

# ADRP Conference Summary

## 2019/114 Quenched and Tempered Steel Plate exported from Finland, Japan and Sweden

Panel Member	Paul O'Connor
Review type	Review of Minister's decision: ADRP Review No. 114 – Quenched and Tempered Steel Plate exported from Finland, Japan and Sweden
Date	10 January 2020
Participants	Daniel Moulis and Maddison Godwin, Moulis Legal
Time opened	14:00 AEST
Time closed	15:00 AEST

### Purpose

The purpose of this Conference was to obtain further information in relation to the Review before the Anti-Dumping Review Panel (Panel) in relation to Quenched and Tempered Steel Plate exported from Finland, Japan and Sweden.

The Conference was held pursuant to section 269ZZHA of the *Customs Act 1901* (the Act) and in response to concerns raised by the Applicant<sup>1</sup> regarding a reference in the Commissioner's Submission to the Review Panel dated 23 December 2019 concerning an aspect of the injury analysis. The Applicant's concerns focused upon an alleged lack of procedural fairness on the part of the Commissioner in not drawing to the Applicant's attention the manner in which Model Control Codes (MCC) would be used in the injury analysis, and upon the broad way they appear to have been used in that analysis.

In the course of the Conference, I asked the Applicant to outline its concerns.

I have only had regard to information provided at this Conference as it relates to relevant information (within the meaning of section 269ZZK(6) of the Act). Any conclusions reached at this Conference are based on that relevant information. Information that relates to some new argument not previously put in an application is not something that the Panel has regard to and is therefore not reflected in this Conference Summary.

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<sup>1</sup> The term "Applicant" is used generally as referring to relevant entities within the SSAB organisation.

## Discussion

1. The Applicant requested the conference to raise its concerns with the following statement contained within the Commissioner's Submission to the Review Panel dated 23 December 2019:

*“on a model by model basis, approximately 87% of [the Australian industry's] sales volumes were undercut or directly competitive with [the Applicant].”*

2. The Panel noted this percentage appears at page 49 of REP 506, which in turn references Confidential Attachment 9.3 to the Report. The Attachment reflected the Commissioner's analysis undertaken subsequent to the publication of the SEF. The Commissioner used the Applicant's and the Australian industry's verified sales data during the inquiry period and assessed the degree of undercutting by the Applicant for each model sold by the Australian industry, accommodating for thickness.
3. The Panel advised that the analysis had been undertaken at what the Commissioner referred to as the three category MCC level (i.e. grade + tensile strength/Brinell hardness + thickness)<sup>2</sup>. The analysis identified two groups of transactions, those which undercut the Australian industry and those transactions considered as being directly competitive. The Panel advised that the Attachment indicated a range of undercutting of between approximately ■% to ■%. One model, which accounted for approximately one third of the Australian industry's sales volume, was undercut by a small margin of less than ■%. Given the small margin the Commissioner describes such sales as being directly competitive. The volume of sales considered to have undercut the Australian industry and those considered to be directly competitive amounted to 87% of the Australian industry's sales volumes.
4. The Applicant noted the MCC methodology was referred to in the Exporter Questionnaire and was presented to the Applicant for the purposes of working out dumping margins, simpliciter. Nothing else was said about the further application of the methodology. The Commissioner now appears to have applied the methodology in the

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<sup>2</sup> Refer footnote 35 to the Report.

injury analysis without regard to tensile strength or to Brinell hardness. Such a technical aggregation of data does not in the Applicant's view relate to the reality of the market.

5. The Applicant expressed concern that nowhere in REP 506 did the Commissioner indicate clearly what were the so-called grades or levels and that it would appear no differentiation was used for tensile strength and Brinell hardness, which are very important aspects of a customer's choice of one product over another in terms of end use.
6. The Applicant emphasised that in the Commissioner's submission dated 23 December 2019, the statement was made that on a model by model basis approximately 87% of the Australian industry's sales volumes were undercut or directly competitive with the Applicant. However, it now appears that the comparison was not done by reference to models but by reference to MCC levels which did not include tensile strength or Brinell hardness.
7. The Applicant referred to its submission to the Panel dated 23 December 2019, in which it challenged the Commissioner's technical price comparison methodology which were described as selective, unreliable and unclear. The Commissioner's conclusions are said to contradict both the reality of the competitive interaction between the Applicant and the Australian industry and the Australian industry's financial condition.
8. The Applicant noted the price injury findings in REP 506 could be a failure to match competitive models with each other.
9. The Applicant restated its argument that a finding that the Applicant undercuts structural grade but not wear cannot be used as a basis of an injury finding as to the goods under consideration are Q&T steel plate (of both grades) and that it is illogical to conclude that material injury to Q&T steel plate in the future could be made because one type of Q&T steel plate is presently suppressed when other types are not.
10. The Applicant made reference to page 4 of its submission to the Commission dated 6 May 2019 in which it referred to steady, increasing prices and less volatility in calmer market conditions which had allowed to the Australian industry to focus on being a

processor of steel slab whilst the Applicant's focus is upon the supply of technically superior structural and wear steel plate, to a separate premium market, at much higher price points, and which is largely outside of the Australian industry's competitive sphere. The Applicant argues that a new market segmentation has emerged such that interactions between the Applicant and the Australian industry have not caused the latter volume injury and the Australian industry cannot realistically complain of price injury.

11. The Applicant argued that where it competes with the Australian industry is with respect to certain specific product areas with different end uses and different customer brackets. The Applicant emphasised that the only structural steel product exported and sold in the inquiry period was essentially a product known as 700 which has clearly defined specifications and mechanical properties i.e. the Applicant essentially sold one structural steel product in the inquiry period.
12. The Australian industry on the other hand produces five grades ranging from having a MPA rating below that of the Applicant to products with MPA ratings well above those of the Applicant. Further, two of the Australian industry's products have a much higher MPA rating than the Applicant's 700 grade and therefore do not compete with the Applicant's goods. The Applicant says this is proof positive that it has concentrated on a specific product and customer group and use, one standard, one tensile strength range, whereas the Australian industry has five.
13. The Applicant alleged product comparisons with respect to wear grade are similarly indiscernible from REP 506.
14. In presenting its case to the Commission, the Applicant provided multiple examples of price competition based on direct, real market scenarios relating to both structural and wear grade usages. These examples were based on proper comparisons of models and grades. Every example was either rejected or downplayed by the Commission and ultimately, not picked up in the Commission's report to the Minister.
15. By way of example, at Section 9.4.2.2 of REP 506, the Applicant's use of price lists for the purposes of comparison was rejected because the Commission considered price lists do not represent the price actually achieved in the market. However, the Applicant

maintains that its price lists were proper and accurate indicators of its pricing. The Commissioner's rejection of those examples was said to be merely un-evidenced opinion about price lists that would apply to any case without regard to the facts of this case.

16. Further, the examples provided by the Applicant and rejected by the Commission were rejected based on the previously undisclosed model selections made by the Commission, which did not pick up the true comparisons of products.
17. Similarly, at section 9.4.2.3 of REP 506, the Commission rejected the opinions of eight end users as to the high prices of the Applicant's steel plate. Again, because it preferred to only use verified sales data and in using that data, to only use its own model selections, which were not disclosed.
18. With respect to the so-called common customer analysis the Applicant notes those customers constituted approximately 20% of the Australian industry's sales volume during the inquiry period. Importantly, this infers that 80% of the Australian industry's sales volume was not contested at all by the Applicants Q&T steel plate.

Paul O'Connor  
Member  
Anti-Dumping Review Panel  
20 January 2020