

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 affect the manner in which the ADC must address the issue of causation. To

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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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