

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.

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

'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

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

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.

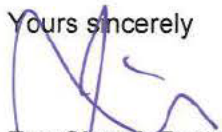
¹ see page 48 SEF.

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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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