrates that on an EX WORKS basis the 'real world' dumping margin is around [REDACTED]

We submit however, that when only the most comparable domestic sales are considered, the dumping margin, on an EX WORKS basis is [REDACTED]

This calculation is based on the EX WORKS value of the most comparable domestic sales, being to the construction sector customers, having a total value of [REDACTED] JPY, being a per tonne value of [REDACTED], which when compared to the Australian sales value stated in Table No 3 of [REDACTED] JPY, is [REDACTED] %.

Whilst the calculations in question are on an EX WORKS basis, and make no allowance for the 'allowed' negative adjustments, they do, in our opinion, clearly question the validity of the current 27%

Other issues:

Credit term adjustment:

JFE, as evidenced during the verification visit, is entitled to an allowance on credit terms based on their verified domestic payment terms and at the rate of [REDACTED] per annum.

Will Dumping Continue:

Clearly the issue we have with the Commission is the current methodology used to determine dumping margins, in that there may be a technical dumping margin but a more valid calculation is considerably less than 27%.

On the question of technically dumped prices continuing we submit that in relation to JFE's exports of product to Australia, there are two basic considerations:-

1. During the verification visit, JFE advised that it was 'transitioning to the [REDACTED] and as of March 2014, it was no longer using the [REDACTED]."

This means that the product mix on which the Commission's determinations have been made, are no longer representative.

2. The other real world factor applying to JFE exports of the product is the fact that the US Dollar against the Yen is at its highest level since September 2008, being around 107.20 to the US Dollar and since the second week in August 2014 it has gained around 5%.

It also seems from the market size statements in the SEF and statements in the visit report on SSAB Emea that the Commission does place an importance on the dimensional features of the product.

Conclusion:

JFE respectfully submits that the methodologies employed on determining it's apparent dumping margin be re-considered for the reasons outlined in this response.

JFE thanks the Commission for its consideration and requests that the Commission contact the writer for any clarification.

Regards

M J Howard