

20 January 2015

Ms Joan Fitzhenry
Panel Member
Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry
10 Binara Street
CANBERRA CITY ACT 2601

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Public File

Dear Ms Fitzhenry,

ADRP Review of Decision No. 234 - Quenched & Tempered Steel Plate exported from Finland, Japan and Sweden – Applications by JFE (exporter), Japanese Mills (exporters) and Total Steel of Australia (importer)

1. Introduction

I refer to the following applications for review of the decision of the Parliamentary Secretary to the Minister for Industry on 28 October 2014 to impose anti-dumping measures on Quenched and Tempered (“Q&T”) steel plate exported from Finland, Japan and Sweden:

- Nippon Steel and Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel (Japanese Mills);
- Total Steel of Australia Pty Ltd; and
- JFE Steel Corporation.

Bisalloy Steels Group Limited (“Bisalloy”) also made an application for review of the Parliamentary Secretary’s decision (see application dated 3 December 2014). Bisalloy takes this opportunity to comment on the applications of the parties identified above.

2. Nippon Steel and Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel (Japanese Mills)

The application for review made on behalf of the Japanese Mills contests the Parliamentary Secretary’s findings on material injury and causal link as contained in Trade Measures Report No. 234 (“Report No 234”). It has been argued in the application for review that the Anti-Dumping Commission (“the Commission”) has failed to adequately establish a causal link between the dumping and material injury to the Australian industry. Additionally, it is suggested on behalf of the Japanese mills that the extent of the injury caused by the dumping has not been adequately addressed (i.e. the *materiality* of the injury).

Bisalloy rejects the suggestions made on behalf of the Japanese Mills as Report No. 234 adequately addresses the Commission’s findings in respect of establishing a causal link and the materiality of the injury experienced by the Australian industry.

Contrary to the representations made, the Commission dedicated Chapter 8 of Report No. 234 to examining causation of injury in Investigation No. 234. In addition to examining the impacts of price, volume and profit injury, the Commission assessed whether other factors have caused injury to the industry (including those identified at s.269TAE(2A) of the *Customs Act*). The Commission also addressed the matters raised on behalf

of the Japanese Mills in the submission in response to SEF No. 234 commenting upon the Ministerial Direction that it was inconsistent with the legislative requirements (see at P. 63 of Report No. 234).

Bisalloy highlights with the Panel Member that the injury experienced by the Australian industry during the 2013 investigation period was confirmed by the Commission as material. Additionally, the Commission concluded that the injury to Bisalloy¹ *“in terms of price and profit effects, due to dumped Q&T steel plate is **greater** than that likely to have occurred in the normal ebb and flow of business in the contracting market”* and further *“The Commission considers that the size of the market for Q&T steel plate in Australia was sufficient for Bisalloy to operate profitably during the investigation period, but for the importation of goods at dumped prices”* (emphasis added).

The Commission was satisfied that in a contracting market, the injury experienced by Bisalloy from the dumping was material and greater than the impact that would otherwise be expected.

The Commission acknowledged that the reduced demand in a contracting market impacted certain other injury indicators (as identified by Bisalloy). However, the Commission correctly notes that the injury from dumping *“need not be the sole cause of injury to the Australian industry”*.

Bisalloy rejects the contentions made on behalf of the Japanese Mills that the Commission has not adequately assessed the existence of a causal link between the dumped exports and injury sustained by the Australian industry. Section 8 of Report No.234 meticulously details the analysis undertaken by the Commission as to the impact of other causes of injury to the Australian industry and whether the injury from the dumping was considered “material”.

The arguments presented in the review application that suggest the Commission has not adequately undertaken this analysis are baseless and should be rejected.

Bisalloy further rejects the claim made in the review application that the Commission has applied different impact tests for establishing causation as outlined in the s.269TAE and the Ministerial Determination. This has not been the case and cannot be interpreted as having occurred.

3. Total Steel of Australia Pty Ltd

Total Steel of Australia Pty Ltd (“Total Steel”) is an importer of Q&T steel plate from the Japanese supplier, JFE Corporation. Total Steel has advanced the following six grounds for review.

(i) *Dumping duty based upon an ex-works basis*

Bisalloy Comment: Total Steel has indicated that the Commission has departed from its practice of determining dumping on an FOB basis to an ex-works basis for Q&T steel plate exports from Finland and Japan. However, Bisalloy notes that the Commission undertook a verification visit with Ruukki Metals Oy of Finland and JFE Corporation of Japan and obtained accurate information to establish the basis upon which dumping duties were recommended.

The Commission has made the appropriate adjustments to the exporter’s normal value (based upon verified information) to enable a fair comparison with the export price. Total Steels does not have access to the information available to the Commission to conclude that the Commission has erred in its decision as to the basis for export price. It is therefore incorrect for Total Steel to suggest that the Commission has erred in this regard.

¹ Trade Measures Report No. 234, P. 63.

(ii) *Description of the goods the subject of the dumping notice is flawed*

Bisalloy Comment: In its application, Bisalloy described the locally manufactured Q&T steel plate and identified the tariff classification(s) of the goods that it understood covered the goods. The investigation by the Commission identified at an early stage that the goods description required further clarification. The Commission's further investigations highlighted that it was possible for any potential measures to be circumvented by the minor alteration of the goods the subject of the application via a minimalistic process e.g. drilling, and hence it was prudent to include the tariff classification of the further worked goods of 7225.99.00.

(iii) *Errors in finding Australian industry producing like goods*

Bisalloy Comment: The Commission has correctly identified the imported goods that Bisalloy has identified as competing directly with locally produced goods. Additionally, Bisalloy concurs that the Commission has accurately identified the Australian market for Q&T steel plate.

Bisalloy does not agree with the applicant's suggestion that the Commission has made material errors as to the Australian industry producing like goods. The Commission has correctly identified the goods intended to be covered by Bisalloy's application. The applicants have not demonstrated that goods not intended to be covered by the measures have been levied with measures.

(iv) *Errors in calculating normal value for JFE*

Bisalloy Comment: Total Steel has suggested that the Commission has erred in its selection of appropriate sales for normal value purposes (i.e. appropriate domestic sales from selected segments) and whether normal values should be determined under s.269TAC(1), s.269TAC(2)(c), or s.269TAC(2)(d). The Commission identified domestic sales of like goods for the purposes of determining normal values and, where a sufficient volume of sales in the ordinary course of trade were identified, normal values were appropriately established.

For fair comparison purposes, the Commission could make adjustments to normal values to account for differences in domestic selling prices. Where price and/or cost differentials exist, the cooperating exporter would need to highlight the differences with the Commission to permit an adjustment to be made.

In the absence of any adjustment it can be concluded that the Commission was not adequately informed by the exporter of suggested differences in selling and/or costs of like goods.

(v) *No causal connection or immaterial causal connection*

Bisalloy Comment: Bisalloy has commented above on the adequacy of the Commission's analysis of causation between the dumped goods and injury experienced by the Australian industry above.

It is not necessary to repeat Bisalloy's comments concerning causation as adequately addressed by the Commission in Section 8 of Report No. 234.

(vi) *Errors in assessing JFE TMCP steel plate as like goods*

Bisalloy Comment: The applicant is suggesting that the Commission has included JFE Steel Corporation's ("JFE") domestic sales of TMCP steel plate in normal value assessments. It is not clear to Bisalloy whether this is the case. Bisalloy cannot comment further without access to product specification information on the identified sales.

Total Steel's assertions that the Commission's findings in the determination of normal values for JFE (with the exception of Item iv) including the coverage of the goods and the identification of the Australian market, involve Total Steel's interpretation of Report No.234 and cannot be construed as anything more than mere

disagreement with the Commission's findings in Report No. 234. Total Steel's arguments are not conclusive evidence that the Commission has erred in its findings. Bisalloy requests the Panel Member to dismiss the grounds for review identified by Total Steel and affirm the Commission's recommendations as contained in Report no. 234 as they relate to the goods coverage, the Australian industry, JFE's normal value, and causation.

4. JFE Steel Corporation

Bisalloy notes that the application by JFE Steel Corporation ("JFE") addresses similar arguments as identified in the application for review by Total Steel. Bisalloy does not propose to restate comments in respect of the grounds of review that are similar to those raised by Total Steel.

(i) Export price

Bisalloy notes that JFE has indicated that the Commission may not have identified the "correct" exporter of the goods. Whilst it is conceded in the application for review that JFE has not raised previously this issue, Bisalloy questions how JFE can now raise this as an issue when it was not identified during the exporter verification visit?

(ii) Cumulation

It is argued that Total Steel's imports should not be cumulated with the imports of Q&T steel plate destined for other market segments within the Australian market. It is suggested on behalf of JFE that the Commission should have undertaken a "realistic assessment of the circumstances of the market". Bisalloy rejects the JFE comments and it can only be concluded that the Commission has adequately assessed the Australian market for Q&T steel plate and the relevant segments thereof.

5. Closing Remarks

Bisalloy understands that the Japanese exporters of Q&T steel plate may be dissatisfied or disagree with the Parliamentary Secretary's acceptance of the findings and recommendations contained in Report No. 234. Dissatisfaction or disagreement with the findings does not translate to the observance of apparent flaws or errors of the Commission in publishing its findings.

The Commission has demonstrated a complete understanding of the goods covered by Bisalloy's application and the Australian market in which the imported and locally produced like goods have been sold. Similarly, the Commission has correctly established that the injury experienced by Bisalloy from the dumping is material and exceeds what would normally be expected in the ebb and flow of a contracting market.

Bisalloy requests the Panel Member to reject the assertions of the three above-mentioned Japanese/Japanese-affiliated applicant companies and affirm the Parliamentary Secretary's decision as the preferred and correct decision as detailed in Report No. 234.

If you have any questions concerning this letter please do not hesitate to contact either myself on (02) 4272 0407 or Mobile 0406 317671 or Bisalloy's Consultant John O'Connor on (07) 3342 1921 or Mobile 0411 252 451.

Yours sincerely



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