Australian Government
Anti-Dumping Review Panel

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	2 December 2019
Participants	Daniel Moulis and Maddison Godwin, Moulis Legal
Time opened	14:00 AEDT
Time closed	15:00 AEDT

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) for a review of a Minister's decision.

In the course of the Conference, I asked the Applicant[1] to clarify an argument, claim or specific detail contained in its application.

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.

Discussion

1. Prior to the Conference, the Panel provided the Applicant with a number of points for discussion.

[1] The term "Applicant" is used generally as referring to relevant entities within the SSAB organisation.

2. The Applicant agreed the Review poses some complexity arising from the interaction of concepts such as: non-injurious price (NIP), ascertained export price (AEP); effective rates of duty; and the impact of an unsuppressed selling price (USP) in a deductive export price/related party scenario.

3. The impact of a combined interim dumping duty (IDD) on a product with varying physical properties, such as thickness, and resultant price differences, was also discussed.

4. Having examined and determined that other economic factors were no longer having an injurious impact on the Australian industry, it is apparent the Commission's conclusions regarding pricing and profitability are at the heart of the reviewable decision.

5. The Applicant emphasised that the Commission's conclusion regarding those injury indicators needed to be assessed against the fact that its wear grade, accounting for 70% of its sales, commands the greatest price or premium.

6. The Commission's view is that if the measures are not continued the Australian industry's prices and profitability will continue to be negatively impacted.

7. Further to its price premium, the Applicant noted the submission dated 25 June 2019 it provided to the Commission with its sales data for the period 1 January to 24 May 2019. The sales data was presented in the same format as had been presented and verified during the inquiry period. The 2019 data was presented to demonstrate that the Applicant's selling prices into the Australian market were higher than the Australian industry's USP, in at least the eight months before the Minister's reviewable decision.

8. The Applicant is critical that the Commission appeared to dismiss the significance of the 2019 price increases. The data was presented in the same way as had been verified and accepted by the Commission with respect to the inquiry period. The Applicant said that it was harsh, unreasonable and unjustified to characterise the data as being unverified, as might impact its evidentiary value.

9. The Applicant was asked to comment on a claim by the Australian industry that "despite steel prices increasing since 2013, Sweden's floor price was at such a low level that the exporter has exported at prices that reflect the originally determined floor price in 2013." The Applicant neither agreed nor disagreed with that proposition but maintained a more complex analysis was required of the impact of the level of the IDD set as a combined duty.

10. The Applicant emphasised it is an integrated producer with a very modern production and supply chain which enjoys a high domestic price for its product. It is not in dispute that the Applicant's normal value will be higher than its export prices to Australia. As an integrated producer, the Applicant does not sit well in a model the focus of which is upon arm's-length prices and market prices at borders, such concepts are at odds with how modern commerce is increasingly conducted.

11. The Applicant emphasised that its aim has always been to keep its prices higher than those of the Australian industry in the Australian market and in so doing derive a profit in Australia. As a result, over the whole time the Applicant's prices have been higher than the Australian industry's. In doing so, the Applicant has complied with OECD Transfer Pricing Guidelines which advise multinationals to seek an appropriate profit at the first independent sale, an approach endorsed by the Australian Taxation Office. Accordingly, a comparison between the Applicant's normal value and export prices is irrelevant. The focus must be upon prices in Australia and requires a judgement as to whether there is material injury to the Australian industry as a result. Such a judgement must be made in the context of the Australian industry's overall financial performance and decisions or strategies it has made or adopted since the imposition of measures in 2014.

12. The Applicant stated that the effect of the reviewable decision would be to impose upon it a product ban and not a non-injurious measure as was the intention. The Applicant would have preferred the Commission's report to place a greater emphasis upon the Australian industry's USP and its profitability and revenues which have improved by reason of the very significant increase in its market share.

13. Figure 9 in REP 506 was claimed to reflect past behaviour of both the Applicant and the Australian industry such that it could inform a judgement regarding the parties' future conduct. The Applicant notes Figure 9 illustrates that immediately after

measures were imposed the Australian industry dropped its pricing, presumably to buy market share. The Applicant, on the other hand, it is said moderated its pricing position such that from 2016 throughout the inquiry period its prices were above the Australian industry's and continuing to trend upwards. This trend quickened in the period towards the end of 2018 and into 2019. The Applicant stated its behaviour regarding pricing cannot be seen as opportunistic or fleeting, as over a sustained period it has strived to command a higher price in the market than the Australian industry.

14. Given REP 506 and the Manual provide a rationale for why it is not appropriate to deduct IDD from the NIP, the Applicant was asked why it describes the outcome as "asymmetrical". The Applicant concedes that in some circumstances the Commission's approach may be appropriate. However, in the case of a NIP and a related party sale, the issue needs to be addressed differently. The Applicant claims the Commission has failed to accept that the operative measure, has and always has been, the establishment of a NIP in a related party setting.

15. The reviewable decision has put in place an effective duty of 58% which exceeds the difference between the Applicant's Australian selling prices and what the Commission says it will take for the Australian industry's prices not to be suppressed. The Applicant notes the legislation does not preclude the deduction of IDD from the NIP. Had the NIP been determined with the deduction of IDD, the Applicant maintains the rate of IDD would have been in the region of [redacted]%.[2] The Applicant maintains the resultant 58% effective duty rate is accordingly discriminatory and there is no clear approximation of that rate when compared to the USP.

16. The Applicant indicated it would lodge a written submission in due course.

Paul O'Connor
Member
Anti-Dumping Review Panel
9 December 2019

2 [redacted].