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LAWYERS

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MINTER ELLISON BUILDING 25 NATIONAL CIRCUIT FORREST
GPO BOX 369 CANBERRA ACT 2601 AUSTRALIA
DX 5601 CANBERRA www.minterellison.com
TELEPHONE +61 2 6225 3000 FACSIMILE +61 2 6225 1000

Mail correspondence to GPO Box or DX

For Public Record

BY EMAIL: itrops3@customs.gov.au

Ms Joanne Reid
Director Operations 2
International Trade Remedies Branch
Australian Customs & Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Ms Reid

Hot Rolled Plate Steel – Investigation into Alleged Dumping and Subsidisation: Your letter of 1 May 2013 – Public Record: Item 87.

We represent Bisalloy Steels Pty Ltd (**Bisalloy**) in relation to the above matter and refer to the above letter which was a response to our earlier representations of 22 March 2013.

Your letter advises that the applicant has declined to withdraw its application in so far as it relates to Q&T Green Feed and claims that Customs is prevented by law from undertaking a separate anti-dumping and countervailing investigation dealing with that product.

We wish to comment on the propositions put forward by Customs in support of that claim.

A. Customs' Arguments

1. *...there is no provision in the Customs Act 1901 (the Act) that enables the redefinition of the goods the subject of the application (goods under consideration) after an application made under section 269TB has been accepted and a public notice has been published under section 269TC.*

While it is true that there is no such specific provision, it is equally true that there is no statutory provision prohibiting a change in the scope of an investigation. Furthermore there are a range of lawful actions countenanced by Part XVB of the Act that result in changes to the scope of an investigation such as the various grounds for partial termination or findings in relation to like goods.

2. *Section 269TC makes it clear that where the notice has been published as per above, that the Chief Executive Officer of Customs and Border Protection is then under a duty to provide a report to the Minister in respect of the goods under consideration as described above.*

In fact, that section does not impose any such duty. The relevant provision is section 269TEA(1) and that provision establishes a duty in relation to reporting, not a duty concerning the CEO's conduct of the investigation. In any event, in the present matter our client has never proposed that the CEO should not report to the Minister on all product categories included in the original goods description.

3. *...there is no provision in the Act that allows for a termination or withdrawal in respect of particular subcategories of the goods under consideration.*

Bisalloy has never made a request for termination of the investigation in relation to Q&T Green Feed.

4. *Provisions exist in the legislation for the Minister to exempt such goods* [dumped and/or subsidised goods that are not causing injury] *from anti-dumping measures if certain grounds are met.*

No such provisions exist. The very limited exemption provisions relate primarily to circumstances in which substitutable or suitably equivalent goods are not produced in Australia. Again Bisalloy has never alleged that the applicant does not produce Q&T Green Feed in Australia.

The Central Issue

The claim by Customs in the present matter that an original goods description is immutable and the rejection to date of our request for a separate material injury examination and analysis in relation to alloyed Q&T Green Feed is unsupported by Part XVB of the Act, WTO authorities or Customs own practice in other inquiries.

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The starting point is the fact that the applicant's goods description in the present matter contained at least two product categories that are not 'like' to each other. This is simply illustrated:

Country of Export Production	Goods underConsideration	Australian Production
Product A	Product A	Product A
Product B	Product B	Product B

We again repeat that there is no legal requirement for the exported goods originally nominated by an applicant – the goods under consideration – to be like to each other[1]. What is essential is that an applicant is an Australian producer of each product category. That is not disputed by our client.

If, as in the present case, the goods under consideration include two products that are not 'like goods' the overall purpose of the Act and a number of its specific provisions will require an adjustment to the examination, analysis and investigation process. The adjustments are necessary to ensure that variable factors are properly ascertained and that assessment of injury, materiality, causation and cumulation is conducted on a robust basis.

Examples of adjustments undertaken by Customs in previous investigations include conducting separate sub-investigations[2], revising rulings on like goods[3] and redefining an applicant's relevant production[4]. As we have previously observed, the immutability claim by Customs is also contrary to an observation of the Appellate Body of the WTO in *EC – Bed Linen*[5] and the decision of the Panel in *EC – Salmon (Norway).*

Adopting the above illustration involving two 'unalike' products being exported to Australia the causation analysis in relation to Australian production of Product B must be conducted only by reference to exports of Product B. Moving from that example to the situation applying in the current matter, under the very precise terms of section 269TG(1), (2) and (3) exports of alloyed Q&T Green Feed cannot be found to be causing injury to the Australian production of non-alloyed steel plate. Further we submit that the proper application of the terms of section 269TAE(2C)(e) must result in a finding that it would be inappropriate to cumulate exports of

[1] DS 337: *EC – Salmon (Norway*): para 7.118; DS 397: *EC – Fasteners (China)*: para. 7.265
[2] REP 41; REP 112
[3] REP 150/170; TMRO 183.
[4] REP 103
[5] DS141?AB/R: para 62

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Q&T Greenfeed with exports of non-alloyed steel from other countries for injury analysis purposes because there is no competition between those goods.

Yours sincerely
MINTER ELLISON

John Cosgrave
Director, Trade Measures

Contact:	John Cosgrave Direct phone +61 2 6225 3781 Fax: +61 2 6225 1781
E mail:	john.cosgrave@minterellison.com
Partner responsible	Callen O'Brien Direct phone +61 3 9921 4730
Our reference:	COB/JPC 20-7720045