

Email

19 January 2015

Anti-Dumping Review Panel Secretariat
Legal Services Branch
Department of Industry
10 Binara Street
BELCONNEN ACT 2601
ADRP_support@customs.gov.au

Dear Sir/Madam

Application for Review - Investigation into the Alleged Dumping of Quenched & Tempered Steel Plate exported from Finland, Japan and Sweden

We act for Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Ltd (**Japanese Mills**) in respect of the application for 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**).

We are instructed to respond to a particular issue raised in the submission of Bisalloy Steel Group Limited (**Bisalloy**) dated 3 December 2014 (**Submission**). In doing so, our clients re-affirm their primary contention that any *material injury* (which is denied) was not *caused* by dumping but by extraneous factors, namely the dramatic downturn in mining investment and demand reduction overall for Q&T steel in Australia.

The Submission seeks review of the recommendation and subsequent finding by the Parliamentary Secretary:

- (a) to impose anti-dumping measures based upon the *ad valorem* duty method as applied to exports from Finland and Japan, where the preferred decision involves measure based upon the combination method (**Combination Method Argument**);
- (b) to apply a non-injurious price (**NIP**) based upon Bisalloy's CTM&S in 2013 plus an amount for profit, where the preferred decision is a NIP that reflects the full (or higher) margin of dumping (**Non-Injurious Price Point**); and
- (c) to apply an effective rate of measures based upon a NIP where the preferred decision should reflect the full dumping margin for exports from Finland and Sweden (**Effective Rate Higher than NIP Argument**).

In respect of the above review claims, our clients submit:

- (i) In respect of the Combination Method Argument, the form of anti-dumping measures applicable to exports from Finland and Japan that have been applied on the basis of the *ad valorem* method is the correct and preferable decision.
- (ii) The Non-Injurious Price Point and Effective Rate Higher than NIP Argument are matters relevant to exporters from other exporting nations and accordingly, our clients make no further comment.

1. Combination Method Argument

1.1 Bisalloy claims that the:

- (a) application of anti-dumping duty to exports from Finland and Japan by application of the *ad valorem* method does not sufficiently address the "intended protective effect" of the anti-dumping measures. Accordingly, it did not experience any "remedy" associated with the imposition of the measures;
- (b) ADC 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; and
- (c) duty should be based upon the combination method, including a fixed and a variable component (**Combination Method**).

1.2 The Guidelines on the Application of Forms of Dumping Duty (**Guidelines**)¹ set out the key considerations relevant to determining the form of the duty to be imposed.

1.3 First, the application of the Combination Method is suited to complex related party company structures.² The Guideline was applied in the Decision and dumping duties using the Combination Method was adjudged to be appropriate for SSAB, noting the multiple interrelated corporate entities exporting from Sweden.³ It is not reasonable to apply the Combination Method to other exporters because, in the case of the Japanese Mills, they do not (and were not found to) have complex related party corporate structures.

1.4 Second, in respect of market conditions, the Guidelines provide that in a contracting market, the fixed element of the duty collected can become punitive under the Combination Method, noting that the punitive effect in a contracting market can have effects on downstream industries.⁴ In this case, the ADC found that the industry experienced a contracting market during the investigation period, with a reduced demand resulting from a downturn in the mining sector.⁵ It follows that there is no justification for the imposition of the Combination Method as this would create the punitive outcome which the Guideline seeks to avoid.

2. Conclusion

2.1 The Japanese Mills contend that the appropriate order to be made by the ADRP is that the Decision under review, in so far as it rejects the Combination Method Argument for Japan, be affirmed.

Yours faithfully



Zac Chami, Partner
+61 2 9353 4744
zchami@claytonutz.com

Sarah Brooks, Lawyer
+61 2 9353 4826
sbrooks@claytonutz.com

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¹ Guidelines on the Application of Forms of Dumping Duty November 2013 at <http://adcommission.gov.au/reference-material/documents/Guidelineformsofdumpingduty-November2013.pdf>

² Guidelines p. 7

³ Decision at [6.6.61] and [11.3.2]

⁴ Guidelines p. 6

⁵ Decision at [8.4] and [8.9]