

**APPLICATION FOR REVIEW OF
DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY NOTICE
OR COUNTERVAILING DUTY NOTICE**

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

to publish : ☒ a dumping duty notice(s), and/or

☐ a countervailing duty notice(s)

OR

not to publish : ☐ a dumping duty notice(s), and/or

☐ a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

- ☒ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- ☒ Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- ☒ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- ☒ Full description of the imported goods to which the application relates.
- ☒ The tariff classification/statistical code of the imported goods.

- ☒ A copy of the reviewable decision.
- ☒ Date of notification of the reviewable decision and the method of the notification.
- ☒ A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.
- ☒ [If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature:



Name:

Zac Chami

Position:

Partner - Clayton Utz Lawyers

Applicant Company/Entity: Japanese Mills (Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel Ltd)

Date:

4 / 12 / 2014

APPLICATION FOR REVIEW - INVESTIGATION INTO THE ALLEGED DUMPING OF QUENCHED AND TEMPERED STEEL PLATE EXPORTED FROM FINLAND, JAPAN AND SWEDEN

1. Executive Summary

- 1.1 We act for the Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Ltd (**Japanese Mills**).
- 1.2 By this application, the Japanese Mills seek review of the decision of the Parliamentary Secretary to the Minister for Industry (**Minister**) on 28 October 2014 to impose anti-dumping measures in respect of the quenched and tempered (**Q&T**) steel plate exported from Finland, Japan and Sweden (**Decision**).
- 1.3 The Japanese Mills submit that the Decision is not the correct and preferable decision under the Customs Act (**Act**) by reason of the following issues identified in the Anti-Dumping Commission (**ADC**) Report No. 234 (**Report 234**):
- (a) errors in the consideration of material injury, which did not adequately account for the effect of extraneous market forces upon the investigation applicant (**applicant**)'s business;
 - (b) misapplication of s. 269TAE of the Customs Act; and
 - (c) failure to properly establish the requisite causal link between such injury and the presence of allegedly dumped goods in the Australian market.
- 1.4 The Review Officer is requested to review the recommendations in Report 234 and accepted by the Minister in the Decision. The Japanese Mills submit that it would be appropriate for the Review Officer to recommend that the decision be vacated, or alternatively, revised to properly account for other market forces upon the industry.

2. Application particulars

2.1 Names of applicants: Japanese Mills (as defined above)

2.2 Contacts within organisations:

Organisation	Contact details
Nippon Steel & Sumitomo Metal Corporation	Mr Yoh Nakayama 6-1 Marunouchi, 2-Chome Chiyoda-ku TOKYO 100-8071 JAPAN nakayama.de3.yoh@jp.nssmc.com
JFE Steel Corporation	Mr Takeshi Esumi Export Planning & Administration Sec. Sales Coordination and Operation Planning Department 2-2-3 Uchisaiwaicho, Chiyoda-ku TOKYO 100-0011

	JAPAN t-esumi@ife-steel.co.jp
Kobe Steel Limited	Mr Takatoshi Sakagami Manager, Planning and Administration Department, Iron and Steel Business 9-12 Kita-Shinagawa 5-chome SHINAGAWA-KU TOKYO 141-8688 JAPAN sakagami.takatoshi@kobelco.com

- 2.3 **Representatives:** The details of the representatives acting in respect of this application are as follows:

Clayton Utz, Lawyers	Contact: Zac Chami Address: Level 15, 1 Bligh Street, Sydney NSW 2000 DX: DX 370 Sydney Fax: +61 2 8220 6700 Phone: +61 2 9353 4000 Email: zchami@claytonutz.com
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A copy of the authorisation for the representatives is contained at **Annexure A**.

3. Description of goods

- 3.1 This application concerns Q&T steel plate exported from Finland, Japan and Sweden. In Report 234, the goods are defined as follows:

"Flat rolled products of alloyed steel plate commonly referred to as Quenched and Tempered ("Q&T") steel plate (although some Q&T grades may not be tempered), not in coils, not further worked than hot rolled, of widths from 600mm up to and including 3,200mm, thickness between 4.5-110mm (inclusive), and length up to and including 14 metres, presented in any surface condition including but not limited to mill finished, shot blasted, primed (painted) or un-primed (unpainted), lacquered, also presented in any edge condition including but not limited to mill edge, sheared or profiled cut (i.e. by Oxy, Plasma, Laser, etc.), with or without any other minor processing (e.g. drilling). Goods of stainless steel, silicon-electrical steel and high-speed steel, are excluded from the goods covered."

4. Tariff classification

- 4.1 The following tariff subheadings and statistical codes are presently applicable:

Tariff subheading	Statistical codes
7225.40.00	21, 22, 23, 24
7225.99.00	39, 44

5. Notification of the reviewable decision

- 5.1 The Japanese Mills were notified by email of the Decision on 5 November 2014. A copy of the Decision is at **Annexure B**.

6. Statement of Reasons for Believing that the Reviewable Decision is not the Correct or Preferable Decision

- 6.1 The Japanese Mills submit that the decision adopts errors from Report 234 in respect of the following issues:

- (a) the assessment of material injury suffered by the applicant;
- (b) the misapplication of section 269TAE of the Customs Act; and
- (c) the determination of a causal link between such injury and the presence of allegedly dumped goods in the Australian market.

Material injury and s. 269TAE of the Customs Act

- 6.2 The General Agreement on Tariffs and Trade 1994 (**GATT**) establishes that anti-dumping duties can only be imposed on imported goods where those goods have been found to have been dumped and as a result of that dumping have caused, or threaten to cause, material injury.
- 6.3 The GATT principle is replicated in sections 269TG(1) or (2) of the Customs Act. Those provisions establish that the publication of a dumping notice can only be made in instances in which the Minister is satisfied that the goods for which the notice is published are dumped, and because of that dumping:

"...material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered."

- 6.4 It is clear that Australian law and the GATT are consistent in so far as both demand that the investigating authority must, on consideration of the verified facts available to it, find that both variables – dumping and a causal link to material injury – are sufficiently supported by probative evidence in order to publish an anti-dumping notice (**ADN**) with respect to the goods under consideration.

The requirement to establish a causal link

- 6.5 The investigation and analysis as to whether dumping has caused material injury (for the purposes of an anti-dumping investigation) demands the careful consideration of relevant facts. Injury analysis is a composite process which requires two queries to be tested against the available, verifiable, facts namely:
- (a) whether the applicant has suffered material injury; and
 - (b) whether the injury suffered can be attributed to dumped imports such that the injury can be said to have been caused by exportation of goods to Australia from the identified countries at prices deemed to be 'dumped prices'.
- 6.6 To test these two elements with the requisite rigor and reliability, in order to make a positive determination under section 269TAE(1) that material injury to Australian industry has been or is being caused or, is threatened or, would or might have been caused, the analysis must be based upon positive evidence that is objectively verifiable and defensible.
- 6.7 This is set out under section 269TAE(2AA) of the Act, which clearly states that a determination with respect to injury pursuant to section 269TAE *"must be based on facts and not merely on allegations, conjecture or remote possibilities"*.

Submissions prior to Report 234

- 6.8 In the Statement of Essential Facts (**SEF**) 234 published by the ADC on 27 August 2014, the ADC preliminarily found that the applicant had suffered injury caused by dumping in the form of price depression, price suppression, reduced profits, reduced profitability, and reduced domestic revenue.
- 6.9 Following the publication of SEF 234, the Japanese Mills made submissions detailing several concerns regarding the approach utilised in the SEF. Those submissions are at pages 49 to 54 of the bundle of submissions at **Annexure C**. In summary:

- (a) the Japanese Mills were concerned by the absence of any clear causal link between the applicant's performance issues and the alleged injury. SEF 234 did not adequately demonstrate how the issue of causation was established to the exclusion of extraneous factors;
- (b) any such consideration would have required a credible method of isolating the alleged damage from market forces during a time of significant transition in the industry;
- (c) the claims made by the applicant clearly failed to adequately address the dynamics of the Australian market - indeed during the early stages of the investigation the applicant denied the impact of the declining mining industry on its performance;
- (d) there was considerable material to evidence that the overwhelming causes of downturn in the applicant's business were changes in the dynamics of the Australian market during a period of significant economic transition. Those changes, which were contemporaneous with the investigation period, are particularised in greater detail in the submissions at **Annexure C**;
- (e) the above stated market dynamics resulted in reduced levels of demand, sales volumes, capacity utilisation, wages, and profitability; and increased CTMS, stock levels, and price depression. However, it was noted that the applicant was nonetheless able to increase its market share during the injury analysis period;
- (f) the price cutting analysis undertaken in the SEF was unduly simplistic and did not involve analysis of all relevant variables (see pages 52 to 54 of the submissions at **Annexure C**); and
- (g) in the circumstances, the Japanese Mills submitted that the injury claimed by the applicant was unsupported, failed to pay due regard to extraneous market forces, and was based upon the most tenuous and speculative of links.

Report 234

- 6.10 Notwithstanding the Japanese Mills' submissions at **Annexure C** regarding the role of market forces as the fundamental cause of injury to the applicant, Report 234 concluded that the applicant suffered injury caused by dumping in the form of price depression, price suppression, reduced profits, reduced profitability and reduced domestic revenue. The report concluded that the injury was material.
- 6.11 The impact of the significant downturn in the mining industry was recognised, to some extent, in Report 234. At 5.2, it was noted that the Australian Q&T steel plate market was predominately driven by the resources and mining sector. The report acknowledged the occurrence of "*a rapid contraction of approximately one third*" of the market in 2013. This coincided with the injury analysis period. The ADC also found:

Volume injury

- (a) reduced demand "*resulting from a downturn in the mining industry*" was "*likely to have materially contributed*" to the applicant's sales volumes declining during the investigation period. As such, there was "*insufficient evidence*" to establish that volume injury by reason of dumping was "*material and greater than that likely to have occurred in the normal ebb and flow of business in a contracting market*";¹

¹ Report 234 at 8.4.

Price injury

- (b) after assessing price undercutting "*at an aggregated level*", by comparing the applicant's weighted prices against those of each importer, the ADC found that there was "*sufficient evidence*" that the applicant had suffered price injury. The ADC conceded, however, that price cutting "*could not consistently be demonstrated*". The ADC nonetheless considered that the Australian industry "*faced price pressure from imported goods*";
- (c) based upon the above, the ADC was satisfied that the Australian industry was forced to reduce prices and avoid price increases to compete with imported goods at dumped prices. The ADC therefore found that the applicant suffered injury in the form of price suppression and depression by reason of dumping. In this regard, the ADC accepted that downturn in mining investment would have lowered the applicant's capacity utilisation and therefore contributed to a higher unit cost to make and sell (CTMS). However, the ADC nonetheless considered it "*likely*" that the applicant would have been in a position to maintain pricing to cover the increase in CTMS in the absence of dumping;²

Profit injury

- (d) in respect of profit injury, the applicant submitted that the injury caused by dumping was greater in a contracting market and resulted in a more dramatic deterioration in profit. The ADC considered this submission to accord with the cover sheet to the Ministerial Direction on Material Injury, which refers to the apparently "*greater impact of injury during periods of economic downturn and reduced rates of growth as an element of injury*". The ADC found that an increase in price, equal to the lowest dumping margin, would have been sufficient for the applicant to have operated profitably during the investigation period;³

Other injury

- (e) in respect of other forms of injury such as reduced capacity utilisation, return on investment and increased stock levels, the ADC accepted that there was "*inconclusive evidence to establish injury*" or that the injury from dumping was material;⁴

Injury caused by factors other than dumping

- (f) the ADC noted submissions that a contraction in demand for the goods was the primary cause of injury during the relevant period. It acknowledged the significant effect of this variable. However, the ADC was satisfied that dumping need not be the "*sole cause*" of the injury.⁵

6.12 In short, the approach of the ADC appears to have been to assume that dumping forced the applicant to lower and maintain lowered prices, which at a minimum could "*directly be attributed*" to the individual dumping margins.⁶ Were this effect removed, the ADC assumed

² Report 234 at 8.5. The verification and sources of the underlying information was not disclosed. Objection to this superficial and opaque method of analysis had previously been made on behalf of the Japanese Mills. Although the concerns of the Japanese Mills were noted, no meaningful response is apparent in Report 234 (see pages 52 to 53 of the submissions at **Annexure C**).

³ Report 234 at 8.6.

⁴ Report 234 at 8.7.

⁵ Report 234 at 8.8.2.

⁶ Report 234 at 8.9.

that the applicant would have operated profitably notwithstanding the dramatic downturn experienced in the domestic market.

- 6.13 Although the ADC quite rightly *referred* to its "*obligation to not attribute injury caused by other factors to injury caused by dumping*", its reasoning as to how those factors were excluded was notably absent. Rather, the ADC appears to have assumed that price increases by the assessed margin of dumping would have provided a 'silver bullet' for the applicant's profitability issues during this dynamic period.

Reviewable errors in the approach taken

- 6.14 The fundamental difficulty with the above approach taken by the ADC is that it avoids real or meaningful consideration of two preconditions to the exercise of power:

- (a) that the injury be *caused* by the dumping; and
- (b) that it be *material*.

- 6.15 This is required by GATT and pursuant to section 269TAE of the Customs Act (see 6.2 to 6.7 above).

Failure to establish the requisite causal link

- 6.16 It is not apparent from either SEF 234 or Report 234 how the requisite causal link was established in the present case.

- 6.17 As detailed above, the ADC accepted that there was insufficient evidence to establish volume injury. It accepted that it was unable to find such injury in circumstances where rapid market decline had resulted in significant reductions in demand. However, the ADC nonetheless concluded that material injury was caused by dumping on the basis that "*dumping need not be the sole cause of injury*" (emphasis added). It therefore appears to have considered that the test of causation was made out if dumping *had some* injurious effect on the applicant. However, this is not the statutory test.

- 6.18 The ADC assumed that, in the absence of dumping, the applicant would have been able to raise prices and operate profitably. It therefore assumed that the applicant's injury was materially caused by dumping, notwithstanding the acknowledged effect of market forces considered above.

- 6.19 However, it cannot be automatically concluded that in the absence of dumping, the applicant would have raised its prices and thereby operated profitably. There are no 'silver bullets' in dynamic international markets, nor in domestic markets undergoing periods of substantial transition and decline. To assume that injury in this climate would be simply displaced by the absence of dumping is unfounded and erroneous.

Failure to assess extent of injury

- 6.20 The extent of the injury caused by dumping was another question that the Japanese Mills submit was not adequately addressed in the report .

- 6.21 It appears from the report that no real evaluative process was undertaken in this regard. Indeed, there appears to have been no real attempt to grapple with the issue.

- 6.22 Report 234 acknowledged that the injury assessment period was one of significant change and downturn in the market. Although it acknowledged the need to isolate the injury caused by external factors from its assessment of the injury caused by dumping, the report contains no credible analysis of how this was achieved.

6.23 For those external forces to be properly considered in the report, there would have needed to have been some meaningful assessment of the tangible effects of those forces, including the extent:

- (a) of the injury caused by the reduction in demand, other market forces, and associated flow on effects;
- (b) to which internal factors contributed to the injury claimed;⁷ and
- (c) that projections may credibly be made for different scenarios in this market (with and without the alleged impact of dumping).

In the respectful submission of the Japanese Mills, the report does not disclose any credible evaluative exercise undertaken into the impact of these important variables.

6.24 Without evidence in support of this exercise, the Decision is not supportable. This is because the decision maker cannot, reasonably, be satisfied that *material* injury has been *caused* by dumping within the meaning of the Customs Act.

Assumptive fallacies arising from the use of Ministerial Direction 2012/24

6.25 As noted above, in assessing injury the ADC relied upon the Ministerial Direction on Material Injury, the cover page to which refers to the apparently "*greater impact of injury during periods of economic downturn and reduced rates of growth as an element of injury*". However, this statement does not form part of the Ministerial Direction 2012/24.

6.26 Neither the Anti-Dumping Agreement nor the terms of section 269TAE support the above quote. Indeed the quote comes from the cover page which was drafted by a Customs official and not the Minister. Submissions to this effect were provided to the ADC on behalf of the Japanese Mills, and appear on pages 43 to 44 of **Annexure C**.

6.27 Additionally, the quote is limited by various qualifiers such as non-attribution and the overarching requirement that the injury caused be material. Injury suffered by an applicant does not become material simply because the market is in decline. Furthermore the mere fact that specific economic conditions of declining demand are found to exist does not of affect the manner in which the ADC must address the issue of causation. To the contrary, section 269TAE(2)(c) provides that injury caused by a contraction in the market must not be attributed to dumping.

6.28 In short, the requirement that unrelated injurious factors not be taken into account when establishing causation and the requirement that injury must be demonstrably linked to dumped imports must be applied in every case.

6.29 There is no scope for applying a differential impact test (and, in effect requiring a less rigorous consideration of causation and materiality) because the market is in decline. To consider that the Minister's direction suggests the contrary is not only a misinterpretation of the direction but would create a direct and irreconcilable contradiction between the terms of the direction and the provisions of the Customs Act.

7. Further considerations

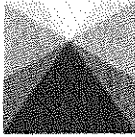
7.1 It is trite that anti-dumping measures are not to be used as surrogate protectionisms. The importance of genuine competitiveness in supply chains to the mining industry, and the broader economy, should not be disregarded.

⁷ Although the ADC found, at 8.8.3, that it "*did not consider*" the applicant's business model "*contributed materially*" to the injury, there is no basis for this finding that is articulated or discernible in the report.

- 7.2 This is particularly so where the *"industry"* against which injury is to be considered is constituted by one self-interested market participant. The data underpinning the findings in SEF 234, Report 234 and, ultimately, the Decision, were heavily reliant upon submissions from this participant. It is therefore incumbent upon decision makers to carefully scrutinise claims of injury in this context.

8. Conclusion

- 8.1 The Japanese Mills contend that the Minister has erred in accepting the ADC's recommendation in making the Decision. The Review Officer is requested to review the recommendations in Report 234 and accepted by the Minister in the Decision.

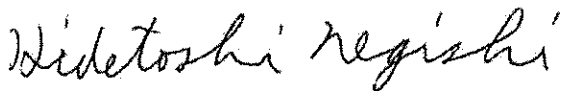


**NIPPON STEEL &
SUMITOMO METAL**

**Nippon Steel & Sumitomo Metal Corporation: Review of Decision of the Minister whether
to Publish a Dumping Duty Notice or Countervailing Duty Notice**

I confirm that **Nippon Steel & Sumitomo Metal Corporation** appoints and authorises Mr Zac Chami, partner, Clayton Utz Lawyers, and any lawyer or employee of Mr Chami, to act on its behalf in respect of an application for review of the decision of the Parliamentary Secretary to the Minister for Industry on 28 October 2014 to impose anti-dumping measures in respect of the quenched and tempered steel plate exported from Finland, Japan and Sweden.

December 3, 2014



Hidetoshi Negishi

General Manager

Legal Division

Nippon Steel & Sumitomo Metal Corporation

Nippon Steel & Sumitomo Metal Corporation



4 December 2014

KOBE STEEL, LTD. : Review of Decision of the Minister whether to Publish a Dumping Duty Notice or Countervailing Duty Notice

I confirm that KOBE STEEL, LTD. appoints and authorizes Mr Zac Chami, partner, Clayton Utz Lawyers, and any lawyer or employee of Mr Chami, to act on its behalf in respect of an application for review of the decision of the Parliamentary Secretary to the Minister for Industry on 28 October 2014 to impose anti-dumping measures in respect of the quenched and tempered steel plate exported from Finland, Japan and Sweden.

Takatoshi SAKAGAMI

Manager of Planning & Administration Department

Iron & Steel Business

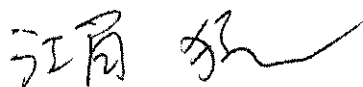
KOBE STEEL, LTD.

JFE Steel Corporation: Review of Decision of the Minister whether to Publish a Dumping Duty Notice or Countervailing Duty Notice

I confirm that **JFE Steel Corporation** appoints and authorises Mr Zac Chami, partner, Clayton Utz Lawyers, and any lawyer or employee of Mr Chami, to act on its behalf in respect of an application for review of the injury aspects of the decision of the Parliamentary Secretary to the Minister for Industry on 28 October 2014 to impose anti-dumping measures in respect of the quenched and tempered steel plate exported from Finland, Japan and Sweden.

At the same time, I confirm that **JFE Steel Corporation** appoints and authorises Mr M J Howard, Staughtons, and any specialists to act on its behalf in respect of an application for review of the dumping and other relevant aspects of the decision of the Parliamentary Secretary to the Minister for Industry on 28 October 2014 to impose anti-dumping measures in respect of the quenched and tempered steel plate exported from Finland, Japan and Sweden.

December 4, 2014



Takeshi Esumi

Staff Deputy General Manager

Export Planning & Coordination Sec.

Sales Coordination & Operation Planning Dept.

JFE Steel Corporation

JFE Steel Corporation

2-2-3 Uchisaiwaicho, Chiyoda-ku, Tokyo 100-0011, Japan
Tel: (03)3597-3111 Fax: (03)3597-4860



Australian Government
Anti-Dumping Commission

Customs Act 1901 – Part XVB

Quenched and Tempered Steel Plate
Exported from Finland, Japan and Sweden
Findings in Relation to a Dumping Investigation

Public notice under subsections 269TG (1) and (2) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of Quenched and Tempered steel plate (the goods), exported to Australia from Finland, Japan and Sweden.

The goods are classified to tariff subheadings 7225.40.00 (statistical codes 21, 22, 23 and 24) and 7225.99.00 (statistical codes 39 and 44) in Schedule 3 of the *Customs Tariff Act 1995*.

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2014/01 which is available on the internet at www.adcommission.gov.au.

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No. 234 (REP 234)*. REP 234 outlines how the Anti-Dumping Commission (the Commission) carried out the investigation and recommends the publication of a dumping duty notice in respect of the goods.

Notice of my decision was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette* on 5 November 2014.

Particulars of the dumping margins established and an explanation of the methods used to compare export prices and normal values to establish the dumping margins are set out in the table below.

PUBLIC RECORD

Country	Manufacturer / exporter	Dumping margin	Inco-term	Effective rate of duty	Method to establish dumping margin
Finland	All Exporters	21.7%	EXW	10.8%	Weighted average export prices were compared with corresponding normal values over the investigation period in terms of s. 269TACB(2)(a) of the Customs Act 1901 (the Act).
Japan	JFE Steel Corporation	24.6%	EXW	24.5%	
	Uncooperative Exporters	33.8%	EXW	26.1%	
Sweden	All Exporters	34.0%	FOB	9.6%	

NB: Pursuant to s. 12 of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act), conversion of securities to interim duty will not exceed the level of security taken. The rate of conversion for securities will be required per the notices published on 19 May 2014 and 27 August 2014.

The above table lists the effective rate of duty which is different from the dumping margins found, due to the application of the lesser duty rule pursuant to s. 8(5B) of the Dumping Duty Act. Pursuant to the lesser duty rule, consideration is given to the desirability of imposing duties at less than the full dumping margins, if the lesser amount of duty is adequate to remove injury to the Australian industry.

The effective rate of duty determined for Finland and Japan is an amount worked out in accordance with the ad valorem method and the effective rate of duty determined for Sweden has been calculated in accordance with the combination of fixed and variable duty method.

I, ROBERT CHARLES BALDWIN, Parliamentary Secretary to the Minister for Industry, have considered, and accepted, the recommendations of the Commissioner, including the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 234.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under s. 269TG(1) of the Act, I DECLARE that s. 8 of the Dumping Duty Act applies to:

- (i) the goods; and
- (ii) like goods that were exported to Australia after 19 May 2014 (when the Commissioner made a preliminary affirmative determination under s. 269TD of the Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before the publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the

PUBLIC RECORD

Australian industry producing like goods has been caused or is being caused. Therefore under s. 269TG(2) of the Act, I DECLARE that s. 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from Finland, Japan and Sweden.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on Australian industry prices and the consequent impact on the Australian industry including reduced revenues, price depression, price suppression, reduced profits and reduced profitability.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how anti-dumping measures are applied to 'goods on the water' is available in ACDN 2012/34, available at www.adcommission.gov.au.

REP 234 and other documents included in the public record may be examined at the Commission's office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 9244 8229, fax number +61 3 9244 8902 or email at operations3@adcommission.gov.au.

Dated this 28th day of October 2014

ROBERT CHARLES BALDWIN
Parliamentary Secretary to the Minister for Industry

RECEIVED 17 FEB 2014

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra London Hong Kong

The Director
Operations 3
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008

17 February 2014

ATTN: Mr Matthew Williams

Our ref 11276/80152428

Dear Sir

Quenched and Tempered Steel Plate Investigation - Submission in response to initiation of anti-dumping investigation and proposed anti-dumping measures in relation to exports from Japan

We act for Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Ltd. and refer to:

- the application for the publication of an anti-dumping duty notice with respect to quenched and tempered steel plate (Q and T Steel) from Finland, Japan and Sweden lodged by Bisalloy Steel Ltd on 20 November 2013 (Application);
- the Australian Anti-Dumping Commission's (ADC) consideration report in relation to the application (CON 234) dated 30 December 2013; and
- the subsequent Anti-Dumping Notice (ADN 2014/01) providing notice of the initiation of an investigation into alleged anti-dumping pursuant to the ADC's consideration of the application.

We provide the following joint submission on behalf of our clients and reserve the right to expand upon or supplement this submission at a later point in time.

1. Introduction

1.1 Our clients consider the claims made by Bisalloy Steel Ltd (Applicant) in the application, as reflected in CON 234, to be significantly deficient of substance and to rely upon misguided assumptions and assertions regarding the conditions of the Australian market for Q and T Steel during the period of investigation.

1.2 Specifically, our clients submit that the claims made by the Applicant that it has suffered injury and that its injury was caused by dumped imports from Japan to be implausible, inherently unsubstantiated and reflect a gross lack of consideration of market variables other than product competition.

1.3 We will deal in turn with issues of dumping, injury and causation separately below.

2. Dumping

2.1 Our clients appreciate that, for the purposes of consideration of the application and initiation, the application must be supported by evidence of dumping - that is, the export price of goods that have been exported to Australia is less than the normal value of those goods.

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- 2.2 We appreciate that at this stage of the investigation the Applicant is only required to furnish evidence to satisfy the decision maker that the goods have been dumped, and that the margin of dumping is not under the de-minimis threshold of 2%.
- 2.3 We note the ADC's methodology for the calculation of dumping in CON 234 and specifically:
- (a) the use of Australian Customs and Border Protection Service (ACBPS) import data for the purposes of determining quarterly weighted average unit export prices from the nominated countries (set out at 5.3.2 of CON 234); and
 - (b) the construction of quarterly unit values for the goods for each nominated country (set out at 5.4.2 of CON 234).

Export prices

- 2.4 As a caveat to our response, we note that we do not have access to the source data exported from the Integrated Cargo Systems (ICS) database by the ADC for the purposes of calculating weighted average export prices.
- 2.5 We note however, the ADC's consideration of the Applicant's claims regarding the unreliability of the import data prepared by the Australian Bureau of Statistics (ABS) and the finding by the ADC that this claim was not sufficiently substantiated by the Applicant either as a matter of "reasoning or probative evidence" in so far as it relates to Japan.¹
- 2.6 We support the ADC's views in this regard. We submit that the Applicant's claims regarding the unreliability of the ABS import data reflect the Applicant's reliance upon assumption and misguided assertion rather than fact which is inherent in the grounds for its application.

Construction of normal values

- 2.7 We understand the basis and methodology for the construction of normal values of the goods for each of the nominated countries for the purposes of examining the existence and quantum of dumping (or lack thereof).
- 2.8 We note the explanation of the methodology proposed by the Applicant, and the consideration of the ADC, provided at 5.4.1 and 5.4.2 respectively in CON 234.
- 2.9 Whilst we do not object to this construction methodology for the purposes of consideration of the application pursuant to section 269TC of the *Customs Act 1901* (Cth) (Customs Act), we query the basis upon which the ADC has used selling prices for standard grade plate steel as the foundation for the construction of normal values, without making adequate adjustment to account for selling, general and administrative costs (SGA) and profit margins which would be incorporated into such prices.
- 2.10 In this regard we note that at 5.4.2 of CON 234 the ADC specifically notes that:

"The Commission considers that incorporating reported selling prices for standard grade plate as the starting point for the constructed normal values could result in the

¹ Page 22 of CON 234

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normal values being marginally overstated as the reported selling prices would include selling expenses and a margin for profit that would not be incurred by an integrated Q&T steel plate producer."

- 2.11 Notwithstanding the ADC's explicit consideration of the issues associated with using unadjusted selling prices as the basis for the construction, it is apparent that the ADC has not made any attempt to apply any reasonable adjustment to these selling prices to mitigate the overstatement of normal value.
- 2.12 We submit that information regarding average SGA and profit ratios for the sale of 250mpa plate steel would be available to the ADC from previous investigations into Plate Steel (ITR 196).
- 2.13 We submit that the ADC must recalculate the constructed normal value by applying a downward adjustment to the plate steel selling price.
- 2.14 Our client otherwise reserves its rights to provide further submissions regarding the calculation of normal values as the investigation progresses.

3. Injury

Cumulative injury analysis

- 3.1 We appreciate that section 269TAE(2C) of the Customs Act provides that injury analysis may be approached by way of consideration of the cumulative effects of import competition because of the specific dynamics between:
- (a) imported products; and
 - (b) imported products and the Australian industry.
- 3.2 However, we submit that, in order for this section to be enlivened, it is necessary that evidence of the particular 'dynamics' between the imported products AND between the imported products and the Australian industry be undertaken.
- 3.3 We submit that, on the facts available to the ADC, and given the absence of information which would reasonably satisfy the necessary factual indicia of competition between imported product, the requisite circumstantial conditions of section 269 TAE(2C) of the Customs Act were not satisfied and, accordingly, cumulative injury analysis was not reasonably open to the ADC.
- 3.4 We note the ADCs analysis of export prices (developed using data drawn directly from ACBPS import database) reflects the export price trends between the nominated countries by quarter during the period of investigation (POI) set out in the table below.

Country	Dec quarter 2012 (AUD)	Mar quarter 2013 (AUD)	Jun quarter 2013 (AUD)	Sep quarter 2013 (AUD)
Finland	\$1,432	\$1,457	\$1,349	\$1,292
Japan	\$1,448	\$1,404	\$1,358	\$1,500
Sweden	\$1,449	\$1,226	\$1,289	\$1,217

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- 3.5 The table reflects a consistent decline in prices from Finland and Sweden across the quarters of the POI and similarity between the unit price of the goods under consideration (GUC) from these two countries.
- 3.6 Our client considers that the evidence could be extrapolated to indicate that there is significant price competition between these two Scandinavian countries and that prices from the region are affected by competitor parity concerns.
- 3.7 The table clearly indicates however, that, notwithstanding the similar drop in unit prices from Finland and Sweden, prices from Japan remained reasonably consistent during the POI and were, in fact, higher in the final quarter of the POI than at the beginning and significantly higher than their alleged major export competitors.
- 3.8 Whilst our clients reserve their rights with respect to discussing the variables which affect export pricing at this time, they refute the implication that competition between exporters into the Australian market has an impact on their pricing policies.
- 3.9 Our clients wish to emphasise that all export activities, and associated pricing policies, are conducted on the basis of market negotiation with their customers in Australia.

4. Injury factors

Volume effects

- 4.1 Our client refers to the discussion regarding the Applicant's declining sales volumes under section 6.7 of CON 234, and, specifically, the graphical extrapolation of sales data for the injury analysis period in Figure 3.
- 4.2 The Applicant has itself noted in its application to the ADC, referred to at section 4.5.2 of CON 234, that the most significant source of demand for the GUC in the Australian market comes from the resources sector.
- 4.3 It is no secret that the Australian resources market has experienced a significant reduction of activity over the past 2 years, which reduction has increased sharply in the 2012-2013 financial year. This decline in market demand, driven by the fall in activity in the Australian resources sector and related markets, is specifically referred to by the Applicant in its FY13 Annual report which states:

"A fall in prices for Australia's major commodities, particularly iron ore and coal, lead to widely publicised deferrals or cancellations of a number of planned resources projects which quickly led to a rapid decline in forecast demand and prices for steel, including Bisalloy's products"
- 4.4 Figure 3 of CON 234 clearly reflects this contraction in the Q and T Steel market generally, and when read with figure 1, reflects the significant reduction in import volume from the nominated countries. Our clients submit that this contraction in Australian demand has significantly affected its own commercial activities in the sector and significantly reduced its sales volumes to its Australian customers.
- 4.5 Our clients submit that Japanese mills, individually and collectively, have experienced sharp fluctuations in demand over the 2010 -2013 period. The summary below reflects our client's

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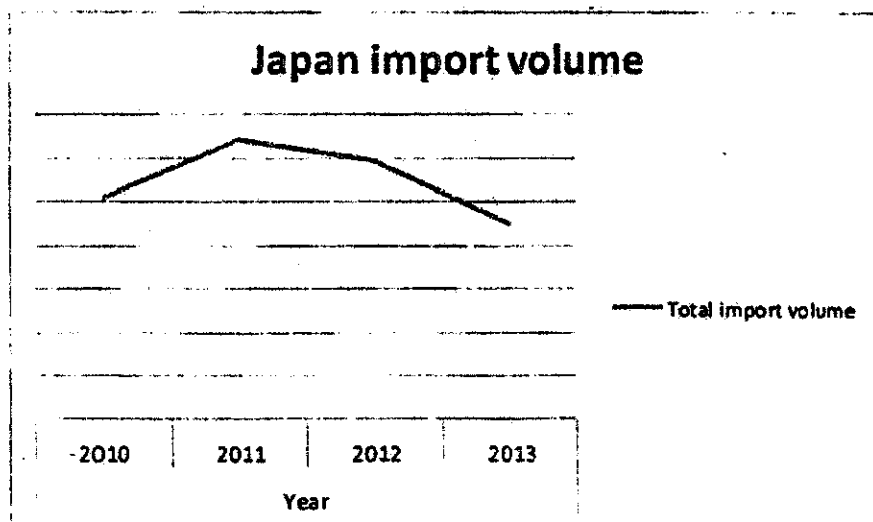
summary of import statistics of the GUC during the period, and the proportionate difference of annual import volumes of Q and T Steel into Australia from JFE and NSSMC.

Year	Total imports (MT) (000's)	% difference
2010	25.5	
2011	32.1	21%
2012	29.7	-8%
2013	22.4	-33%

4.6 The table above highlights that:

- (a) Imports increased in 2011 relative to 2010 levels;
- (b) There was a relatively sharp decline in volume in 2012; and
- (c) There was a sharp decline in 2013 relative to 2012 levels.

4.7 These trends become more apparent when represented graphically:



4.8 The above data is consistent with the trends, reflected in Applicant's own sales data, regarding the significant decline in market demand for the GUC during 2012-2013.

4.9 What is interesting to note, however, is that whilst the data reflected in figure 3 shows the Applicant achieving an increase in sales volumes in 2012, Japanese imports experienced a relatively sharp decline.

4.10 Our clients note, to this end, that the Australian market data extrapolated by the ADC indicates that, notwithstanding the overall contraction of the market generally, and the alleged heightened

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market competition, the Applicant has managed to increase its market share in 2013, relative to 2011 levels.

- 4.11 Whilst our clients share the Applicant's concerns regarding the contraction of the market for the GUC generally in Australia, they do not consider that the decline in volume, of itself, to be an indicia of injury related to import trade activity, dumped or otherwise.

Price effects

- 4.12 Our clients understand that price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

Price Suppression and Depression

- 4.13 We refer to figure 4 of CON 234 which extrapolates the relative margin between the Applicant's cost to make and sell (CTMS) and revenue on a quarterly basis during the injury analysis period (September 2010 to September 2013).
- 4.14 The graph clearly indicates that during this period Bisalloy's CTMS the GUC was subject to quite significant fluctuation. Specifically, we note that when the CTMS fluctuations in Figure 4 are analysed relative to the volume variables during the same period reflected in Figure 3, an inverse correlation is apparent between volume and CTMS - that is, when sales volume rises, unit CTMS falls and the converse is true where sales volume decreases.
- 4.15 Our clients consider that this pattern is consistent with the Q and T industry globally and is not a phenomenon unique to the Applicant's situation in the Australian market. Simply put, Q and T Steel production is a volume dependent process - costs per unit will rise when throughput in the production falls. The relative ratio between cost and revenue will depend on internal variables related to the costs of production and manufacturing efficiencies.
- 4.16 Logically, production volumes and associated unit costs are inextricably linked to demand for the goods in the market. The pattern in question between September 2012 and September 2013 appears consistent with a changing pattern of demand and changing trends in the market.
- 4.17 Figure 4 reflects that the revenue attained by Bisalloy remained relatively stable during the injury analysis period, notwithstanding the peaks and troughs in volume and associated spikes in CTMS.
- 4.18 Our clients submit that the stability of unit revenue is not, of itself indicative of price depression, but symptomatic of the historical stability of Q and T Steel prices in the Australian (and global markets).
- 4.19 Our clients submit that, as shown by the quarterly export price data relied upon by the ADC, the attainable market price for its goods have remained at historically stable levels during the course of the POI, notwithstanding the fact that this period was one of dramatic decline in consumer demand.
- 4.20 As to the implied assertion that prices have been suppressed on the basis that the Applicant has experienced periods where the Applicant's costs of production outstripped revenue, our clients consider that these issues are symptomatic of the turbulence in the market and the difficulties all

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producers of the GUC are experiencing in adjusting to the extreme decline in demand in what has been historically a booming market in Australia.

Reduced Profitability

- 4.21 Our clients submit that the above views on the Applicant's commercial position regarding the GUC are further supported by the data reflected in Figure 5 relating to the Applicant's profit and profitability during the injury analysis period.
- 4.22 Again, this table further indicates the extent of the volatility in the Q and T market in Australia from 2010 to 2013 and the extreme peaks and troughs in demand from the main sectors of consumption - predominantly the resources sector.
- 4.23 As explained above, profitability in relation to the production and sale of Q and T product is a product of demand, which in turn drives production throughput. The lower the throughput, the higher the cost of manufacture. Unit selling prices, and in turn revenues, are less dynamic and are much slower to respond to systemic market change such as has been experienced in the Q and T market in Australia during the POI.
- 4.24 Logically, the relative ratio between cost and revenue (that is the inherent profitability of sales activities) will depend on a number of internal variables related to the costs of production and manufacturing efficiencies and the ability of a business to adapt and innovate production processes in line with changes in market demand.
- 4.25 When viewed alongside Figures 3 and 4, Figure 5 reflects the financial impact of unprecedented declines in market demand which led to rising manufacturing costs and the inability of the industry generally to adapt to market movements.

Other injury factors

- 4.26 We note that the Applicant has claimed that a number of 'other injury factors' have been experienced during the period.
- 4.27 We also note that the ADC was not satisfied that the Applicant has provided sufficient evidence of the significant majority of these claims. We commend the ADC's rigor in this regard. We submit that the unsubstantiated nature of these specific claims made by the Applicant is emblematic of the inherent deficiency of the application itself and the misguided attempts by the Applicant to attribute the source of commercial losses suffered in the ebb and flow of business in an increasingly volatile marketplace through unfounded assumptions, assertions and insufficient evidence.
- 4.28 We note the ADC's comments regarding claimed 'other injury factors' raised by the Applicant, and specifically its finding that there are reasonable grounds to support the claim that the Applicant has suffered material injury in the form of reduced capacity utilisation, reduced revenues and increased stock levels of like goods. Our clients have no basis upon which to currently dispute whether or not the Applicant has experienced these factors.
- 4.29 However, we submit that these injury factors are not unique to the Applicant and have been experienced by all parties in the Australian Q and T market as a result of the overall contraction of the market - leading to under-utilisation of production facilities, greater levels of stock in inventory and reduced revenues as a result of contraction of sales.

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- 4.30 The data reflects that the Applicant did, in fact, achieve a small increase in its market share during 2013 relative to 2011 levels, notwithstanding the contraction of the market. We submit that this is indicative of the fact that 'other injury factors' suffered by the Applicant are the result of overall market forces and are not attributable to market competition from imported goods, dumped or otherwise.

Conclusion on injury factors

- 4.31 Overall, our clients submit that whilst the tables reflect that, prima facie, the Applicant has suffered financial injury during the injury analysis period - these injury factors are symptomatic of unparalleled market changes which have affected all parties in the Q and T-market.

5. Causation

The Applicant's claim

- 5.1 We note the claims made by the Applicant, summarised at 7.1.1 of CON 234, regarding the alleged causal link between the injury it has suffered in relation to its Q and T Steel business and increased competition in the market from dumped exports from the nominated countries.
- 5.2 We note that the underlying basis for these claims is the allegation that due to competitive forces in a contracting market, and aggressively low prices from export competition of allegedly dumped goods which have undercut the Applicant's prices, the Applicant has been forced to lower its prices to compete and retain sales volumes.
- 5.3 We note that in accepting the Applicant's claims regarding price undercutting in the Australian Q and T market, the ADC has relied upon 'internal management reporting' relating to the Applicant's price monitoring activities and examples of written quotations' apparently relating to price offers of imported goods.
- 5.4 We note that the material provided by the Applicant has been used by the ADC to calculate the alleged degree to which quoted prices of goods imported from the nominated countries put to market have undercut the selling prices of the Applicant's product.
- 5.5 We note that, on the data available to, and relied upon by the ADC, goods of Japanese origin are alleged to have significantly undercut the Applicants selling prices in all quarters of the POI.

Our client's response

- 5.6 We acknowledge that in responding to these claims we are limited in our knowledge of the specific data provided by the Applicant to the ADC to support its claims of price undercutting. However, we submit that the ADC must carefully consider the veracity and accuracy of this data for a number of reasons:

(a) quotations

Market quotations, without context can often be misleading, either by default or by design, and are often used as negotiating mechanisms in the down stream market.

Whilst our clients cannot respond to the nature of the specific quotations supplied by the Applicant, we submit that the fact that the Applicant has these quotes available to

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them raises concerns regarding their legitimacy as accurate indicators of selling prices in the market.

(b) market data

The Applicant has claimed that it gathers market intelligence and import pricing data as a basis for monitoring the market and measuring price competition.

We note that, in relation to its import price monitoring activities, the Applicant has, unsuccessfully, suggested that the data prepared by the ABS is not consistent with its internal intelligence regarding market pricing of imported product and is unreliable. We note that the ADC has already found this claim unwarranted and has relied upon its own ICS database for the purposes of determining weighted average quarterly export prices.

Our clients submit that this is indicative of the inherent unreliability of the Applicant's commercial awareness of the market, and of the basis for its assertions regarding price undercutting.

5.7 To illustrate the concerning inconsistencies with the Applicant's claims in this regard, we have compared the export price information calculated by the ADC with the preliminary undercutting margins calculated using the Applicant's alleged 'offer price' information.

5.8 This information is provided in the below table, which illustrates significant anomalies in the relationship between export price and undercutting margin for each nominated country.

Period	Japan export price	Japan undercutting	Sweden export price	Sweden undercutting	Finland export price	Finland undercutting
Oct-Dec 2012	\$1,448	14.2 - 19.5 %	\$1,449	Nil - 3.5 %	\$1,432	18.3 - 23.4 %
Jan-Mar 2013	\$1,404	2.4 - 18.6 %	\$1,226	7.5 - 13.3 %	\$1,457	n/a
Apr-Jun 2013	\$1,358	2.3 - 16.5 %	\$1,289	3.9 - 9.5 %	\$1,349	2.8 - 12 %
Jul-Sep 2013	\$1,500	10.5 - 16.5 %	\$1,217	8.0 - 13.8 %	\$1,292	12.0 - 18.0 %

5.9 We note that, notwithstanding the fact that:

- (a) the weighted average export price of the goods from Japan remained relatively consistent during the POI, and in fact increased in the final quarter of the POI;
- (b) the weighted average export price of the Finland and Sweden decreased significantly across each quarter of the POI,

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the undercutting margin for Japan remained positive during each quarter of the POI and, inexplicably, was higher, on average, in the final quarter (when export prices were at a premium) than they were in the previous quarter (when export prices were 9% lower).

5.10 Additionally, the data also reflects some very anomalous dynamics:

- (a) notwithstanding that export prices from Japan were marginally lower (\$1AUD) than the export price of Sweden in the first quarter of the POI, the margin of undercutting was significantly higher for Japanese imports;
- (b) in the second quarter of the POI, Japanese export prices were 13% higher than export prices from Sweden but a similar average undercutting margin has been calculated for both countries;
- (c) in the fourth quarter of the POI, when Japanese export prices were 19% higher than prices from Sweden and 14% higher than prices from Finland, the range of price undercutting remained higher than the margin calculated for Sweden and relatively similar to that calculated for goods from Finland.

5.11 We submit that the patent, significant anomalies presented by the data relied upon by the ADC raise significant concerns regarding the reliability of the market price data provided by the Applicant as the basis for preliminary undercutting analysis.

5.12 For the above data to be accurate, the price offered into the downstream market would have to routinely, and significantly, outstrip the export price paid for the goods. Our clients submit that such a phenomenon is so divorced from reality so as to be commercially impossible in current global climates.

5.13 We respectfully encourage the ADC to carefully reconsider the data relied upon to determine its undercutting margins for the purpose of causation analysis.

6. Injury caused by factors other than dumping

6.1 As discussed in detail previously, our clients agree with the Applicant's claims, at a broad level, that the Australian Q and T Steel market has experienced significant volatility in 2012/13 evidenced most pointedly by a dramatic decline in demand.

6.2 However, we submit that the Applicant's claims that but for the impact of dumped imports it would have retained volume in a smaller market and not suffered such a decrease in its performance to be unfounded and supported only by its own under-appreciation of the scale of market contraction.

6.3 Our clients submit that demand for Q and T products has declined dramatically in Australia, which has effected volume - both in terms of manufacturing throughput and sales volume - for all parties in the manufacture and sale of the goods. This has had dramatic impacts on the performance of these parties.

6.4 We note that, notwithstanding the above, the Applicant successfully achieved greater market share in 2013, relative to 2011 levels, which contradicts its assertions regarding its inability to increase market share in the protracting Australian market.

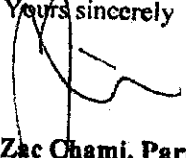
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- 6.5 As mentioned previously in this submission, issues with performance - and most notably the profitability of Q and T manufacture and sales - are the result of the unprecedented decline in the Australian and overseas markets in 2012 and the inability of manufacturers to adjust to the scale of decline. Again, we submit that these issues are not unique to the Applicant and are not attributable to import competition, dumped or otherwise.
- 6.6 We submit that the ADC must give careful, comprehensive consideration to the nature of the Q and T market and the factors which have been affecting it during the period of investigation when considering the proportionate impact of injurious factors in the market other than dumping.
7. **Non Injurious Price**
- 7.1 Our client notes the ADC's calculation and application of the unsuppressed selling price (USP) and non-injurious price (NIP) in its assessment of causation. We reserve our clients' rights to provide specific submissions regarding the calculation of the USP and NIP at a later date.
8. **Conclusion**
- 8.1 In summation, we submit on behalf of our clients, that the application made by Bisalloy on behalf of the Australian industry, for the publication of anti-dumping duties with respect to exports of the goods from Japan is based upon unsubstantiated assumptions, unreliable evidence and an apparent under-appreciation of the factors affecting the Australian Q and T market.
- 8.2 We submit that the injury factors suffered by the Applicant are not unique to the Applicant and reflect the commercial condition of all parties involved in the Q and T market. Additionally, the injury claimed by the Applicant is the result of market volatility caused by, among other things, the contraction of demand for the goods on an unprecedented scale. In our opinion, import competition, be it at dumped prices or otherwise, has not caused the injury allegedly suffered by the Applicant.
- 8.3 We trust that the ADC will carefully consider the issues raised in this submission in the context of its analysis of material injury and causation.
- 8.4 Our clients are committed to assisting the ADC to achieve a complete and accurate understanding of the Australian Q and T market and the dynamics that have affected the market, and the parties operating within this market, during the POI.
- 8.5 Do not hesitate to contact me should you have any questions regarding this submission or should you require specific information from our clients.

Yours sincerely


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For Publication

The Director
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28 April 2014

Attn: Mr Matthew Williams

Dear Sir

Quenched and Tempered Steel Plate Investigation - submission replying to Bisalloy's claims concerning related parties.

As you know I act for Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Ltd. and refer to the two letters from Bisalloy Steel Group Limited (Bisalloy) dated 31 March 2014 - the first of which concerns the topic of "related parties" and the second being a reply to JFE's submission dated 7 March 2014.

In this letter I will only address Bisalloy's claims regarding the related parties issue. I will defer my clients' reply to Bisalloy's second letter.

Related Parties

In its submission, Bisalloy refers to ASIC company searches performed in relation to certain registered Australian companies who have imported goods from Japan during the POI - namely Total Steel of Australia Pty Ltd (Total Steel) and ASM Corporation Pty Ltd (ASM).

The data referred to by Bisalloy in its letter, but not included on the public record with the submission provided to the ADC, is interpreted by the applicant to evidence a commercial relationship between these named Australian importers and the Japanese entities identified as exporters of the goods during the POI - namely Marubeni Itochu Steel Inc. and Metal One Corporation.

Bisalloy then attempts to demonstrate that there is a relationship between the importers and exporters of the goods under consideration - that is, the parties are related parties. The information is relied upon by Bisalloy to support a number of allegations regarding the dynamics of trade between related parties (dealt with below).

My clients submit that the corporate information provided by the applicant is publicly available information and Marubeni Itochu Steel Inc. and Metal One Corporation make no secret of this fact. A cursory reading of the public file exporter questionnaire response supplied to the ADC by Metal One Corporation identifies the commercial affiliation between Metal One Corporation and ASM (<http://www.adcommission.gov.au/cases/documents/014-Questionnaire-Exporter-MetalOneCorporation.pdf>).

Further, whilst the corporate affiliations between Marubeni Itochu Steel Inc. and subsidiaries are not included in the public file version of their exporter questionnaire response, the company publicly identifies that Total Steel is an overseas subsidiary company within its global network.

The existence of commercial affiliations between overseas companies and their subsidiaries across global networks is by no means a new or unique phenomenon (as the applicant will be well aware).

Anti-Dumping Commission

28 April 2014

Bisalloy's use of an ASIC company search in this instance to make disparaging assumptions regarding the trade of the goods to Australia between parent companies and Australian importers relies upon a wilful misinterpretation of the publicly available information.

Allegations regarding export price reliability

The applicant's submission, in summary, suggests that, due to the existence of a commercial relationship between the exporter and importer of the goods, the price of goods sold by the former to the latter is unreliable.

The assertion implied in this submission (as originally made in the application and rejected by the ADC) is that because transactions between the parties have not been made on arm's length terms the declared price paid by the importer to the exporter cannot be used to determine export prices in accordance with section 269TAB (1)(a).

The intended outcome of such an argument, whilst not clearly articulated by the applicant, is to suggest that the ADC must determine export prices in relation to exports of the goods by Metal One Corporation and Marubeni Itochu Steel Inc. in accordance with section 269TAB (1)(b) to be:

- the price at which the goods were so sold by the importer to a person who is not an associate of the importer (less the prescribed deductions); or
- in any other case - the price that the Minister determines having regard to all the circumstances of the exportation.

On the basis of the above, the allegation made (ie the declared prices are unreliable) is a very significant claim to make against Japanese exporters and their Australian importers. To support this claim the applicant has relied on the mere fact that the parties have a commercial affiliation to suggest that all transactions between these parties cannot be deemed to be arms length.

The submission reflects that the applicant has not given thought to the factors that must be considered by the ADC when determining whether transactions between parties are, or are not, arms length transactions.

Section 269TAA outlines the circumstances in which the price paid or payable shall not be treated as arms length. These are where:

- there is any consideration payable for in respect of the goods other than price;
- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller;
- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The above clearly articulates that the test is not merely whether a relationship exists between the buyer and the seller but whether, the price between the buyer and the seller is influenced by this relationship.

This question is one for the ADC to consider on the basis of purchase and sales data verified by the ADC during the course of its importer visit program. A number of factors can indicate that purchases are influenced by a commercial relationship but again, these are factors that can only be assessed by verifying the terms of sale between the parties.

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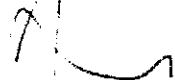
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28 April 2014

My clients do not consider that the transactions have not been made on the basis of fair-market prices and in the same manner, and on the same terms, that would be applied if the purchaser was an unrelated party.

My clients consider the assertions made by Bisalloy, which wrongly interprets publicly available evidence and implies improper trade practices by Japanese mills, should be rejected.

Yours sincerely



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Our ref 11276/80152428

RECEIVED: 23/05/2014

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For Publication

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1010 La Trobe Street
DOCKLANDS VIC 3008

23 May 2014

Attention: Mr Matthew Williams

Dear Sir

**Quenched and Tempered Steel Investigation exported from, Inter alia, Japan
Response to PAD - Japanese Steel Mills**

We refer to the preliminary affirmative determination report issued on 19 May 2014 (Report).

Our clients are concerned about the calculation of the NIP and the imposition of measures in circumstances where:

1. The ADC accepted that the reduced demand for Quenched and Tempered Steel resulted from a downturn in the mining sector which led to reduced sales volume during the investigation period (Report at 9.2).
2. The lower market demand caused by the downturn in mining investment in Australia lowered Bisalloy's *capacity utilisation* and contributed to a higher unit CTMS (Report at 9.3.4).
3. Imports of Q&T steel plate into Australia from countries such as China, Korea, Austria, Belgium, France, Germany and the United Kingdom were found not to have contributed to injury to Australian industry (Report at 9.5.1).

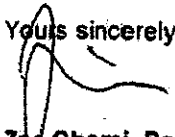
The ADC determined the rate of dumping securities with reference to Bisalloy's submission of 11 April 2014. That submission urged the use of the unsuppressed selling price (USP) as a surrogate (after deducting certain expenditures) for the NIP.

The calculation undertaken by the ADC, insofar as it relies on a USP derived from a CTMS in 2013 (which was at its highest due to the slump in demand) as adjusted by SG&A and profit from 2012 (when profits were at their maximum) results in a skewed and inflated NIP.

Profits were at their maximum in 2012 because that was a period of peak demand which in turn lead to optimal capacity utilisation and a consequent lower CTMS. The mismatch of information and data from two distinct time periods is neither logical nor rational.

There are 2 alternatives which the ADC could have used to calculate the NIP. First, the USP could have been derived from the 2010 prices and data - this being a time unaffected by any alleged dumping and before the market rose to the peaks experienced in 2011 and 2012. Alternatively, the USP could have been derived from the selling price of un-dumped imports. This data is held by the ADC and is referred to in the PAD report i.e. the other imports data from the countries specified in point 3 above.

Yours sincerely


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FOR PUBLICATION

The Director
Operations 3
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008

30 May 2014

Attention: Mr Matthew Williams

Dear Sir

Investigation Into Alleged Dumping Of Quenched and Tempered Steel exported from, inter alia, Japan (Japanese Mills Injury Submission)

1. Introduction

We act for the Japanese Mills - Nippon Steel & Sumitomo Metal Corporation (NSSMC); JFE Steel Corporation (JFE) and Kobe Steel Ltd (Kobe).

We refer to and repeat the content of our clients' submission dated 17 February 2014 but supplement the arguments in it by this submission, which is directed to injury. We submit the applicant's allegation of dumping misfires, is exaggerated and there is no dumping or, no causative material injury is being experienced by the applicant.

Our clients reserve the right to make further submissions in respect to any further matter relevant to injury, and intend to provide such further submissions in respect of:

- total export sale volumes to Australia, third countries and domestic sales over the 5 year period ending December 2013;
- Bisalloy's production capacity in the context of total demand in the Australian market.

2. A Précis of Law

2.1 The requirements of the *General Agreement on Tariffs and Trade 1994 (GATT)* with respect to the imposition of anti-dumping duties are well known to the ADC. The GATT specifically establishes the guiding principle that anti-dumping duties can only be imposed on imported goods where those goods have been found to have been:

- (a) dumped; and,
- (b) as a result of that dumping have caused, or threaten to cause, material injury.

2.2 The GATT principle is replicated in sections 269TG(1) or (2) of the *Customs Act 1901 (Cth) (Customs Act)*. Those provisions establish that the publication of a dumping notice can only be made in instances in which the Minister is satisfied that the goods for which the notice is published are dumped, and because of that dumping:

"...material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered."

2.3 It is clear that Australian law and the GATT are consistent in so far as both demand that the investigating authority must, on consideration of the verified facts available to it, find that both

variables – dumping and a causal link to material injury – are sufficiently supported by probative evidence in order to publish an anti-dumping notice (ADN) with respect to the goods under consideration.

3. *Dumping*

- 3.1 The question as to whether dumping has occurred is a question of fact that can only be tested by investigation of factors relevant to the export and domestic trade (in very general terms – a comparison between export price and the 'normal value' of the goods sold for home consumption in the country of export). The investigative processes and consideration requirements that apply to the analysis of dumping are numerous. Discussion of the ADC's analysis of dumping with respect to our clients will not be dealt with in this submission.

4. *Injury and causal link*

- 4.1 The investigation and analysis as to whether dumping has caused material injury (for the purposes of an anti-dumping investigation) demands the careful consideration of relevant facts. As the ADC is well aware, injury analysis is a composite process which requires two queries to be tested against the available, verifiable, facts namely:

- (a) whether the applicant has suffered material injury; and
- (b) whether the injury suffered can be attributed to dumped imports such that the injury can be said to have been caused by exportation of goods to Australia from the identified countries at prices deemed to be 'dumped prices'.

- 4.2 To test these two elements with the requisite rigor and reliability, in order to make a positive determination under section 269TAE(1) that material injury to Australian industry has been or is being caused or, is threatened or, would or might have been caused, the analysis must be based upon positive evidence that is objectively verifiable and defensible.

- 4.3 This is set out under section 269TAE(2AA) of the Act, which clearly states that a determination with respect to injury pursuant to section 269TAE "must be based on facts and not merely on allegations, conjecture or remote possibilities".

5. *Establishing the causal link*

- 5.1 The Act and the WTO anti-dumping Agreement (AD Agreement) prescribe the analysis for satisfaction of the causation test in the context of anti-dumping investigations.

- 5.2 Article 3.5 of the AD Agreement requires the investigating authority to examine "any known factors other than the dumped imports which at the same time are injuring the domestic industry", and requires that any such injury should not be attributed to the subject imports.

- 5.3 The requirement to identify 'other injury factors' and to ensure that these are not considered in the context of establishing the causal link between dumping and material injury is set out in section 269TAE(2A) of the Act, which states:

In making a determination... the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

- (a) the volume and prices of imported like goods that are not dumped; or*

- (b) the volume and prices of importations of like goods that are not subsidised; or*
 - (c) contractions in demand or changes in patterns of consumption; or*
 - (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or*
 - (e) developments in technology; or*
 - (f) the export performance and productivity of the Australian industry;*
- and any such injury or hindrance must not be attributed to the exportation of those goods."*

- 5.4 Consideration of the existence of 'other factors' is not only a requirement of the Act in all investigations but, we submit, is particularly relevant in the present investigation given the dynamics of the Australian market under consideration and the significant changes that have occurred in this market over the period under investigation for the purposes of injury analysis.
6. **Summary of the injury submission**
- 6.1 Our clients submit that:
- (a) The applicant's claims regarding injury suffered by its business are unsubstantiated and unfounded. There is no positive evidence of the injury complained of by the applicant aside from assumption and assertion. Additionally, in many instances the claims of injury that have been made for the purposes of initiating the present investigation are at odds with publicly available information regarding the performance of the applicant. The applicant has placed itself in a position where the information it has supplied to two different fora (the ADC on the one hand, and its shareholders and potential investors on the other) is fundamentally inconsistent; and
 - (b) The applicant's claims regarding the causal link between injury and dumped imports lack credibility and are not supported by verifiable evidence. The applicant has relied upon assertion, assumption and questionable market intelligence to support its claim regarding market competitiveness and price-based injury. The applicant has also attempted to downplay the relevance of other market factors which have fundamentally impacted the Australian market generally, and the dynamics of trade by all participants in the market in recent years.
- 6.2 Our clients are concerned with the applicant's wilful use of unreliable evidence in its submissions to the ADC. Our clients consider that the applicant has continued to be overtly selective in the presentation of data and information in its submissions to the ADC.
- 6.3 Our clients consider that the applicant has attempted to maintain a line of reasoning which is premised on a series of assumptions and negative assertions. To maintain this position in circumstances where the applicant has simultaneously avoided consideration of market factors which are well known to the major market participants and for the applicant to then make allegations regarding its commercial performance which are fundamentally at odds with performance data it has provided to the market, is inexcusable.

- 6.4 The applicant's ability to conduct itself in such a manner in relation to an investigation of this nature raises significant concerns regarding the veracity of the applicant's claims and the bona fide nature of the application.

7. **The current market for Quench and Tempered Steel in Australia**

- 7.1 Our clients submit that it is critically important for the ADC to understand and appreciate the characteristics of current Q and T markets - globally and domestically - before turning its mind to questions of material injury and the factors which may have caused injury suffered to the applicant.
- 7.2 Our clients submit that the global and domestic markets for Q and T steel have undergone seismic changes during the period in which the applicant is claiming to have suffered material injury. The market has been fundamentally changed by declines in the major traditional sectors of demand such that, globally, the size of the market and the dynamics of supply and demand within them have changed.
- 7.3 As the ADC will be well aware at this stage of its investigation, Q and T steel plate is primarily used in the manufacture of heavy machinery requiring high strength steel plate with very high yield strength (common uses include the manufacture of buckets, truck bodies and transport/digging equipment in mining and resource related projects).
- 7.4 Due to the end-use specifications for which Q and T steel is produced, the global market is underpinned by demand from the resources sector. The applicant itself has publicly stated that demand for its Q and T steel plate is driven by the resources industry. The Applicant's own estimate is that around 70% of its Q&T steel plate is used in resources-related activities. (Bisalloy Steel Group Limited AGM Presentations, Chairman's Address, 21 November 2012)
- 7.5 All entities involved in the production and sale of Q and T steel will agree that the performance of the Q and T market is inextricably linked to the performance of the resources sector. Furthermore, it is commonly appreciated by participants at all levels of the Q and T market that significant contractions of demand from the resources sector of major global markets (including Australia) have fundamentally affected the market for Q and T.
- 7.6 Growth in the resources sector globally declined dramatically from 2008 onwards in the aftermath of the Global Financial Crisis (GFC) and continued economic volatility in traditional growth markets such as Europe and the USA.
- 7.7 The Australian market for Q and T steel weathered the GFC and the ongoing economic sensitivities that followed relatively well compared to overseas markets - supported by stable growth in the Australian resources sector driven by continued demand in Asia.
- 7.8 Declines in the Australian resources sector over the past 2 years have significantly changed these dynamics, however.
- 7.9 The Australian Bureau of Resources and Energy Economics (BREE), in a report published in April 2013, assessed the state of the market across 2012. The BREE report indicates, inter alia, that:

The decline in the number of projects at the Committed Stage is indicative of the emerging trend of project proponents delaying or cancelling high value resources and energy projects in Australia. In the past twelve months around \$150 billion of

projects have either been delayed, cancelled or have had re-assessed development plans in the past twelve months¹.

- 7.10 The decline has had a significant ripple effect in relation to a number of ancillary service markets. The original equipment manufacturing segment of the market has declined considerably as demand for new equipment has dried up.
- 7.11 The result of these developments in relation to the Q and T market is that primary demand for Q and T plate is now driven by maintenance/repair requirements with respect to operational machinery and infrastructure being utilised in ongoing projects.
- 7.12 The impact on Q and T producers
- 7.13 Many industries which have existed as providers of raw material consumed by the resources sector have had to re-adjust to the changes in global and domestic dynamics.
- 7.14 Changes in the source of demand from consumption for new projects to maintenance and repair have fundamentally impacted business models and operational activities - declining demand, and increased competition for a smaller pool of potential sales has forced manufacturers to adjust their demand and production forecasts.
- 7.15 Efficiency and effectiveness are now primary concerns for manufacturers globally who must seek to drive internal efficiencies to counteract cost increases associated with declining through-put and reduced sales volumes. This is true also for all entities along the supply chain for steel products including, but not limited to, Q and T steel.

The current market and its prognosis

- 7.16 The BREE report provides a useful forward projection regarding the state of the resources market in Australia as follows:

Based on an assessment of internal project and external market factors, BREE has developed two scenarios that project the future stocks of committed investment in resources and energy projects in Australia. In the 'Likely Scenario', which includes all existing projects at the Committed Stage and projects assessed as likely to progress to the Committed Stage in the next five years, committed investment is projected to moderate to \$256 billion at the end of 2013 and then decrease to around \$70 billion in 2017. (emphasis added)

- 7.17 The BREE report indicates that the downturn in the Australian resources market in 2012 reflects a fundamental change in market dynamics in Australia, and that this downward trend will continue well into 2017.
- 7.18 The projections of BREE are echoed by a range of other reputable commentators in the sector, including:

- (a) PPB advisory - see <http://www.ppbadvisory.com/uploads/a395-00484INS-Investment-peaks-for-resources-and-energy-projects-Insight-May-2013.pdf>;

¹http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCgQFjAA&url=http%3A%2F%2Fwww.bree.gov.au%2Fsites%2Fdefault%2Ffiles%2Ffiles%2F%2Fpublications%2Frempp%2Frempp-2013-04.docx&ei=4jRDU-qaHMTikgXMhYHYBA&usq=AfQjCNGoM2vVN5U9OHjFxm_-AUN2Kwxlg&bvm=bv.64367178,d.dG1

(b) the Property Observer, which forecast investment to drop by 17.4% by the end of 2015. The cause of the trend is attributed to *"a sharp decline in the mining industry"* investment in which, in the 2014-15 financial year, is anticipated to fall by 25.2%.²

(c) UBS Chief Economist, Scott Haslem, who says that:

*"The mining story is showing a clear flattening out but we're not yet seeing any improvement in the investment intentions across our manufacturing or other sectors, which means there's no real offset to the loss of growth from the mining investment."*³

- 7.19 It is clear that the Australian resources 'boom', as it has been referred to, has commenced a sharp decline from peak levels in terms of committed investment and new developments.
- 7.20 The direct link between the dynamics of the resources market and the Q and T steel market must be appreciated by the ADC in defining the state of the Australian market.
- 7.21 Our client's submit that the Australian Q and T steel market should be defined with an appreciation of its current parameters - the market's primary demand is for repair and maintenance; a segment of the wider Q and T market during the years of the growth of the resources sector.
- 7.22 Our clients submit that the Q and T steel market remains healthy in Australia given the fact that there remain a number of ongoing resources projects with ongoing maintenance requirements. However, the market is now characterized by fewer end users, reduced demand in both overall volumes and per-order requirements and greater competition between suppliers. This is something that must be considered when assessing whether the applicant has suffered injury caused by imports, dumped or otherwise.
- 7.23 Obviously all participants in the Q and T steel market, at all levels of the supply chain, lament the changing dynamics of demand and the impact that this has had upon operational activity. Our clients understand the applicant's concerns regarding the changes in the market.
- 7.24 However, our clients submit that it is inappropriate for the applicant to apply performance metrics that applied when the market was booming to assess its performance over the injury analysis period, and to rely upon a comparison of current performance with past performance to demonstrate material injury.
- 7.25 Our clients wish to re-iterate that the issues of operational performance highlighted by the applicant as 'injury factors' cannot be appropriately seen to be signs of injury but simply reflect the current performance paradigms dictated by the Australian market.

² Carmody, B, "Investment set to slump amid mining decline, but some industries are looking up", 28 February 2014, <http://www.propertyobserver.com.au/forward-planning/investment-strategy/economy-and-demographics/29141-investment-set-to-slump-amid-mining-decline-but-some-industries-are-looking-up.html>

³ "Business spending lifts but economists warn mining sector set to drop off", 29 August 2013: <http://www.abc.net.au/news/2013-08-29/building-boost-lifts-business-investment/4921620>

Level of Trade

- 7.26 In determining whether injury has occurred, the ADC must examine the price of the goods sold at the relevant level of trade.
- 7.27 The ADC's May 2014 Visit Report provides details on Bisalloy's pricing and sales system. Prior to December 2013, the Visit Report indicates that Bisalloy used a system whereby it commenced with a "starting point". The Visit Report indicates that Bisalloy charges or classifies customers in accordance with a tier system. Bisalloy charges a premium and gives discounts based on the tier in which the customer falls. It is logical to infer that, pre-December 2013, Bisalloy determined sale price by reference to the size of the customer which in turn dictated the discount to apply.
- 7.28 Bisalloy sells 80% of its Q and T steel to the Australian market through both affiliated and unaffiliated distributors (the balance of 20% being sold directly to customers without the intervention of a distributor)⁴. My clients sell Q and T steel to the Australian market almost exclusively through distributors, including Total Steel of Australia Pty Ltd, ASM Corporation Pty Ltd and CMC Australia. Self-evidently, the price of Bisalloy's Q and T steel in the market will vary according to:
- (a) the tier of the particular customer;
 - (b) the distributor engaged, namely whether it is affiliated or unaffiliated.
- 7.29 In determining whether or not injury has occurred, the ADC must undertake an analysis of the price of Q and T steel sold by comparing like with like. That is, it must compare the price of our clients' Q and T steel to the price of Bisalloy's Q and T steel at the correct level of trade. In my clients' submission, the correct level of trade is the market for Bisalloy's unaffiliated distributors.
- 7.30 We submit that, when the applicant's activities are assessed in the context of the contemporary market (rather than assessed against past (mineral boom) performance) it is clear that:
- (a) The applicant has performed well in a competitive market;
 - (b) The aspects of operational performance which are asserted to be signs of injury are the result of external market forces, and cannot be reasonably attributed to competition with imported goods, dumped or otherwise;
 - (c) In determining injury, the ADC must undertake an analysis of price at the correct level of trade.
8. The applicant's claims of injury
- 8.1 Our clients submit that the applicant's claims made to the ADC in relation to the injury it says it has suffered as a result of (alleged) dumping must be critically evaluated in the context of the nature of the market within which they operate during the period in which injury is claimed to have occurred.

⁴ ADC Visit Report - Bisalloy Steels Pty Ltd at 3.3.2 and 4.3.1.

- 8.2 The investigation covers the period of 2013, which aligns with the applicant's views that it suffered material injury caused by dumping during the twelve month period ending September 2013.
- 8.3 As discussed above, our clients consider the applicant's characterization of operational performance issues during this period to be 'injury' factors is misleading given the nature of the market at the time.
- 8.4 Furthermore, and not detracting from the above, our clients are concerned by the fact that the applicant's public pronouncements to the market during this period regarding the performance of its business directly contradict the claims of 'injury'.
- 8.5 According to the Applicant, its performance during the period of investigation was better than its performance in preceding years.
- 8.6 The FY 2013 Annual Report of the Bisalloy Steel Group, states that:
- Bisalloy *"maintained its market share for FY2013"*;
 - Bisalloy reduced its debts and its gearing has fallen from 34% to 29%⁵;
 - *"the Group's financial position strengthened over the year"*.
- 8.7 The above contradicts the contention that Bisalloy suffered from reductions in profits, profitability, return on investment and revenues.
- 8.8 As stated earlier, the contradiction between these statements and the claims made by the applicant to the ADC for the purposes of its application is concerning.
- 8.9 The businesses' performance during this period was referred to in an ASX/Media Release published by the Bisalloy Steel Group on 21 August 2013. The heading to that release is notable *"Bisalloy Delivers Profit and Reintroduces Dividend in Challenging Market"*.
- 8.10 It is also notable that Bisalloy did not distribute dividends from 2008 to 2012. However on 25 November 2013 - during the period that the Applicant alleges that dumping caused it material injury - it was able to return capital to its shareholders and pay a dividend.
- 8.11 The lack of injury is further supported by the publicly available data regarding the profitability of the Bisalloy Steel Group, for FY 2010, 2011 and 2012. The EBITDA figures for these periods reflect:
- Its EBITDA at the commencement of the injury investigation period in FY 2010 was **\$5.3 million**;
 - Its EBITDA rose to \$7.8 million in FY 2011 and then to \$12.4 million in FY 2012;
 - In FY 2013 its EBITDA was **\$8.4 million**.

⁵ The Applicant's gearing in FY2010 was 60% and fell every subsequent financial year to 29% in FY 2013.

8.12 The above reflects that the applicant achieved a 42% increase over the period FY 2010 to FY 2013. The proposition that a company can achieve such a remarkable increase in its performance whilst suffering material injury is implausible.

8.13 Our clients draw attention to the ASX/Media Release which addressed the company's performance and its market share over FY 2013:

Despite these competitive pressures, Bisalloy is pleased to report it has maintained its market share for FY2013 while continuing to reduce its debt through managing its costs and inventory, and is well placed to take advantage of any upturn in domestic demand (our emphasis).

8.14 Our clients consider that the above information presents a picture of a business performing well in tight market conditions despite declining demand. Indeed this is the image that Bisalloy itself has consistently delivered to the market.

9. **Injury and causation - other injurious factors**

9.1 Further and without detracting from our client's prime claim, our clients also submit that the applicant has not adequately engaged with the real issue which is that, performance issues deemed by the applicant to indicate 'material injury' have been caused by factors other than dumped imports.

9.2 The principle of non-attribution, and its relevance to the consideration of causation, is well known to the ADC. In simple terms, in considering whether a causal link can be established between injury suffered by the Australian industry (which is denied) and dumped imports from the identified countries, the ADC must consider other factors which have contributed to the injury factors complained of.

9.3 These 'other factors' must not be taken into account in the context of establishing whether a causal link exists between the injury and dumped imports.

9.4 As discussed above, our clients consider that the performance indicators complained of by the applicant have been inappropriately characterised as factors of 'injury' throughout the investigation.

9.5 An understanding of the current Q and T steel market in Australia, and the performance of all participants in the market during the previous 2 fiscal years, will indicate that depressed performance across these indicators is a symptom of market forces which have changed the reasonable performance expectations in relation to the manufacture and sale of Q and T steel in the Australian market.

9.6 Specifically, we submit that the performance issues complained of by the applicant have been caused by:

- a) changing dynamics of demand in the Australian market driven by a unprecedented downturn in the energy and resources sector;
- b) imports of the goods from third countries and imports of partially finished and finished products; and
- c) the applicant's business model and service offering.

A) Changes in the Q and T market

- 9.7 The downturn in the Australian resources market and its impact on the dynamics of the Australian Q and T steel market has been discussed above.
- 9.8 The fundamental changes that have occurred within the Q and T market over the past 2 years are well known to participants in the market and have been raised with the ADC by our clients and other producers and end users of Q and T during the course of the investigation. Indeed, submissions from those with intimate knowledge of the market, such as ASM Corporation, spell out the demand factors and the current market conditions for Q and T steel in Australia. ASM Corporation's conclusion is that demand peaked in 2011 and 2012 due to heightened activity in the energy and resources sector and, what is now being experienced is market readjustment.
- 9.9 Our clients note that the applicant is the only producer of Q and T steel in Australia and, consequently, it makes up the 'Australian industry' with respect to the GUC. The applicant operates a vertically integrated operational model - selling the goods to unaffiliated distributors and to the downstream end-user market through its own network of affiliated distributors. As such, it is uniquely placed within the Australian market to appreciate the challenges faced at both the upstream and downstream levels of trade in the market and the impact that declining demand from end-users has had across the supply chain. Indeed, the applicant has consistently referred to the challenges caused by declining domestic demand in its publications to its shareholders.
- 9.10 Our clients were surprised to read the view put to the Commission in the applicant's submission dated 5 March 2014, that macro-economic factors such as the downturn in the resources industry *"have in Bisalloy's opinion not been significant causal factors to injury to the Australian Industry"*.
- 9.11 The applicant's attempts to downplay the significance of market forces in relation to operational performance in the Q and T steel market not only contradict general commercial knowledge of the dynamics of doing business in this market but, more relevantly (if not curiously), are in direct contradiction of their own commercial analysis.
- 9.12 Everyone in the market, including the applicant, is well aware that the dynamics have shifted and that the nature of the market has changed. The approach to the market has had to adapt in response to this change driven by a focus on increasing efficiency and adapting production to suit form and volume of demand from the market.
- 9.13 These are themes that are echoed in the applicants annual reports as discussed above. These reports have shown (or alleged) that the company has adapted to the changing dynamics and has made progress to innovate its business to return to profitability in the new market landscape.
- 9.14 The FY2013 Annual Report, describes the market as *"challenging and volatile"* and specifically refers to the *"rapidly declining demand in the Australian domestic market"*. Furthermore, it analyses the dynamics of trade within the market in the following terms

...trading conditions were challenging for Bisalloy over the FY2013 as the resources sector faced deteriorating conditions... there have been widely publicised deferrals or cancellations of a number of planned resources projects leading to a rapid decline in demand for Q&T steel

- 9.15 Our clients submit that the applicant's selective interpretation of the relevance of market forces in relation to business performance presented to the ADC raises significant concerns regarding the veracity of the claims made by the applicant with respect to injury and causation. The fundamental inconsistency between its claims made for the purposes of initiating the present investigation, and in relation to the ADC's ongoing enquiries, and its internal performance analysis released to the market, is troubling.
- 9.16 The ADC will appreciate that the opposing views expressed by the applicant cannot be reconciled. Given the mutual agreement in the market globally regarding the impact that the decline in committed investment and new project development in the resources sector, it would appear that applicant's public announcements to the market provide a more accurate understanding of the applicant's analysis of the factors impacting the performance of its business.

The applicant's rationale

- 9.17 The applicant's rationale for its claims that market contraction is not a significant causative factor is that notwithstanding demand contractions the industry was still of sufficient size for the applicant to compete and maintain profitable operations, if it were not for the alleged dumping. That is, but for competition with dumped imports, its position in the Australian market would be more favourable.
- 9.18 This view is yet another example of the applicant's failure to engage in a logical analysis of the Australian market and its performance within this market. Furthermore, this view cannot be reconciled with the ADC's preliminary considerations in CON 234. Specifically, Figures 1 and 2 of CON 234 clearly illustrate the ADC was satisfied that there was sufficient evidence to indicate:
- That there has been a significant decrease in the size of the Australian market (by sales volume) during the period of investigation; and
 - Notwithstanding the contraction in demand and resultant decline in sales overall, the applicant was able to maintain its market share in 2012 relative to 2011 levels.
- 9.19 If the applicant's 'loss' of sales volume was caused by competition with dumped imports, the outcomes spelt out above could not have occurred due to winning sales that would otherwise have gone to the applicant or other import sources. That is, it would be expected that a shift in market share in favour of imported goods would occur. That has not happened. It belies the applicant's claims of injury. Indeed CON 234 confirms this. Whilst the applicants own sales volumes were down in the 12 month period ended September 2013 relative to the same period in 2012, its sales volumes were constant relative to the size of the market generally due to the fact that the market overall has contracted.
- 9.20 The data presented in CON 234, which is supported by our clients experiences in the market, reflects that the dramatic contraction in demand has caused sales volumes to decrease, both individually and overall. Simply put, the demand required to satisfy previous sales benchmarks no longer exists in the Australian market.
- 9.21 In short, the loss of sales suffered by the Applicant was caused solely by the contraction in demand.

Performance issues in a contracting market

- 9.22 The ADC will appreciate that declining demand in a traditionally buoyant market has a number of consequential impacts on operational activities and the commercial performance of those activities. Our clients submit that the decline in demand (reflected in both the reduction in future opportunities and the cancellation of current supply demands) leads to:
- Reduced revenues - due to relative decrease of goods sold.
 - Increased holding inventory in storage - as production and supply outstrips demand.
 - Reduced capacity utilization - as production forecasts are re-adjusted in line with demand.
 - Increased costs - as lower throughput in production increases the operating CTMS allocated on a per unit basis.
 - Reduced profits profitability - as unit costs and expenses increase at a rate that cannot be matched by increases in price and income.

Price-based effects

- 9.23 Additionally, our clients submit that a contracted market characterized by limited volume of demand inhibits the increase of prices such that the benchmark price points of goods will appear 'suppressed' - where price suppression is defined by the inability to increase prices to meet rising costs.
- 9.24 Our clients suggest that this contraction of the achievable ratio of sales price to cost is symptomatic of changing market forces and is not caused by import competition.
- 9.25 Our client's suggest that price depression is a symptom of competition in a contracting market and, more specifically, sales strategies and pricing policies implemented by market participants.
- 9.26 Our clients re-iterate that price competition in the market and, specifically, price undercutting must be assessed by looking at the Australian applicant's business model and strategies and its aggressive price strategy dealt with in the section that follows.

B) Third country imports

- 9.27 Our clients refute the allegations made by the applicant that, because of the global downturn in demand for Q and T, overseas exporters have resorted to selling the goods below cost and at dumped prices in order to move inventory stockpiles.
- 9.28 Our clients submit that this is a baseless claim. Japanese mills wish to maintain their presence (as they have for decades) in the Australian market as a competitive source of supply in a fair-market.
- 9.29 As the applicant will be aware, longevity in any market (particularly a sensitive market such as Q and T steel) requires the maintenance of certain standards of quality, supply stability, sales terms and price-point.

- 9.30 As the ADC will appreciate, the contracted global market for Q and T has contributed to heightened price sensitivities. Our client's submit that global Q and T prices influence prices in the domestic market and that market price benchmarking occurs fluidly in response to trends in price offerings from certain sources of supply.
- 9.31 Our clients submit that price competition in the Australian market is driven by end-users who are aware of the reduction in demand and the global oversupply. Domestic prices will be influenced by global market prices and benchmarked price offerings in the Australian market.
- 9.32 Our clients submit that downward price pressures in the market are driven by the lowest price offerings in the market. The ADC must carefully consider the relevant impact that imported Q and T from countries other than Japan, Finland and Sweden have had in relation to the dynamics of price.
- 9.33 If it is found that the lowest price point in the market is being led by benchmark prices from imports from other countries, the only conclusion that can be drawn is that it is those imports which are driving the alleged conditions of price competition in the market.
- 9.34 Furthermore, as the ADC is aware, the ADC must not attribute any injury caused by them to the imports that the Applicant has alleged are dumped.
10. **Business model**
- 10.1 Our clients submit that, based on market intelligence (and indeed submissions on the public file) regarding the applicant's operational model and behaviour in the Australian Q and T market, it has contributed to developing the dynamics of price competition which, allegedly, have caused it injury.

Vertical integration

- 10.2 Our clients understand [REDACTED] that the applicant operates a partially vertically integrated business model - that is, it sells into the downstream market through unaffiliated distributors and its own network of affiliated distributors.
- 10.3 Our client understands that, due to this model, the applicant effectively stimulates direct competition in relation to sources of supply of its own 'Bisplate' product.
- 10.4 This creates an unfavourable split supply chain for the bisplate product and puts the applicant at risk of undercutting the price point of its own product in the market and lowering the benchmark for the 'bisplate' brand amongst end-users.
- 10.5 Our clients submit that this behaviour, alongside the quality and utility/variety concerns regarding the suite of Bisplate product relative to other offerings in the market, has caused the applicant's product to be viewed as a lower-tier brand in the market.
- 10.6 The applicant has suppressed its ability to raise its prices above the price point which it has created for itself, and continues to erode through its aggressive pricing behaviours.

Debt

- 10.7 Our Clients submit that the ADC should carefully consider the extent to which the applicants operational performance has been caused by its financial situation. We specifically note that the applicant has struggled to reign in large business debts that it has had on its books for a number of years (four years ago its net debt totalled more than \$36.5 million) - the applicant's

annual reports indicate the reduction of debt has been a business priority which has only just been managed in FY 2013.

Reactive pricing

- 10.8 Our clients understand that buyers (both at the distributor level and end-user level) in the Australian market have considerable influence on price negotiations in the current market - price offers of other producers and the prevailing global market price of Q and T will be used as bargaining tools to drive the price down.
- 10.9 This is particularly the case with original equipment manufacturers who use the prevailing global price as a benchmark in claiming the price that they are prepared to pay for Q and T in Australia.
- 10.10 Our clients are aware [REDACTED] that increased inventory and competitive pressures in the Australian market have led to some sellers (including the applicant) to be 'reactive' in their pricing strategies in order to retain sales volumes and move inventory.
- 10.11 Our Client's submit that this is supported by the application submitted to the ADC and the applicant's reliance upon 'market intelligence' to assert the average price of imported product in the Australian market for the purposes of undercutting analysis.
- 10.12 Our clients consider the applicant's reliance upon price quotations supplied to it by Australian customers in the course of negotiations to support the view in the market that the applicant has either induced a price drop or been 'reactive' to price offerings to Australian market.
- 10.13 Our client submits that the information that the applicant has reacted to in setting prices is inherently unreliable and provided by parties for the specific purpose of driving down the price. We submit that the ADC should carefully consider:
- the veracity of the information relied upon by the applicant when determining its pricing strategies; and
 - the extent to which the applicant has effectively undercut its price point by adopting a reactive pricing strategy.

Other relevant factors

11. **Market offering**
- 11.1 The market is changing. Demand has contracted across the board. Everyone is competing for a smaller customer base. The applicant has done well to maintain market share in a contracting market.
- 11.2 The applicant's claim of injury in terms of sale volume and market share is premised on the assertion that, but for the imports being sold at dumped prices, customers who have procured imported product would have purchased the Australian product. This is a subjective hypothesis which is incapable of being tested to any degree of reasonable satisfaction. What underlies the assertion is the applicant's overestimation of the value offering of its product to the market and the avoidance of a consideration of the factors other than price which differentiate products offered in the Australian market.

- 11.3 Submissions from those in the downstream market at both the distributor and end-user level have indicated that, as demand contracts, competitive pressures have increased as margins for all entities along the supply chain contract – the simple fact being that the slowdown at the end user level has resulted in slimmer margins for all up-stream suppliers.
- 11.4 In such an environment, price has become an influential factor in supply negotiation. However, it has never been, and still isn't, the decisive factor in the Australian Q and T market. Due to the specific end-use requirements for which Q and T steel is procured, other factors influence procurement decisions such as:
- availability and stability of supply
 - reliability and assurance of product quality
 - terms of supply and supply relationship
- 11.5 Downstream market participants such as [REDACTED] at the distributor level and [REDACTED] at the end-user level have both shared similar sentiments that the supply relationship with Japanese exporters, including the reliability of their product, and the consistent quality of the offering justifies the price point at which the goods are introduced to the Australian market.
- 11.6 Furthermore, they suggest that this price point is not the cheapest in the Australian market. However, the other factors surrounding the supply of the goods add value to the service offering from Japanese mills and make the product the more suitable option for their purposes and those of their clients.
- 11.7 This is a consideration that the applicant has either failed to address in its engagements with the ADC or has sought to avoid. The applicant would have the ADC believe that the Q and T steel offered to the Australian market is homogenous and generally substitutable, such that customers will switch from source of supply according to the price point at which the goods are offered. It is this view of the Australian market which supports the applicant's assertions that price competition is being driven by the downstream market.
- 11.8 The applicant asserts that this customer led market, has led to competition between imported product and between imported product and the applicants goods such that prices are depressed and suppressed. This view of the market supports the applicant's claims regarding injury. However, this view is wrong and does not correctly reflect the commercial realities of the market.
- 11.9 As stated by SSAB in its submission, and supported by our clients, the Q and T steel market in Australia is, and has always been, a sophisticated market due to the specific end use requirements for the goods. Customers look to a variety of variables when making supply choices including the physical and technical requirements, logistical supply concerns and other factors such as commercial relationship and history of supply.
- 11.10 Our clients support the views put forward by SSAB that overseas mills introduce product on the basis of service offering, not just price. Our clients share SSAB's views that the lower price-points in the Australian market are being serviced by imported product from countries other than those identified in this investigation – namely China and Korea.
- 11.11 Any downward pressure placed on prices in the Q and T market, if it does indeed exist, would be driven largely by imports from these countries with the catalyst being Australian customers who do not have the discerning supply requirements of the majority of customers in the Australian market.

12. No competition

12.1 Our clients imports of Q and T Steel is responsive to the specific requirements of its clientele. Our clients manufactured product meets the specific needs of its Australian customers, as is evident from:

- (a) a letter from Drake Trailers Pty Ltd (Drake) to the ADC dated 1 April 2014. Drake indicates that it has a long standing relationship with [REDACTED] and "regularly re-examine[s] the feasibility of sourcing [Bis-80] as an alternative" to our client's Q and T steel product. However, it has declined to purchase Bis-80 due to the "shortcomings" in Bisalloy's capability of supplying a product fit for Drake's specific purposes. More specifically, those shortcomings are identified as "a critical disconnect between [Bis-80's] tolerances...and the technical plate specifications required by [Drake] to meet its current production and customer needs";
- (b) a letter from Metso Minerals (Australia) Limited (Metso) in respect of its relationship with our client, JFE. Metso, a company which operates globally, indicates that JFE's Q and T steel is "proven to be the most suitable selection in terms of wear performance, product range, price, availability and service". Although not the cheapest product on the market, Metso considers that JFE's Q and T steel is its "primary choice" for its Polymet Liners.

12.2 The above indicates that:

- (a) Bisalloy's product is not fit for purpose for our clients' customers. It follows that there could be no dumping in respect of product meeting that description;
- (b) Australian purchasers choose between Bisalloy and other products in the market based on quality of produce. The differential in demand for our clients' product and Bisalloy's product could not, in those circumstances, be attributed to dumping.

13. Different production process

13.1 Our clients are integrated steel manufacturers who are able to control quality throughout their production process from raw materials, iron making, steel making, rolling, heat treatment, inspection and shipment. A component of production for certain exported products is the "Thermo Mechanical Control Process" (TMCP) by which it utilises heat in the rolling process and omits the re-heating process from the manufacturing process. The omission of the re-heating process reduces the production costs for our clients, which costs saving our clients can pass on to their clients by selling at a lower price.

13.2 In contrast, Bisalloy does not use TMCP and controls only a portion of heat treatment used to manufacture its Q and T steel. This results in a higher production cost for Bisalloy and reduced price competitiveness, accordingly.

14. Value added supply chain

14.1 Our clients engage a distribution process for their Q and T steel which differs to that of the applicant.

14.2 The applicant sells 80% of its Q and T steel plate in Australia through a network of distributors as "full plate". That product has not undergone any form of processing. The remaining 20% is sold directly (ie without the service of a distributor) to its larger end user customers and includes services for repairs and maintenance.

- 14.3 Our clients do not compete with 80% of the applicant's market. In relation to the other 20%, our clients' main customers are service centres which provide essential services to the mining sector including stockist, processor and machine shop functions, which services the applicant does not provide. Additionally, a significant proportion of our clients' sales in the relevant competing market are of Q and T steel which has undergone a form of processing, such as cutting, drilling and bevelling.
- 14.4 The distinction between the services provided by our clients to the services provided by the applicant in the relevant market is a further factor which differentiates our clients' product from the applicant's, and must be taken into account when determining any injury.
15. **Other imports – completed/partially completed products**
- 15.1 Global reductions in the price of Q and T have resulted in increased cost efficiencies of overseas original equipment manufacturers and the directly related increase of importation of pre-fabricated products from overseas, which would typically have been manufactured in Australia by original equipment manufacturers, using Q and T Steel.
- 15.2 This trend can be supported by Customs data related to the importation of for example, finished products such as buckets for earth moving machinery, truck bodies etc.
- 15.3 This has led to a further decrease in demand from Australian original equipment manufacturers who cannot compete with imported pre-fabricated product.
- 15.4 Our clients understand that much of this pre-fabricated product comes in from Indonesia (including from a free trade zone).
16. **Conclusion**
- 16.1 As the ADC is well aware, if no material injury has been suffered during the period of investigation:
- there can be no positive finding of any injurious dumping; and
 - In the absence of such a finding, dumping notices cannot be published.
- 16.2 Our clients consider, on the basis of the above, that the claim that it has suffered material injury during the period in question are baseless. The claims made rely upon the wilful misinterpretation of market statistics regarding the numerous extraneous variables which have impacted the structure or the market within which they operate, and the performance of their business in the current commercial landscape in Australia.
- 16.3 Without detracting from the above, our clients consider that, even if the applicant's classification of market performance issues to be indicia of 'material injury' the ADC must carefully examine the link between such injury and the specific conditions of the Q and T market in Australia during the period in question.
- 16.4 Our clients submit that the changing paradigms of performance about which the applicant has complained, were caused by factors in the market which are not associated with dumped imported product.
- 16.5 Further, to the extent to which the applicant's present commercial condition can be linked with the dynamics of competition in the Australian market, our client urges the ADC to carefully consider the impact that the applicant's own commercial behaviour and sales structure has

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had upon its position within the Australian market. Similarly, the ADC ought to give careful consideration to the effect that imports from countries not named in the present investigation have had upon the dynamics of competition in the market and the environment of aggressive price competition complained of by the applicant.

Yours sincerely

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Our ref 11276/80152428

RECEIVED 10 JUNE 2014

CLAYTON UTZ

For Publication

The Director
Operations 3
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008

10 June 2014

Attn: Mr Matthew Williams

Dear Sir

Quenched and Tempered Steel Plate Investigation - issues arising from the Visit Report - Australian Industry - Bisalloy Steels Pty Ltd

We act for Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Ltd.

We refer to the May 2014 Visit Report - Australian Industry (Visit Report) in respect of Bisalloy Steels Pty Ltd (Bisalloy).

The purpose of this letter is to comment on and address issues arising from the Visit Report with a view to ensuring that the Anti-Dumping Commission's (Commission) assessment of matters relevant to the Statement of Essential Facts represents a complete and accurate analysis of the material facts affecting this investigation.

For ease of reference we adopt numbering used in the Visit Report.

3.1 Corporate, organisational and ownership structure

The Visit Report specifies that Bisalloy's parent company, Bisalloy Steel Group Limited (Bisalloy Steel Group), has distribution operations in Thailand and Indonesia and also has a 33% equity stake in Bisalloy Jigang (Shandong) Steel Plate Co., Ltd (Bisalloy Jigang). It is stated that Bisalloy Jigang is a manufacturer of Q&T steel plate in China.

The Visit Report does not provide details of the exports by Bisalloy Jigang of Q&T steel plate into Australia during the investigation period. This information may have a material bearing on the ADC's investigation.

Please investigate or provide:

- (a) details of the exports by Bisalloy Jigang of Q&T steel plate into Australia during the investigation period;
- (b) the quantity of imports by Bisalloy sourced from its joint venture partner, Shandong Iron and Steel.

3.3 Relationship with suppliers and customers

At 3.3.2, it is stated that Bisalloy sells Q&T steel plate on both the domestic and export markets. Relevant to the question of injury is the volume of Bisalloy's products which are exported. We respectfully suggest that the ADC ascertain:

- (a) the quantity of Bisalloy's exports of Q&T steel plate during the investigation period to:

- (i) Thailand;
 - (ii) Indonesia;
 - (iii) countries other than Thailand and Indonesia.
- (b) the price at which Bisalloy's exports of Q&T steel plate, during the investigation period, was sold to:
- (i) Thailand;
 - (ii) Indonesia;
 - (iii) countries other than Thailand and Indonesia.
- (c) the quantity of imports by Bisalloy from its joint venture *partner* (Shandong Iron and Steel) or its joint venture company (Bisalloy Jigang).

4.3 Marketing and distribution

The Visit Report records an admission by Bisalloy that its customers were willing to pay a premium of unidentified quantum. The Visit Report also records Bisalloy's observation that, in the last 12 months, its customers are more willing to negotiate on price.

It is salient to observe that the charging of a premium is antithetical to competitive pricing models and shows a disassociation with a *costs to make and sell* model. The charging of a premium in an overheated market (as it was in 2011 and 2012) was achievable. It was not so in 2013 given the reduction in demand by the key driver for Q&T Steel plate, the mining industry. It is natural therefore that Bisalloy's customers are now negotiating price given the contraction of the market and thus demand. Further, the fact that Bisalloy could charge a premium on its domestic Q&T steel plate sales suggests that Bisalloy is the market leader with a consequential ability to set price.

The greatest defect however in Bisalloy's observation is that there is no *link* between the Bisalloy's observation that customers are more willing to negotiate in 2013 to any alleged dumping. Inference and speculation do not constitute proof. There is however irrefutable evidence of market contraction for Q&T steel plate in 2013. The only logical conclusion therefore is that Bisalloy's apparent inability to now charge a premium (or a premium of the size previously charged) is reflective of current market conditions.

As to distribution issues, our clients have previously made clear that Bisalloy's distribution arrangements promotes self-competition - that is Bisalloy's direct sales channel competes with its own distributors. This issue is not addressed in the Visit Report despite it having been identified in submissions by interested parties. It ought to occupy the mind of the ADC and is worthy of analysis by the ADC.

4.5 Demand

Bisalloy attributes a decline in demand over *the past 12 months*¹ to a contemporaneous decline in capital expenditure in the mining industry. Bisalloy considers that the market has shifted focus to refurbishment and repair of mining equipment and infrastructure.

¹ See 7th dash point on page 19 of Visit Report

The contraction of the market is consistent with our clients' submission dated 17 February 2014 (at paragraph 4.3) (**Japanese Mills First Submission**) and more recent injury submission dated 30 May 2014 (**Japanese Mills Injury Submission**).

4.6 Market size

The Visit Report (figure 2, page 20) charts Bisalloy's estimate of the size of Australian market for 2010, 2011, 2012 and 2013 years. The chart illustrates the proportion of sales of Q&T steel plate in the Australian market by Bisalloy, the countries the subject of the ADC investigation, including Japan (**subject countries**), and 'other imports' being countries other than the subject countries.

An analysis of Bisalloy's chart, by reference to the relative ratio of sales for each of the three categories of sales according to each of the four bars, indicates that in the four calendar years starting 2010:

- Bisalloy's market share was between approximately 32% and 40%;
- imports from the subject countries fluctuates between 50% and 60%;
- other imports have remained relatively steady at between 7.5 and 8%.

Critically, in the investigation period, Bisalloy's market share appears to have fallen by 3.0% (from approximately 40% in 2012 to 37% in 2013) whereas and in contrast there was a 4% fall in market share for the subject countries (from about 55% to 51%).

As to the Japanese Mills sales to Australia, their greatest sales volumes occurred in 2011. Their sales volumes then declined year on year by 8% in 2012 and 33% in 2013. This data was previously set out in the Japanese Mills First Submission at paragraph 4.5.

The above analysis leads to the conclusion that:

- (a) even in a declining market, the subject countries' market share has decreased at a greater rate than the rate of decrease for Bisalloy and the other imports (the latter countries sales volumes remained steady throughout).
- (b) Japanese imports of Q&T steel plate could not be the source of injury given the reduction of volume by 33% in 2013.
- (c) there is a mismatch in terms of when the applicant says it sustained its injury (the investigation period being the calendar year 2013) and the years in which the Japanese Mills had greatest market share or sales volumes (namely 2011).

The above highlights an issue critical to the investigation, the cause of any injury. The Japanese Mills suggest that the fall in Bisalloy's sales is not attributable to the alleged dumping but rather to a generalised fall in the market and a return to the *new normal* or *normal operating conditions*.

5 Sales and Pricing

The Visit Report provides an overview of the sales system employed by Bisalloy.

At 5.3 of the Visit Report, reference is made to a change in the pricing system introduced by Bisalloy in December 2013. Prior to December 2013, Bisalloy used a system whereby its pricing policy had a "starting point". Having regard to information appearing earlier in the Visit Report that Bisalloy charges a premium, and the fact that Bisalloy gives discounts based on the tier in which the customer falls, it is

logical to infer that, pre-December 2013, Bisalloy determined sale price by reference to the size of the customer which in turn dictated the discount to apply.

The above information provided in the Visit Report however does not accord with Bisalloy's claim that it sought to *match (and reduce)* its price to compete with imports in 2013.² We are unable to explain the disparity and inconsistency but the ADC may wish to explore this further. In any case, any reduction in price was a re-adjustment to meet market conditions. Otherwise, the pricing system implemented in mid-December 2013 by Bisalloy is irrelevant.

7 Economic condition of the industry

Bisalloy's general proposition is that it suffered material injury from dumped Q&T steel from the subject countries for *"a number of years, with an increased impact on its profit and profitability for the 12 months ending September 2013"* (emphasis added).

On the basis of data appearing in section 7 of the Visit Report, the ADC concludes (at 7.4) that Bisalloy appears to have suffered from the following *major injury* factors:

- lost sales volumes;
- price depression;
- price suppression; and
- reduced profits and profitability.

In my clients' submission, Bisalloy's propositions and the ADC's preliminary conclusion is unfounded. To exemplify:

- figure 3 on page 33 of the Visit Report (Figure 3) illustrates that Bisalloy's domestic sales volume increased every year from 2010 to 2012. This data does not reconcile with Bisalloy's claim to have suffered material injury by reason of dumping for *"a number of years"*;
- in respect of the 2013 year, relevantly to the investigation period, Figure 3 shows that Bisalloy's annual sales volume for that year is equal to its 2010 sales volume. For the reasons stated at paragraph 4.3 of the Japanese Mills First Submission, this statistic suggests that the 2013 sales are settling following the 2012 peak of the mining boom, which is now on the downward trend. It is not supportive of a causal link with the alleged dumping;
- in relation to figures 5 and 6 at page 34 of the Visit Report, the data shows that annual unit CTMS has *decreased* at every interval since 2010 and rose marginally in 2012. From 2012, CTMS has reduced and as at the last quarter of 2013, CTMS and revenue had equalised with a resultant zero profit. The 2013 figures do not support Bisalloy's claim to have suffered material injury from dumping. Rather, the Japanese Mills consider that the data is attributable to efficiency and throughput issues. The higher the utilisation and amount being produced, the lower the unit CTMS. Given the 2013 market decline, it is natural that a throughput decrease had a concomitant effect on CTMS;
- in relation to figures 6 and 7 on page 35 of the Visit Report, they are consistent with the market contraction referred to above following the end of the mining boom.

² See page 28 of Bisalloy's application filed with the ADC.

As to the *other injury factors* cited, they are not relevant to an assessment of injury as a result of dumping. They ought to be accorded no weight. The Japanese Mills make the following observations:

- (a) **(Share Price)** there is no apparent or necessary connection between a decline in share price and injury caused by dumping. Share price is driven by many factors including rumourage, market sentiment, inside information, sector buoyancy or perceived prospects of the company. There are a myriad of other reasons. In short, share price is not an injury factor. One fact which seems to have eluded Bisalloy is that its share price was highest in 2012 - which was the year of the mining boom and its greatest production;
- (b) **(Return on Investment)** the publicly available information contradicts the blanket claim of a decline of return on investment or equity. In its investor presentation for its 2013 full year results³ at page 5, Bisalloy noted that its return on equity was 22% in FY2011, 36.9% in FY2012 and 16% in FY2013. As will be evident from those figures, the decline occurred in 2013 with each preceding year having been a positive growth figure in terms of return on investment. In short, the statement at 7.5.2 of the Visit Report should be approached with a degree of circumspection because what is being measured is the 2013 year - a year which has seen a very significant market contraction.
- (c) **(Revenue/utilisation/stock levels)** the cited figures of a reduction in revenue by 26%, capacity utilisation reduction of 23% and a closing stock level increase by 114% using 2010 as the base year for 2013, are indicative of a contracting market and less throughput.

Significantly though, other important indicators have been ignored by the ADC. By way of example:

- (i) costs/revenue ratio i.e ratio of costs of sales as proportion of the value of the sale of goods was 79% in FY2013 which was the same in FY2012;⁴
- (ii) gross profitability ratio i.e ratio of gross profit as a proportion of the value of the sale of goods is 20.9% in FY2013 which is more than the 20.2% achieved in FY2012;⁵
- (iii) the total current and non-current liabilities of Bisalloy decreased in FY2013 by 43% and 9% respectively over the FY2012;⁶
- (iv) In note 4 to Bisalloy's 2013 annual accounts it is recorded that, other than the 3 distributors who make up its *major customers*, the next most significant client account is end users. There is one end user who is described as a major customer who accounted for 1% of total external revenue in 2013 but who accounted for 10% of total external revenue in

³ http://member.afraccess.com/media?id=CMN://2A755198&filename=20130911/BIS_01442908.pdf

⁴ See Bisalloy's 2013 Annual report at page 17.

⁵ *ibid.*

⁶ *ibid* at page 18

2012. This suggests that the end user in 2012 purchased approximately \$6.6M of Bisalloy product but in FY2013 that same end user reduced its purchase to about \$870,000. It is clear that the reduced purchases by this end user had a significant affect on the fortunes of Bisalloy;

- (v) inventory levels have not increased as recorded by the ADC in its Visit Report but have decreased - in the Managing Directors financial report for the half year ended 31 December 2013, Mr Terpening, Bisalloy's managing director, said:

"Inventory levels have fallen by \$5.5m in the six months to December 2013, however minimum inventory levels are required to be maintained to meet any opportunities for spot sales".

- (d) **(Reduced wages)** the reduction in wages is said to be attributable to the absence of overtime rather than a reduction in staff by reason of retrenchment. Again, this is an indicia of a contracting market (which Bisalloy admits). It is also notable that during the relevant period many Australian companies had a wage freezes including Holden and Qantas. In truth this factor plays no part in any assessment of injury.

8 Causal link

Causal link is still to be determined. Our clients insist that a proper and full evaluation of injury take place with a strict adherence to the dictates of section 269TAE(2A) of the *Customs Act 1901* (Cth) (Act) and article 3.5 of the Anti-Dumping Agreement.

In any event, in section 8.1, Bisalloy claims a demonstrable causal link between the alleged dumping and claimed material injury to the Australian industry by reason of the following:

- a belief that free-on-board (FOB) prices for Q&T steel plate declared and captured by the Australian Bureau of Statistics are much higher than actual selling prices for product imported from the subject countries. The belief is said to be based on an estimate of importation costs and importer prices. Bisalloy's claims do not have any solid, probative basis;
- the declared prices of exports of Q&T steel plate to Australia from Finland and Sweden are not reflective of selling prices because they have been reduced to compete with Japanese imports. No evidence is cited in support of that claim;
- its own management reports and written quotes in relation to the alleged price undercutting. Those figures are yet to be verified and should be treated with caution, accordingly, unless and until such verification occurs.

For the reasons set out above, the ADC should approach Bisalloy's claims with extreme circumspection and caution. It should require positive evidence not hearsay accounts gathered by Bisalloy's employees and operatives.

In relation to section 8.2, my clients note Bisalloy's admission of a decline in the market commensurate with a downturn in mining activity. That admission stands to Bisalloy's credit and is consistent with my clients' previous submissions. Bisalloy claims that it determined to reduce its prices in an attempt to maintain sales volumes and market share. That was its own decision. Bisalloy has not proven any price undercutting. In the absence of absolute proof, Bisalloy's submission is supportive of the Japanese Mills

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position that any injury suffered by Bisalloy is not due to dumping but, rather, competition and natural market forces.

Finally, in relation to manufacturing process (thermo mechanical control process) and costs structures, the submission made by Bisalloy is wrong. In particular, there are costs advantages that accrue to integrated steel mills that Bisalloy (as a non-integrated manufacturer) does not enjoy. Secondly, the linkage that Bisalloy seeks to draw between excess supply resulting from high capacity utilisation because of the need for blast furnaces to always be operable is also wrong. Integrated steel mills can modulate the production process and the intensity of use of the furnace. By way of example it is possible for integrated steel mills to reduce production by reducing (i) the pig iron tapping ratio (the tapped quantity of pig iron per day per m³ of inner volume of the blast furnace) and (ii) the scrap ratio (the ratio of scrap quantity inputted into the basic oxygen furnace).

Conclusion

We consider that the ADC ought to further explore numerous issues as identified in this letter and our client's previous submissions. We consider that there is a genuine deficiency of evidence in respect of injury factors. The consideration of the injury factors in the Visit Report is, with respect, superficial and unbundled. We urge the ADC to fully consider and address each of the prescribed matters in section 269TAE(2A) of the Act in a more complete way.

Yours sincerely

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Our ref 11276/80152428

RECEIVED 25 JUNE 2014

FOR PUBLICATION

The Director
Operations 3
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1010 La Trobe Street
DOCKLANDS VIC 3008

24 June 2014

Attention: Mr Matthew Williams

Dear Sir

Quenched and Tempered Steel Plate exported from, inter alia, Japan

We act for Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Ltd.

We refer to the letter dated 4 June 2014 from Bisalloy Steel Group Limited (Bisalloy) in relation to Preliminary Affirmative Determination Report No. 234 (PAD 234). Bisalloy's letter raises issues concerning normal values, material injury to Australian industry, causation and other causes of injury. We will address each in turn.

Normal Values

Bisalloy claims that it is "widely known the steel industry was suppressed during 2013 and that selling prices by traders are unlikely to reflect the full cost to make and sell (CTM&S) the goods under investigations (sic)". No evidence has been provided for this assertion. In any event, the selling price of traders is irrelevant to the ADC's consideration of the sale of quenched and tempered steel plate by our clients.

Material Injury to Australian Industry

Bisalloy states that it has recently restructured its business as of 20 May 2014 so as to result in a reduced workforce. This fact is irrelevant and must not be considered by the ADC in any assessment of injury. The simple reason is that it is outside the investigation period. Further, as stated previously by our clients, any injury (which is denied) is not on account of dumping (which is also denied) but rather general trading conditions in the Australian market for quenched and tempered steel plate.

Causation

Bisalloy refers to its market share having reduced by 2.9%. The expressions "dumped import volumes" and "dumped imports market share", are assumptive.

The claimed reduction in market share is inconsistent with Bisalloy's publicly stated positions in various documents including the following:

- (a) its FY2013 Annual Report which states that Bisalloy "maintained its market share for FY2013"; and
- (b) an ASX/Media Release which stated:

"Despite these competitive pressures, Bisalloy is pleased to report it has maintained its market share for FY2013..."

Our research indicates that the actual market share, for the goods under consideration in the East Australian states and West Australian market combined, for:

The Director, Anti-Dumping Commission

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- Bisalloy is [REDACTED];
- the Japanese Mills is [REDACTED];
- SSAB is [REDACTED];
- Ruuki [REDACTED]; and
- Quard is [REDACTED].

As to the Japanese Mills sales to Australia, their greatest sales volumes occurred in 2011. Their sales volumes have declined year on year since. Our client's data suggests that, in 2013, their volumes dropped [REDACTED] on the previous year. We are instructed that our client's volumes were as follows:

Q&T to Australia	2009	2010	2011	2012	2013
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Bisalloy submits that "... its decline in sale volume and market share were in excess of the normal ebb and flow of business that should have impacted sales by all parties equally". This shows a fundamental misconception of the workings of a competitive market. First, it would be interesting to know what Bisalloy considers to be the "normal ebb and flow". In the absence of identifying precisely what that is, the balance of the argument is arid and impossible to justify. The claim that any impact should be borne by all parties equally is again lacking any reasoned basis. In any event, our clients volumes dropped [REDACTED] in 2013.

It is a very curious outcome that Bisalloy complains of volume decrease yet our client's volumes declined [REDACTED]. The ADC ought to consider the reasons for this - which we consider has no link to the Japanese mills but reflects the 'norm' in the market.

Other Causes of Injury

We refer to our clients' submissions dated 30 May 2014 at paragraphs 7.9 to 7.18. The wealth of data referred to in those paragraphs lays bare any claim that the contraction of the mining industry in Australia is not the sole reason for the injury allegedly experienced by Bisalloy.

Conclusion

Bisalloy's letter is yet another attempt at asserting matters which have no probative evidential basis, and which do not strengthen the case of dumping against our clients.

Yours sincerely

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Our ref 11276/80152428

RECEIVED 26 JUNE 2014

CLAYTON UTZ

The Director
Operations 3
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008

26 June 2014

Attention: Mr Matthew Williams

Dear Sir

Quenched and Tempered Steel Plate exported from, inter alia, Japan

We act for Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Limited.

We refer to the letter dated 13 June 2014 from Bisalloy Steel Group Limited (Bisalloy) being a purported response to our letters dated 30 May 2014 and 10 June 2014.

Bisalloy's letter addresses two issues, namely:

1. material injury and causal link; and
2. market pronouncements.

No other issues have been put in contest by Bisalloy and it must be assumed that the balance of our client's submissions are not contested.

In relation to the two matters put in issue by Bisalloy, we make the following comments:

Ministerial direction

- (a) The statement purportedly taken from page 25 of the PAD Report number 234 that "it is important to consider...the greater impact of injury during periods of economic downturn and reduced rates of growth as an element of injury" does not form part of the Ministerial Direction 2012/24. To the extent that the PAD makes reference to this quote, it is in error. It follows therefore that Bisalloy's reliance on this quote founders.

Neither the Anti-Dumping Agreement nor the terms of section 269TAE support the above quote. Indeed the quote comes from the cover page which was drafted by a Customs official and not the Minister.

As to the balance of the quote, which is found in the Minister's direction, that is ultra vires and illogical for the basic reason that the ADC is only entitled to make a determination concerning dumping in the relevant investigation period. It follows that, since in law there can be no finding of dumping at any previous point in time, no consideration or regard can be taken of any alleged dumping in a prior year. To that extent, the Minister's direction is invalid.

Additionally, the quote in the Minister's direction is limited by various qualifiers such as non-attribution and the overarching requirement that the injury caused be *material*. Injury suffered by an applicant does not become material simply because the market is in decline. Furthermore the mere fact that specific economic conditions of declining demand are found to exist does not of affect the manner in which the ADC must address the issue of causation. To

The Director, Anti-Dumping Commission

26 June 2014

the contrary, section 269TAE(2)(c) provides that injury caused by a contraction in the market must not be attributed to dumping.

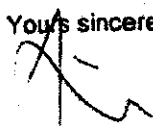
In short, the requirement that unrelated injurious factors not be taken into account when establishing causation and the requirement that injury must be demonstrably linked to dumped imports must be applied in every case.

There is no scope for applying a differential impact test (and, in effect requiring a less rigorous consideration of causation and materiality) because the market is decline. To consider that the Minister's direction suggests the contrary is not only a misinterpretation of the direction but would create a direct and irreconcilable contradiction between the terms of the direction and the provisions of the *Customs Act 1901 (Cth)*.

Market announcements

- (b) Our clients have referred to the market announcements made Bisalloy in various of its submissions. It is suggested that in three of the media releases issued by Bisalloy it referred to "import competition". Nowhere in any of those statements is it said by Bisalloy that it was harmed because of dumping.

Yours sincerely



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Our ref 11276/80152428

RECEIVED 4 AUGUST 2014

PUBLIC RECORD

CLAYTON UTZ

For Publication

Director Operations 3
Anti-Dumping Commission
1010 La Trobe Street
Docklands VIC 3008

4 August 2014

Attn: Mr Adam Yacono

Dear Sir

Quenched & Tempered Steel Plate exported from, Inter alia, Japan

As you know we act for the Japanese Mills (Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Limited).

We refer to the Bisalloy Steel Group Limited (Bisalloy) letter to the Anti-Dumping Commission (Commission) dated 30 June 2014. Bisalloy's letter essentially raises 2 issues which are worthy of demurrer, namely:

- (a) Bisalloy's restructuring announcements of 20 May 2014.
- (b) Bisalloy's announcements of 21 and 26 November 2013.

Dealing with the second matter first, it should strike the Commission as curious that Bisalloy claims an *influx* of overseas competitors and Australia is *used as an outlet for surplus production* but:

- (a) there is no express reference to dumping or unfair competition in any of its published notices;
- (b) Bisalloy held/maintained market share over the relevant period;
- (c) two (2) of the named countries in the statement quoted in Bisalloy's letter, namely the People's Republic of China (PRC) and Korea, were not included in the anti-dumping application. Bisalloy's relationship with PRC firms and its joint venture may possibly explain the reason.

As to the pejorative terms 'influx' and 'surplus production', there is not a scrap of evidence to support those claims. What is and has been proved however is that mining industry investment has reduced so significantly that it has had an affect on the applicant.

As to the first matter, we repeat our prior submission that events outside the investigation period must not be considered either as to dumping or injury: *Pilkington (Australia) Ltd v Minister of State for Justice and Customs* [2002] FCAFC 423.

Bisalloy refers to the Trade Measures Review Officer (TMRO) report concerning investigation 188 dated 2 April 2013. That report does not reflect the development of the law on the temporality of facts that can be taken into account in relation to the different decisions that need to be made and that can be made by the Minister at the conclusion of an investigation. Indeed some findings in the TMRO's report and its exposition of the law were rejected by the Federal Court: for example, the Federal Court differed from the TMRO's views concerning s.33(3A) of the *Acts Interpretation Act, 1901* (Cth) in *Panasia Aluminium (China) Limited v AG of the Commonwealth* [2013] FCA 870, a decision that was handed down some months after the TMRO's report.

Mr Adam Yacono, Anti-Dumping Commission

4 August 2014

As a matter of statutory construction, s.269TEA(3)(b) of the *Customs Act 1901* (Cth) does not have the width that the TMRO suggested. In the *Pilkington* case the Court considered the structure of the Customs Act and referred to the centrality of the investigation period. Section 269TEA(3)(b) cannot be considered to be a freestanding power.

Ultimately, what it was that the TMRO did in that report was to rely on s.269TEA(1)(c) and general policy as the reason why price post the investigation could be taken into account in recommending to the Minister the 'extent of any duties that are or should be payable...'. What Bisalloy does, with respect wrongly, is treat the TMRO's statement as giving rise to some broader principle. It does not. The TMRO was referring to the use of price post the investigation period for the purposes of deciding about the extent of the measures and NOT to the use of any facts occurring outside the investigation period for the purposes of deciding whether dumping, damage or injury had actually taken place in the investigation period.

At this point it is wise to point out that Bisalloy's original application was that it had suffered damage "...for a number of years with an increased impact on profits and profitability being experienced during the 12 months period to 30 September 2013 (see part 8.3 of PAD at page 19) (my emphasis). Taking that at face value, a restructure some 8 months later and, knowing the condition of the Q&T market has declined significantly because of matters raised in our other submissions, calls into question the shifting nature of the applicant's case and its attempts to characterise its lack of performance to dumping and injury.

Yours sincerely



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Our ref 11276/251/80152428
Your ref Investigation 234

RECEIVED 22 AUGUST 2014

PUBLIC RECORD

CLAYTON UTZ

For Publication

Attention Mr Matthew Williams
 The Director
 Operations 3
 Anti-Dumping Commission
 1010 La Trobe Street
 DOCKLANDS VIC 3008

20 August 2014

Dear Sir

Quenched and Tempered Steel Plate Investigation - Submission in response to initiation of anti-dumping investigation and proposed anti-dumping measures in relation to exports from Japan

As you know we act for, among others, Nippon Steel & Sumitomo Metal Corporation (NSSMC).

We understand that [REDACTED] has provided to the ADC an all sales spreadsheet specifying the usual data. We also understand that the average selling price of [REDACTED] is not lower than the relevant market price in Australia at the relevant time(s). It follows that NSSMC's products did not injure Australian industry.

NSSMC has analysed its sales data for the goods during the investigation period ending 31 December 2013. That analysis reveals that approximately:

- (a) [REDACTED] of all its exports to Australia of the goods under consideration were sold to [REDACTED].
- (b) [REDACTED] of the goods under consideration were sold to [REDACTED].
- (c) [REDACTED] were sold [REDACTED].

Given that the significant bulk of our client's exports, [REDACTED] of its sales of the goods under consideration were sold [REDACTED] data is centrally relevant to any assessment of injury. In this way we would urge you to undertake the following analysis of that data:

1. [Confidential - Methodology for analysing data] [REDACTED]
 - (a) [REDACTED]
 - (b) [REDACTED]
 - (c) [REDACTED]
 - (d) [REDACTED]
2. The data should then be spliced and aggregated into quarterly periods.
3. The data should then be filtered to show [REDACTED].
4. The data should then be further filtered to show [REDACTED].
5. Thereafter a weighted average can be calculated for each quarter.

On analysis and upon proper modelling of the raw data we believe that issues of price undercutting and price suppression will not hold true.

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The Director, Anti-Dumping Commission

20 August 2014

Please confirm that you will undertake the necessary modelling of the raw data [REDACTED] in accordance with or, substantially with, the above methodology. We otherwise trust that you will actively consider and engage with that information.

Yours sincerely



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Our ref 11276/80152428

RECEIVED 15 SEPTEMBER 2014

PUBLIC RECORD

CLAYTON UTZ

For Publication

The Director
Operations 3
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008

15 September 2014

Attention: Mr Matthew Williams

Dear Sir

**Alleged dumping of Quenched and Tempered Steel exported from Finland, Japan and Sweden
Response to Statement of Essential Facts 234**

We act for the Japanese Mills - Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Ltd in relation to the above investigation (Investigation 234).

We refer to Statement of Essential Facts (SEF) 234 published by the Anti-Dumping Commission (ADC) on 27 August 2014. This submission reiterates, and supplements the content of our clients' submission dated 26 May 2014.

Our clients are concerned with the ADC's conclusions outlined in the SEF regarding, inter alia:

- material injury suffered by the applicant
- the misapplication of s. 269TAE *Customs Act* 1901 (Cth) (*Customs Act*)
- the existence of a causal link between such injury and the presence of allegedly dumped goods in the Australian market.

Our clients urge the ADC to carefully re-consider its analysis of the issues recorded above and encourage the ADC to re-assess and give genuine weight to the significant structural change that occurred in the Australian quenched and tempered (Q and T) steel market during the period of investigation (POI).

As is reflected in prior submissions, our clients are concerned about the applicant's allegation that it suffered injury caused by the allegedly dumped goods. Our clients consider that allegation to be based on the most tenuous of links. The applicant's performance issues were caused by a significant change in the Australian market - a market that is competitive but suffered the declining fortune experienced by the downturn of the mining industry. Our clients remain concerned that the applicant's claim is not well founded and does not adequately address the dynamics of the Australian market - indeed during the early stages of the investigation the applicant denied the impact of the declining mining industry on its performance.

Our clients submit that the injury suffered by the applicant in this case has been substantially caused by changes in the dynamics of the Australian market during a period of significant economic transition. We urge the ADC to carefully consider the significance of market forces as 'other injury factors' and to ensure that these are fully eradicated from all consideration in the context of establishing the causal link between dumping and material injury.

The Australian Q and T market - A market in transition

1. As has been addressed at length during the course of this investigation, the significant decline in demand, and the indicia of 'injury' that is complained of by the applicant, is consistent with demand pressures experienced by producers of Q and T globally. The scale and impact of the structural changes in the market in question in this investigation must be fully considered when looking at the issue of causation.

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The Director, Anti-Dumping Commission

15 September 2014

2. Much has been said by various parties (including the ADC) regarding the market as a 'declining market'. In our submission, the ADC's analysis does not give proper emphasis to the scale of the 'decline' and what it represents.
3. As the ADC will undoubtedly appreciate, the size and shape of the Australian Q and T market is inextricably linked to demand dynamics in the primary sector of consumption - the Australian mining sector. The economic performance of the Australian mining sector from 2012 has been well documented. It is characterised by a seismic drop in the volume and value of new mining projects in Australia. This is poignantly spelt out in the Australian Bureau of Resources and Energy Economics (BREE) report:
 - (a) of April 2013 which stated that in the past twelve months around \$150 billion of projects have either been delayed, cancelled or have had re-assessed development plans in the past twelve months.
 - (b) of April 2014 which stated that "the current state of commodity markets is not supportive of further investment in resources and energy projects".
4. The BREE reports, and other market analysts, reflect a significant change in one of the key contributors to Australia's GDP and a significant driver of Australia's consistent economic growth over the last decade. The dramatic contraction of mining sector investment (and, subsequently, the decline of new projects in the sector) has caused a significant 're-balancing' of Australia's economy as it transitions out of the 'mining boom'. Our clients previous submissions refer to commentary from HSBC and others corroborating that claim but which have not been referenced in the SEF.
5. It is also important to note that the prognosis for the mining sector does not envisage a return to form for the sector - that is, the decline in the sector signals an adjustment to a new benchmark. The BREE report 2013 report provides a useful summary of the outlook for the sector moving forward:

Based on an assessment of internal project and external market factors, BREE has developed two scenarios that project the future stocks of committed investment in resources and energy projects in Australia. In the 'Likely Scenario', which includes all existing projects at the Committed Stage and projects assessed as likely to progress to the Committed Stage in the next five years, committed investment is projected to moderate to \$256 billion at the end of 2013 and then decrease to around \$70 billion in 2017. (emphasis added)
6. The trend in the Q and T market mirrors the *transition* of the Australian mining sector and more broadly, the economic output of the sector. Indeed the significant decline in demand during 2012 was manifested in:
 - (a) the contraction of the original equipment manufacturing segment of the market (with significant volume of demand shifting to completed goods imported from overseas), and
 - (b) the evaporation of new equipment demand (previously driven by new project demand).
7. The result of these developments to Q and T producers (and retailers) is that primary demand for Q and T plate is now driven by maintenance/repair requirements with respect to operational machinery and infrastructure in old or ongoing projects. The Australian market for Q and T (to borrow the terminology applied to the Australian economy generally) has

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'rebalanced' following a period of dramatic transition. The size and shape of the downstream market has changed - that is reduced demand and narrow requirements from fewer consumers. The impact on the upstream market has been significant as producers adapt their operational activities to meet the new market.

8. Our clients submit that the applicant's characterisation of the market does not adequately recognise the fundamental changes in the market and incorrectly attempts to compare current market dynamics with historical (or historically high) benchmarks in an effort to bolster its case.
9. We submit that the ADC must find that the current Australian Q and T market is one of transition and that such transition occurred during the POI. It was a period in which the market was in a state of flux. This prevents a real and meaningful comparison with prior benchmarks. Indeed it leads to exaggeration and distortion of results.

Injury in a transitioning market

10. Our clients remain concerned that the ADC ensure that the disruptive impact of the declining demand and market forces during the relevant period not be taken into consideration when assessing causal link between competition with imports and the 'injury' experienced by the applicant.
11. Certainly, a change in the source of demand from consumption for new projects to maintenance and repair fundamentally impact business models and operational activities - declining demand, and increased competition for a smaller pool of potential sales, has forced manufacturers to adjust their demand and production forecasts.
12. As previously submitted, these issues are not unique to the Australian market or to the applicant. Producers and retailers globally have had to adjust to a fundamentally changed market environment. Whilst the Australian market remained insulated from global fluctuations longer than other markets (largely due to a period of significant domestic mining sector growth) it is unreasonable to suggest that it could remain immune from these pressures. As with any change in the pattern of demand in a market, market participants have had to adapt to these changes in their market. Efficiency is now a primary concern for manufacturers globally - they must seek to maintain profitability as costs increase and sales volume reduces. This is true also for all entities along the supply chain for steel products including, but not limited to, Q and T steel.
13. As to issues of operational performance highlighted by the applicant as 'injury factors', these cannot be appropriately seen to be signs of injury. They reflect the current performance paradigms dictated by the Australian market. Indeed these issues have been recognised in corporate briefings and shareholder addresses made by the applicant during the transitional period. As has been accepted by the applicant, significant changes have been implemented after the POI to adapt their business to the dynamics of the declining market.
14. As the ADC will appreciate, decisions to make significant changes to operational activities and business profiles are never made lightly. The changes made by the applicant should be appropriately seen to be part of its efforts to adjust to the market. Any assertion by the applicant that decisions of this magnitude were based on competition with unfairly priced imports is, respectfully, fragile and hollow.
15. Our clients acknowledge the applicant's dismay at the state of the Australian market, and appreciate the rationale for it seeking to adjust its operational models to effectively meet the market, but our clients concern is that the application for anti-dumping measures, and the

The Director, Anti-Dumping Commission

15 September 2014

selection of the POI, is an opportunistic and unfair attempt to use the upheaval in the Australian market to its advantage.

16. The ADC will appreciate that the changes in the market during the POI make the assessment of 'injury' over the injury analysis period difficult. Whilst there is indicia of a decline in performance, the task of demonstrating causation is not straight forward and indeed very difficult. It is, we consider, made impossible by the fact that the requirement of non-attribution cannot be fully and accurately applied by the ADC in the circumstances of this case, during this particular POI.

Price-based effects

17. Further to the above, our clients remain concerned with the specific analysis of price based 'injury' in a transitioning market. Our client's submit that a market in transition from a period of peak demand to a new landscape of limited demand volume and narrowed sources of demand naturally limits or inhibits the increase of prices during the period in which the market is transitioning. Limited demand also means that sales volume relative to output will decrease – leading to a rising CTMS per unit. These are the key impacts of substantial demand changes. This has been experienced by producers of a range of goods whose primary source of demand is linked to the mining sector (see for example collapse of Forge Group, the loss of employment at Caterpillar in Tasmania and the innumerable junior miners in voluntary administration and liquidation). The significance of such impact on the bottom line of producers will depend on a number of factors associated with their business models and ability to adjust to declining demand for the particular product line to minimise the impact on performance.
18. These changes will cause prices of the goods to appear 'suppressed' when the price to CTMS ratio is traced historically. Furthermore, data from such a period can also be extrapolated to suggest that the prices are depressed, when compared to a historical benchmark or the expected profit margin achieved on the sale of goods during a period of increased demand.
19. However, these factors are primarily associated with structural changes in the market and it is unreasonable to use the extrapolations of such phenomena as evidence of 'injury'. Our clients submit that this is a serious issue and should be the prime concern for the ADC.
20. Notwithstanding the above, our client's reiterate that, to their understanding price-competition in the Australian market during the POI was driven significantly by the applicant's business model and aggressive price strategy.
21. It is trite but must be re-emphasised that the Australian Anti-dumping system does not seek to facilitate domestic protectionism nor be used as a mechanism for Australian producers to substantially lessen competition in their domestic market by imposing quantitative barriers to trade. Having said that, our clients are concerned that the circumstances within the market during the POI in this case makes 'injury' analysis exceptionally difficult – where 'injury' must be understood to be distinct and separate from performance issues caused by structural adjustment. Furthermore, the upheaval in the market during this period makes the assessment of causal link between 'injury' and competition with imported goods significantly more difficult within the relatively short timeframes of the investigation.
22. We submit that the price based injury was too narrowly focussed on price undercutting which, together with the assessed dumping margin, underpin the entire injury and causation findings. In this respect, it is worthwhile noting that the ADC did not find price undercutting consistently

The Director, Anti-Dumping Commission

15 September 2014

for every grade, customer, month (time intervals) or level of trade yet concluded that there is 'sufficient' evidence.¹ It is evident that:

- (a) the prices points on an aggregated basis were both above (by 18.9%) and below (by 14%) the applicants price;
 - (b) for the 400 to 500 Brinell hardness grades, the price of the imported product was:
 - (i) up to 39% higher at distributor level to 13.1% lower on occasions;
 - (ii) up to 28.7% higher at distributor level to 27.3% lower on occasions;
 - (c) there was no positive or sustained trend of undercutting over the period;
 - (d) there was no positive trend of continual undercutting but rather an elastic price range which was a symptom of the market conditions at various stages;
 - (e) the applicant's (alleged) import parity pricing regime must have contributed to the price elasticity.
23. We submit that the ADC's price undercutting (an extremely pejorative term) analysis is not sufficiently rigorous and ought to include a consideration of:
- (a) the alleged price undercutting transaction assessed against volume of total sales in a particular month;
 - (b) the transactions in which the price of the imported product was above that of the applicant and assess same against volume of total sales in a particular month;
 - (c) matters (a) and (b) above with a netting effect;
 - (d) all available evidence as to the applicant's price undercutting to determine whether it was the cause or contributed to the price elasticity.
24. In short, our clients consider that the price undercutting analysis is not unpersuasive, inadequate and incapable of positively *satisfying* the Minister, as he is required to be legally so satisfied, to introduce dumping measures. The inferences drawn from the evidence are too imprecise and more exacting proof is required.

Conclusion

25. As the ADC is well aware, if no material injury has been suffered during the period of investigation:
- (a) there can be no positive finding of any injurious dumping; and
 - (b) in the absence of such a finding, dumping notices cannot be published.

¹ see page 48 SEF.

The Director, Anti-Dumping Commission

15 September 2014

26. Our clients consider, that the analysis of causation is confused by the mischaracterisation of extraneous variables which have impacted the structure or the market within which the applicant operates as indicia of injury. We urge the ADC to carefully examine the impact of variables of the market (so called 'other factors') and ensure that these are given appropriate weight in assessing the causes of the applicant's commercial performance in the market.
27. Our clients submit that the changing paradigms of performance of which the applicant has complained are caused by factors in the market which are not associated with competition with imported product, dumped or otherwise.
28. Further, to the extent to which the applicant's present commercial condition can be linked with the dynamics of competition in the Australian market, our clients urge the ADC to carefully consider the impact that the applicant's own commercial behaviour and sales structure has had upon its position within the Australian market.

Yours sincerely


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Our ref 11276/80152428