Canberra Office
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
Australian Capital Territory 2609
+61 2 6163 1000

Brisbane Office
Level 4, Kings Row Two
235 Coronation Drive
Milton, Brisbane
Queensland 4064
+61 7 3367 6900

Australia

facsimile: +61 2 6162 0606
email: info@moulislegal.com
www.moulislegal.com

moulislegal
commercial + international

21 January 2015

Ms J. Fitzhenry
Member
Anti-Dumping Review Panel
c/- Legal Services Branch
Department of Industry
10 Binara Street
Canberra
Australian Capital Territory 2601

By email

Dear Ms. Fitzhenry

Review of Ministerial decision - quenched and tempered steel Interested party submission of Ruukki Metals Oy

We represent Ruukki Metals Oy ("Ruukki") in this matter. Ruukki manufactures and exports quenched and tempered steel plate ("Q&T plate") from Finland, and is one of the exporters whose information was accepted and verified by the Anti-Dumping Commission ("the Commission") in the original investigation that has led to this review. Accordingly, Ruukki is an interested party for the purposes of that investigation and this review.

In relation to this review, Ruukki would like to make the following submissions:

- there is no basis to alter the imposition of *ad valorem* anti-dumping measures on exports of Q&T plate from Finland;
- there is no basis to consider that the non-injurious price ("NIP") was inadequate; and
- directly quenched thermo-mechanically processed steel plate ("TMCP") is not a like good and should not be subject to anti-dumping measures

The substance of these submissions is set out below:

1 There is no basis to alter the imposition of ad valorem antidumping measures on exports of Q&T plate from Finland

In its application, the Bisalloy Steel Group Limited ("Bisalloy") states that *"it 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".*[1]

Ruukki does not understand the decision to adopt a particular method for determining the interim dumping duty ("IDD") payable on goods the subject of notices under Subsection 269TG(1) or (2) of the *Customs Act 1901* ("the Act") to be a decision that falls within the purview of the Anti-Dumping Review Panel ("ADRP").

According to Section 269ZZA(1)(a) of the Act, this current review is a review into the following

[1] Bisalloy Application, page 5.

decision:

> *(a) a decision by the Minister to publish a dumping duty notice under subsection 269TG(1) or (2) or 269TH(1) or (2), or a countervailing duty notice under subsection 269TJ(1) or (2) or 269TK(1) or (2);*

However, the IDD calculation methodology is governed by the *Customs Tariff (Anti-Dumping) Act 1*975 ("the Anti-Dumping Act"). Specifically, Subsection 8(5) of the Anti-Dumping Act requires the Minister (or in this instance, the Parliamentary Secretary) to determine the IDD payable on goods the subject of a notice under Subsection 269TG(1) and (2), and requires that the adopted methodology must be one of the methods referred to in Subsection 8(5BB). Subsection 8(5BB) allows for the prescription of IDD calculation methodologies via regulations. In this case the relevant regulations are the *Customs Tariff (Anti-Dumping) Regulations 2013*, Subclause 5(7) of which provides for the adoption of the *ad valorem* duty method.

Although the choice of methodology is a natural consequence of the decision to publish a dumping duty notice under Section 269TG(1) or (2) of the Act ("the reviewable decision") it cannot be characterised as the reviewable decision, nor can it be characterised as a decision that is a condition precedent to the making of the reviewable decision. Accordingly, we respectfully submit that the methodology for determining the IDD payable has no bearing on whether the decision to publish dumping duty notices under subsection 269TG(1) and (2) of the Act was the correct or preferable decision - as is the threshold question for establishing these reviews - and cannot provide any basis for a revocation of that reviewable decision.

Plainly this must be the case. If the reviewable decision was to be revoked solely on the basis of some perceived flaw in the IDD calculation methodology, it would be substituted by the same, unchanged reviewable decision (i.e. the decision to publish a dumping duty notice under Subsections 269TG(1) and (2)), consequent to which a separate decision would be made differently (the decision to calculate interim dumping duty liability on a fixed and variable basis, rather than on an *ad valorem* basis under Subsection 8(5) of the Anti-Dumping Act). Such an outcome is clearly not possible under the current legislative architecture.

Respectfully, we submit that the ADRP does not have the jurisdiction to consider the merits of the IDD calculation methodology.

2 There is no basis to consider that the NIP was inadequate

In its application, Bisalloy contends that the NIP that was determined in *Report No. 234 – Dumping of Quenched and Tempered Steel Plate Exported from Finland, Japan and Sweden* ("Report No. 234") was inadequate. Bisalloy favours the adoption of an NIP that ultimately allows for the imposition of effective duties equal to the individual dumping margins found for each of the cooperative exporters, although it does not provide details regarding how this should be done. In this regard, we note that rather than addressing the substantive NIP analysis at pages 79 to 86 of Report No. 234, Bisalloy has simply tried to impugn the outcome of that analysis by pointing to incidental and unrelated comments made elsewhere in the Report.

Bisalloy has not shown that there were any errors within that analysis, nor that the conclusions drawn from that analysis were incorrect. Significantly, Bisalloy has failed to establish that the NIP that was calculated was not correct and/or preferable, in the sense that it has not shown that there was a more correct and/or preferable *"minimum price necessary…to prevent the injury"* that was found to have been caused by dumping. Rather, Bisalloy's position appears to be that it could have been afforded more protection if a different NIP was adopted.

That outcome is not something that is condoned by the Act. Section 269TACA(a) of the Act provides that:

The non-injurious price of goods exported to Australia is the minimum price necessary:

> *(a) if the goods are the subject of, or of an application for, a dumping duty notice under subsection 269TG(1) or (2)--to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG(1)(b) or (2)(b);*

The NIP is the minimum price necessary to prevent injury or the recurrence of injury to the local industry. Its policy rationale is simple – dumping in and of itself is not detrimental or actionable, there is fact an economic benefit to allowing cheap imports into Australia. It is only where that dumping causes injury to the domestic industry that the dumping becomes actionable, and then only to the extent that the dumping has caused injury to the Australian industry. The calculation of the NIP allows the Commission to determine what price level would be sufficient to counteract the injury that dumping is found to have caused to the Australian industry, and prevents the imposition of dumping duties beyond this price point that, without this corrective purpose, would be unnecessarily trade distorting and detrimental to the broader Australian economy.

In this respect, we note the observations made by Nicholas J, regarding the purpose of Australia's anti-dumping laws, in *PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth:*

> *148 Further, I do not agree with Capral that the purpose of Part XVB of the Act is "to protect Australian industry". The purpose of Part XVB is far more complicated. It is apparent from the scheme of Part XVB that the legislature has sought to strike a balance, as the relevant international agreements no doubt seek to do, between various interests including not only those of Australian industries but also other WTO members and their own domestic industries, Australian consumers (in the broadest sense of that word) who may have an interest in acquiring imported goods at the lowest available prices and Australian exporters that supply their goods to other countries that are also members of the WTO.*[2]

If it is accepted that dumping has caused the Australian industry material injury, and we note that this is a finding that is currently the subject of review in this process, then the NIP that has been adopted and that is currently operating serves the purpose of Australia's anti-dumping law, as articulated by Nicholas J. In contrast, Bisalloy's preferred outcome would be a distortion of that purpose, and would unjustifiably protect the Australian industry beyond the limits of removing the injury found to have been caused by dumping.

3 Directly quenched TMCP is not a like good and should not be subject to anti-dumping measures

In their applications both JFE Steel Corporation and Total Steel of Australia Pty Ltd argue against the finding that TMCP plate that was produced via a direct quenching process fell within the broad description of Q&T steel plate, and therefore was subject to the investigation and the imposition of dumping measures.

In this regard we note that the general finding made in Report No. 234 was that TMCP steel plate was not the goods and was not "like goods", and therefore was irrelevant to the investigation. However, it is important to also note that the Commission found that TMCP steel plate *that was direct quenched* was included in the investigation and is subject to the measures.

Ruukki needs to correct one aspect of these submissions. The only products of Ruukki's that have been excluded from the measures are strip products, in accordance with the finding at page 20 of Report No. 234. TMCP plate products that Ruukki produces through a direct quenching process have not been excluded from the measures, as JFE and Total Steel contend they have been. This is

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2 [2013] FCA 870, paragraph 148.

demonstrably clear if reference is had to page 17 of Ruukki's Exporter Visit Report.

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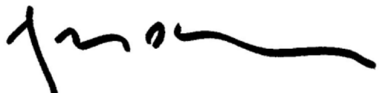
Thank you for your consideration of these matters.

Yours sincerely



Daniel Moulis
Principal