



Australian Government
Anti-Dumping Review Panel

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

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City
ACT 2601
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F: + 61 2 6275 6784
E: ADRP_support@customs.gov.au

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Australian Customs and Border Protection Service (ACBPS), or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The ADRP may review decisions made by the Minister, as follows:

Investigations:

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice;
- not to publish a countervailing duty notice;

Review inquiries, including decisions

- to alter or revoke a dumping duty notice following a review inquiry;
- to alter or revoke a countervailing duty notice following a review inquiry;
- not to alter a dumping duty notice following a review inquiry;
- not to alter a countervailing duty notice following a review inquiry;
- that the terms of an undertaking are to remain unaltered;
- that the terms of an undertaking are to be varied;
- that an investigation is to be resumed;
- that a person is to be released from the terms of an undertaking;

Continuation inquiries:

- to secure the continuation of dumping measures following a continuation inquiry;
- to secure the continuation of countervailing measures following a continuation inquiry;

- not to secure the continuation of dumping measures following a continuation inquiry;
- not to secure the continuation of countervailing measures following a continuation inquiry;

Anti-circumvention inquiries:

- to alter a dumping duty notice following an anti-circumvention inquiry;
- to alter a countervailing duty notice following an anti-circumvention inquiry;
- not to alter a dumping duty notice following an anti-circumvention inquiry; and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

Before making a recommendation to the Minister, the ADRP may require the Commissioner to:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
- report the result of the reinvestigation to the ADRP within a specified time period.

The ADRP only has the power to make **recommendations to** the Minister to affirm the reviewable decision or to revoke the reviewable decision and substitute with a new decision. The ADRP has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

WHICH APPLICATION FORM SHOULD BE USED?

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The ADRP does not have any discretion to accept an invalidly made application or an application that was lodged late.

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at www.adreviewpanel.gov.au).

There are separate application forms for each category of reviewable decision made by the Commissioner, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for ADRP review of a decision of the Minister whether to publish a dumping duty notice or countervailing duty notice (or both). It is approved by the Commissioner pursuant to s 269ZY of the Act.

WHO MAY APPLY FOR REVIEW OF A MINISTERIAL DECISION?

Any interested party may lodge an application for review to the ADRP of a review of a ministerial decision. An "interested party" may be:

- if an application was made which led to the reviewable decision, the applicant;
- a person representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision;
- a person directly concerned with the importation or exportation to Australia of the goods;
- a person directly concerned with the production or manufacture of the goods;
- a trade association, the majority of whose members are directly concerned with the production or manufacture, or the import or export of the goods to Australia; or
- the government of the country of origin or of export of the subject goods.

Intending applicants should refer to the definition of "interested party" in s 269ZX of the Act to establish whether they are eligible to apply.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after a public notice of the reviewable decision was first published in a national Australian newspaper (s 269ZZD).

The application is taken as being made on the date upon which it is received by the ADRP after it has been properly made in accordance with the instructions under "Where and how should the application be made?" (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the ADRP that the Minister's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision (s 269ZZE).

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP after an application has been made. Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The ADRP does not have any investigative function, and must take account only of information which was before the Minister when the Minister made the reviewable decision (s269ZZ). The ADRP will disregard any information in applications and submissions that was not available to the Minister.

HOW LONG WILL THE REVIEW TAKE?

The timeframes for a review by the ADRP will be dependent on whether the ADRP requests the Commissioner to reinvestigate specific findings or findings that formed the basis of the reviewable decision.

If reinvestigation is not required

Unless the ADRP requests the Commissioner to reinvestigate a specific finding or findings, the ADRP must make a report to the Minister:

- at least 30 days after the public notification of the review;
- but no later than 60 days after that notification.

In special circumstances the Minister may allow the Review Panel a longer period for completion of the review (s 269ZZK(3)).

If reinvestigation is required

If the ADRP requests the Commissioner to reinvestigate a specific findings or findings, the Commissioner must report the results of the reinvestigation to the ADRP within a specified period.

Upon receipt of the Commissioner's reinvestigation report, the ADRP must make a report to the Minister within 30 days.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

At the conclusion of a review, the ADRP must make a report to the Minister, recommending that the:

- Minister affirm the reviewable decision (s 269ZZK(1)(a)); or
- Minister revoke the reviewable decision and substitute a specified new decision (s 269ZZK(1)(b)).

After receiving the report from the ADRP the Minister must:

- affirm his/her original decision; or
- revoke his/her original decision and substitute a new decision.

The Minister has 30 days to make a decision after receiving the ADRP's report, unless there are special circumstances which prevent the decision being made within that period. The Minister must publish a notice if a longer period for making a decision is required (s 269ZZM).

WHERE AND HOW SHOULD THE APPLICATION BE MADE?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City ACT 2601
AUSTRALIA**

- OR emailed to:

ADRP_support@customs.gov.au

- OR sent by facsimile to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
+61 2 6275 6784**

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the ADRP** can be obtained at the ADRP website (www.adreviewpanel.gov.au) or from:

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City ACT 2601
AUSTRALIA

Telephone: +61 2 6275 5868
Facsimile: +61 2 6275 5784

Inquiries and requests for **general information about dumping matters** should be directed to:

Anti-Dumping Commission
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: 1300 884 159
Facsimile: 1300 882 506
Email: clientsupport@adcommission.gov.au

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – this equates to \$3400).

PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZE of the *Customs Act 1901*. The information is collected to enable the ADRP to assess your application for the review of a decision to publish a dumping duty notice or countervailing duty notice.

**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: Tom Matinea

Name: TOM MATINCA

Position: Business Development and Strategy Manager

Applicant Company/Entity:

Bisalloy Steel Group Limited

Date: 3 / 12 / 2014

3 December 2014

Anti-Dumping Review Panel
C/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601

Email: ADRP_support@customs.gov.au

Dear Sir/Madam

Request for Review of a Decision – Quenched and Tempered Steel Plate exported from Finland, Japan and Sweden - Findings in relation to a dumping investigation

Attached for your consideration is an application for the review of the Parliamentary Secretary's decision to impose dumping measures on exports of Quenched and Tempered ("Q&T") Steel Plate exported from Finland, Japan and Sweden. The Anti-Dumping Commission's recommendations as accepted by the Parliamentary Secretary are included in Report No. 234. The Parliamentary Secretary's decisions in relation to the form and level of the measures applied are not the correct or preferred decisions, in Bisalloy's opinion, and substitute decisions are required to adequately address the level of dumping and injury experienced to the Australian industry from the dumped exports.

Bisalloy Steel Group Limited ("Bisalloy") is seeking the ADRP to review:

- The form of the anti-dumping measures applicable to exports from Finland and Japan that have been applied on the basis of the *ad valorem* method;
- The "Non-Injurious Price" for the Australian industry manufacturing like goods; and
- The "effective" rate of the measures applied to exports from Finland and Sweden.

The attached application addresses the grounds for review and why the Parliamentary Secretary's decisions in these matters are not the correct or preferred decisions in Bisalloy's opinion.

If you have any questions concerning this application for review please do not hesitate to contact Mr Tom Matinca on (02) 4272 0407 or Bisalloy Steels' representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



Tom Matinca
Business Development and Strategy Manager
Bisalloy Steel Group Limited.

Application Particulars

1. Contact Details

1.1 Name, street and postal address, and form of business of the applicant

The applicant company requesting a review of the decision of the Parliamentary Secretary to apply anti-dumping measures on Q&T Steel Plate exported from Finland, Japan and Sweden is the sole Australian producer of like goods, Bisalloy Steel Group Limited ("Bisalloy").

Bisalloy's postal address is:

P.O. Box 1246
Unanderra NSW 2526
Tel: (02) 4272 0444
Fax: (02) 4272 0445

1.2 Name, title/position, telephone and facsimile numbers, and email address of contact within the organisation

The relevant contact detail at Bisalloy for this application for review is:

Contact Name:	Mr Tom Matinca
Company and position:	Business Development and Strategy Manager
Address:	18 Resolution Drive, Unanderra NSW, 2526
Telephone:	(02) 4272 0407
Facsimile:	(02) 4272 0445
E-mail address:	tom.matinca@bisalloy.com.au

1.3 Name of consultant

Bisalloy has engaged the following representative to assist with this application:

Name:	Mr John O'Connor
Representative's business name:	John O'Connor & Associates Pty Ltd
Address:	P.O. Box 329, Coorparoo Qld 4151
Telephone:	(07) 3342 1921
Facsimile:	(07) 3342 1931
E-mail:	jmoconnor@optusnet.com.au

A copy of the signed authorisation nominating Mr O'Connor as Bisalloy's representative is included at Confidential Attachment 1.

1.4 Full Description of the Goods

The goods the subject of Bisalloy's application for anti-dumping measures were 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."

Bisalloy stated that Q&T steel plate comprises grades with typical mechanical properties as follows:

- *High hardness/Abrasion resistant Q&T steel plate (more commonly referred to as 'Wear' Grade Q&T steel plate) of Brinell hardness (HBW – 10/3000) range 320-640 or equivalent Rockwell C hardness range 34-59 or equivalent Vickers hardness range 230-670;*
- *High Strength Q&T steel plate (commonly referred to as 'Structural/High Tensile' Grade Q&T steel plate) of 0.2% Proof Stress of 475-890 MPa (min); and*
- *High Harness/Impact resistant Armour Grades (more commonly referred to as 'Armour' Grade Q&T steel plate) of hardness up to 640 Brinell (HBW – 10/3000).*

To further clarify the goods description, Bisalloy indicated that Q&T steel plate has the following chemical compositions up to:

- Carbon Max – 0.5%;
- Manganese Max – 2.5%;
- Silicon Max – 0.65%;
- Sulphur Max – 0.04%;
- Phosphorous Max – 0.04%;
- Nickel Max – 3.0%;
- Chromium Max – 3.0%;
- Molybdenum Max – 2.0%;
- Vanadium Max – 0.2%;
- Boron Max – 0.01%;
- Aluminium Max – 0.1%;
- Titanium Max – 0.1%;
- Copper Max – 0.5%;
- Niobium Max – 0.1%.

The percentage of the above individual alloying elements may vary in accordance with each manufacturer's grade specifications and not all elements may be utilised in all Q&T steel plate grades. Additional other quantities of trace elements up to a max 0.1% each may also be utilised or found (as trace elements) in Q&T steel plate.

Further information is specified in Australian Dumping Notice No. 2014/01.

2. Tariff Classification

Q&T steel plate is classified to the following tariff subheadings:

- 7225.40.00 statistical code 21 (high alloy: quenched and tempered); and
- 7225.40.00 statistical code 23 (other: quenched and tempered).

Bisalloy also indicated in its application that some Q&T steel plate had been incorrectly classified to:

- 7225.40.00 statistical codes 22 and 24.



Bisalloy Steel Group Limited

The Anti-Dumping Commission identified some Q&T steel plate classified to 7225.99.00 that refers to other alloy steel of a width of 600mm or more, not specified or included in preceding tariff subheadings.

The imported Q&T steel plate the subject of Bisalloy's application may be entered under the identified sub-headings and statistical codes.

3. A copy of the written advice from the Commissioner of the Parliamentary Secretary's decision

Bisalloy was made aware of the decision of the Parliamentary Secretary to apply anti-dumping measures by a notice published in The Australian newspaper on 5 November 2014 (Non-Confidential Attachment 2). Australian Dumping Notice No. 2014/123 was also published on the same day.

A copy of ADN No. 2014/123 is included at Non-Confidential Attachment 3.

4. A detailed statement setting out the reasons for believing that the reviewable decision is not the correct or preferable decision.

A. Introduction

On 20 November 2013 Bisalloy Steel Group Limited ("Bisalloy") applied for anti-dumping measures on exports of Quenched and Tempered ("Q&T") steel plate exported from Finland, Japan and Sweden. The Anti-Dumping Commission ("the Commission") commenced an investigation into Bisalloy's allegations on 8 January 2014 (ADN No. 2014/01 refers).

As a result of the Commission's investigation, the Parliamentary Secretary decided to impose anti-dumping measures on exports of Q&T steel plate exported from Finland, Japan and Sweden.

The dumping margins determined by the Commission were as follows:

Country	Exporter/Manufacturer	Dumping Margin
Finland	All Exporters	21.7%
Japan	JFE Steel Corporation	24.6%
	<i>Uncooperative exporters</i>	33.9%
Sweden	All Exporters	34.0%

The Commission determined a Non-Injurious Price ("NIP") for the Australian industry and recommended that the Parliamentary Secretary apply the NIP for the purposes of exports from Finland, Japan and Sweden. The Commission also recommended that the Parliamentary Secretary apply the anti-dumping measures against exports of Q&T steel plate from Finland and Japan on an *ad valorem* basis, with measures recommended to apply on the combination (i.e. fixed and variable) method for exports from Sweden.

The Parliamentary Secretary accepted the Commission's recommendations and applied the measures as recommended by the Commission.

The "effective" rate of the measures as influenced by the NIP and accepted by the Parliamentary Secretary, along with the basis for the measures, is reflected in the following table.

Country	Exporter/Manufacturer	Effective Rate of Duty	Duty Method
Finland	All Exporters	10.8%	Ad valorem
Japan	JFE Steel Corporation	24.5%	Ad valorem
	<i>Uncooperative exporters</i>	26.1%	Ad valorem
Sweden	All Exporters	9.6%	Fixed and variable

Bisalloy does not consider that the Parliamentary Secretary's decision is the correct or preferred decision in relation to the *ad valorem* form of measures applied for exports from Finland and Japan. Bisalloy is further aggrieved by the Parliamentary Secretary's decision to apply the NIP on the basis of an unsuppressed selling price ("USP") and that this is also not the correct or preferred decision in establishing the NIP applicable in the circumstances.

Bisalloy requests the Anti-Dumping Review Panel ("ADRP") review the decision of the Parliamentary Secretary to impose ad valorem anti-dumping measures on dumped and injurious exports of Q&T steel plate from Finland and Japan.

B. Applicant's Grounds for Review

B.1 Form of measures

The Commission recommended that the Parliamentary Secretary apply anti-dumping measures on exports of dumped Q&T steel plate from Finland and Japan using the *ad valorem* duty method. The Commission reasoned the recommended *ad valorem* duty method (with reference to its Guidelines on the Application of Forms of Dumping Duty – November 2013) on the following grounds that this form of duty¹:

- is suitable for goods with many different product levels of varying unit prices;
- is the simplest and easiest form of duty to administer when delivering the intended protective effect;
- may require less frequent reviews than other duty methods;
- is the most common form of duty in other main jurisdictions; and
- eliminates negative effects on downstream industries in a falling market, as was the case for Q&T steel plate during the investigation period.

Bisalloy challenged the Commission's recommendation for the *ad valorem* measures in the Statement of Essential Facts ("SEF") as "inadequate" as export prices had fallen further following the imposition of provisional measures. The Commission responded in Report No. 234 that it could not evidence a decline in export prices. The Commission's analysis was not limited to contrasting the period post provisional measures with the investigation period, but across the whole period from January 2014 up to 31 August 2014 (excluding the investigation period). Similarly, the Commission's analysis did not take account of the decline in the \$A from the 2013 investigation period.

The shortcoming of the *ad valorem* method for measures is where export prices are reduced further, the dumping duty liability also decreases and Australian industry experiences a recurrence of injury (all other things being equal).

By contrast, measures based upon the combination method (that include a fixed and variable component), adequately address further reductions in the export price.

¹ Report No. 234, P 88-89.



Bisalloy does not consider that the reasons tendered by the Commission for use of the *ad valorem* method are sufficiently adequate to address the "intended protective effect" of the measures. The Commission has not adequately considered the circumstances of Bisalloy as a trade-exposed SME, where any fall in export prices would result in further material damage. Bisalloy encountered reduced export prices following the application of provisional measures with export prices reduced further by approximately the amount of the measure. Market selling prices for Q&T steel plate imported from Finland and Japan remained at similar or lower levels to the selling prices that prevailed during the investigation period.

Bisalloy therefore did not experience any "remedy" associated with the imposition of the provisional measures.

Bisalloy does not consider the apparent use of the measure in other jurisdictions is sufficient reason to warrant the same form of measures in Australia. Nor is it sufficient to suggest that the measures are the "simplest and easiest form of duty to administer". The key consideration is the ability of the duty to remedy the injury experienced from the dumping.

Bisalloy requests the ADRP review the Parliamentary Secretary's decision to apply *ad valorem* measures to exports of Q&T steel plate from Finland and Japan that have not remedied the injury they were intended to correct.

B.2 Non-Injurious Price & effective rate of measures

As Bisalloy lodged its application on 20 November 2013, Report No. 234 indicates that the Parliamentary Secretary's consideration of the lesser duty rule is "mandatory". Bisalloy understands that this requirement altered from 1 January 2014 for Australian industry where "two or more" small to medium sized enterprises ("SMEs") are involved in the manufacture of the goods.

As the sole Australian manufacturer of Q&T steel plate, Bisalloy, was not eligible for the Parliamentary Secretary's discretion to be exercised under the new policy guidelines that came into effect on 1 January 2014.

Prior to SEF No. 234, Bisalloy formed the view that an appropriate non-injurious price ("NIP") could be derived from an unsuppressed selling price ("USP") based upon Bisalloy's cost-to-make-and-sell ("CTM&S") plus an amount of profit from 2012. The Commission, however, considered that an average rate of profit between 2010 and 2012 was more appropriate.

At Section 8.6 of SEF No.234 the Commission indicated that

"the minimum amount of injury suffered by Bisalloy that can be attributed to dumped exports is reflective of the individual dumping margins" (i.e. margins in the range 21.7 to 35.8 per cent);

and further that it was,

"satisfied that an increase in price, equal to the lowest dumping margin calculated, is sufficient for Bisalloy to have operated profitably during the investigation period".

The lowest dumping margin calculated was 21.7 per cent (for Finland). All remaining exporters had greater dumping margins.

The Commission's comments in SEF No. 234 makes it clear that any measures applied at less than 21.7 per cent would not have returned Bisalloy to profit. Hence the "effective" rate of the measures for Finland (10.8 per cent) and Sweden (9.6 per cent) as impacted by the Non-Injurious Price, are ineffective in removing injury from the dumping caused by these exporters.



Bisalloy also notes the maximum price undercutting margins determined by the Commission at the aggregate level, which were up to 13.1 per cent at the distributor level and up to 27.3 per cent at the end user level of trade. Anti-dumping measures applied by the Parliamentary Secretary at the effective rates of 9.6 per cent and 10.8 per cent are not going to remove injury to Bisalloy when the levels of price undercutting from the dumped exports are up to 27.3 per cent, and the dumping margins for exports from Finland and Sweden are at 21.7 per cent and 34.0 per cent, respectively.

The Commission's own analysis indicates that a NIP based upon CTM&S data plus a level of profit is insufficient to remove injury to the Australian industry and should not have been considered for NIP purposes. This is further supported by the Commission's comment that an increase in price equal to the lowest dumping margin (i.e. 21.7 per cent) would have enabled Bisalloy to operate "profitably". This comment by the Commission does not mention whether the reference to operate "profitably" reflects an *adequate* level of profit, or merely just a return to profit.

Bisalloy's response to SEF No. 234 includes a revised view as to the appropriate basis for a NIP. Bisalloy submitted that in light of the Commission's findings in SEF No. 234, a USP could not be determined on the basis of the Australian industry's costs plus an amount for profit, as this level of pricing remained *injurious* to Bisalloy. Bisalloy therefore recommended that a price rise equal to the minimum dumping margin would enable the Australian industry to operate at profit, it was critical that the non-injurious price be set at the full margin of dumping for each of the exporters.

The Commission rejected Bisalloy's proposal and maintained its position of a USP based upon the Australian industry's CTM&S plus profit from which a NIP was derived. The Parliamentary Secretary accepted the Commission's recommendations and applied measures for Finland and Sweden at the reduced "effective" rates that were significantly lower than actual dumping margins as determined from both countries.

Bisalloy requests the ADRP review the Parliamentary Secretary's decision to apply a less than adequate Non-Injurious Price on exports of Q&T steel plate from Finland and Sweden that reduce the "effective rate" of the measures to injurious levels.

C. Review Request

Bisalloy requests the Anti-Dumping Review Panel to review the Parliamentary Secretary's decisions:

- (i) that involve anti-dumping measures based upon the *ad valorem* duty method as applied to exports from Finland and Japan, where the preferred decision involves measures based upon the combination method (i.e. fixed and variable components);
- (ii) to apply the less than adequate Non-Injurious Price based upon Bisalloy's CTM&S in 2013 plus an amount for profit, where the preferred decision is a NIP that reflects the full margin of dumping; and
- (iii) the effective rate of the measures (based upon the inadequate NIP) where the preferred decision involves measures reflective of the full dumping margin for exports from Finland and Sweden.



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.

Country	Exporter	Dumping Margin	Method	Rate of Duty	Notes
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 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



ANTI-DUMPING NOTICE NO. 2014/123

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

Customs Act 1901 – Part XVB

I, Dale Seymour, Commissioner of the Anti-Dumping Commission have completed the investigation, which commenced on 8 January 2014, 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 code 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.

I reported my findings and recommendations to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in *Anti-Dumping Commission Report No. 234* (REP 234). REP 234 outlines how the Anti-Dumping Commission (the Commission) carried out the investigations and recommends the publication of a dumping duty notice in respect of the goods.

In REP 234, it was found that:

- Q&T steel plate exported to Australia from Finland, Japan and Sweden was dumped with margins ranging from 21.7 to 34.0 per cent;
- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

The Parliamentary Secretary has considered REP 234 and has accepted my recommendations and reasons for the recommendations, including all material findings of fact or law on which my recommendations were based, and particulars of the evidence relied on to support the findings.

Notice of the Parliamentary Secretary’s 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.

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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 <i>Customs Act 1901</i> (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%	

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 section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act). Under 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 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.

The effective rate of duty applicable to shipments from traders is the effective rate of duty applicable to the relevant manufacturer of the goods.

Measures apply to goods that are exported to Australia after publication of the Parliamentary Secretary's notice.

The actual duty liability for imports from Sweden may be higher than the effective rate of duty due to a number of factors. Affected parties should contact the Commission on 1300 884 159 or +61 2 6275 6066 (outside Australia) or at clientsupport@adcommission.gov.au for further information regarding the actual duty liability calculation in their particular circumstance.

To preserve confidentiality, the export price, normal value and non-injurious price applicable to the goods will not be published. Bona fide importers of the goods can obtain details of the rates from the Dumping Liaison Officer in their respective capital city.

Clarification about how anti-dumping measures are applied to 'goods on the water' is available in Australian Customs Dumping Notice No. 2012/34, available at the Commission website.

Any dumping securities that have been taken on and from 19 May 2014 will be converted to interim dumping duty.¹ Importers will be contacted by the Regional Securities Officer in their respective capital city detailing the required conversion action for each security taken.

Pursuant to section 12 of the Dumping Duty Act, conversion of securities to interim dumping duty will not exceed the level of security taken. The rate of conversion for

¹ Within the time limitations of section 45 of the Act

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securities will be required per the notices published on 19 May 2014 and 27 August 2014 (as applicable).

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 the Parliamentary Secretary's notice.

REP 234 has been placed on the Commission's public record, which may be examined at the Commission 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.

Dale Seymour
Commissioner
Anti-Dumping Commission

5 November 2014