

**Undertaking to the
Australian Competition and
Consumer Commission**

**Given under section 87B by
P&T JV Company Pty Limited**

1. Background

- 1.1 OneSteel and Smorgon each operate a structural pipe and RHS manufacturing business in Australia. OneSteel and Smorgon have agreed to enter into an incorporated pipe and tube joint venture, which will result in the structural pipe and RHS manufacturing assets of both OneSteel and Smorgon being transferred to, and operated by, P&T JVC.
- 1.2 The Commission has expressed a concern about anti-dumping applications made under Part XVB, Division 2 of the Customs Act 1901 which are unsuccessful. The Commission is concerned that such applications may have an effect on competition in the Australian market for structural pipe and RHS.
- 1.3 P&T JVC has offered the undertakings set out in this document for the purpose of addressing the Commission's concern.

2. Commencement and Duration of Undertaking

- 2.1 This Undertaking comes into effect on the Implementation Date.
- 2.2 This Undertaking will cease to have effect when the time period specified in clause 3.1 has expired.

3. Anti-dumping applications

- 3.1 For three years from the Implementation Date:
- (a) if P&T JVC lodges or supports an anti-dumping application under Part XVB, Division 2 of the Customs Act 1901 in relation to the importation of structural pipe or RHS products into Australia by any person; and
 - (b) Customs initiates an investigation; and
 - (c) the application is unsuccessful,
- then P&T JVC must send by registered airmail an executed deed in the form contained in Schedule 1 to these Undertakings to each Eligible Importer within five Business Days of:
- (d) the date on which any appeal from a decision of Customs or the Minister of Customs is determined; or
 - (e) the expiry of the time period in which such an appeal may be lodged.
- 3.2 An anti-dumping application will be unsuccessful for the purposes of clause 3.1 only if:
- (a) at the conclusion of an investigation Customs decides to terminate the entire investigation on grounds other than the application of section 269TDA (1)(b)(ii) and (3) of the Customs Act or the Minister of Customs decides not to impose any anti-dumping measures due to a failure to establish dumping or material injury;

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- (b) the decision of Customs or the Minister of Customs referred to in paragraph (a) is not overturned on appeal; and
 - (c) there have been no price undertakings accepted by Customs.
- 3.3 For the avoidance of doubt, clause 3.1 does not apply to:
- (a) anti-dumping applications lodged prior to 19 December 2006;
 - (b) applications seeking a review of variable factors in relation to anti-dumping measures;
 - (c) appeals in relation to anti-dumping applications made prior to the Implementation Date.

4. Compliance with these Undertakings

- 4.1 P&T JVC acknowledges that these Undertakings are court-enforceable in accordance with section 87B of the Trade Practices Act.
- 4.2 In performing its obligations under this Undertaking, P&T JVC will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of the Undertaking.
- 4.3 P&T JVC will not be liable for any failure to perform an obligation under these Undertakings if the failure is due to a Force Majeure.
- 4.4 If P&T JVC is unable to comply with its obligations as set out in these Undertakings due to a Force Majeure or changed circumstances beyond its control, or if changed circumstances otherwise make modification of these Undertakings desirable, then P&T JVC and the Commission must review these Undertakings and negotiate in good faith in relation to the amendment or revocation of these Undertakings, having regard to the need to maintain competition in the markets in Australia in which P&T JVC operates.
- 4.5 P&T JVC will promptly provide the Commission with any information which the Commission reasonably requests in relation to compliance with these Undertakings.

5. Acknowledgments

- 5.1 These Undertakings do not prevent the Commission from taking enforcement action at any time during or after the duration of these Undertakings in respect of any breach by P&T JVC of these Undertakings.
- 5.2 P&T JVC acknowledges that the Commission will publish these Undertakings on its Section 87B Undertakings Register and that the Commission may publicly refer to these Undertakings.

6. Costs

All costs incurred by P&T JVC either providing information to the Commission or in responding to Commission enquiries as required by these Undertakings are to be paid by P&T JVC.

7. Definitions

The following definitions apply:

Business Day means a day on which trading banks are open for business in Melbourne and Sydney, Australia, but does not include any Saturday, Sunday or public holiday;

Customs means Australian Customs Service;

Eligible Importer means an importer of the Goods Under Consideration in an anti-dumping application with import volumes exceeding 1000 tonnes over the Customs investigation period, and in respect of whom Customs has published an importer visit report indicating that the importer has supplied the requisite information to Customs during the investigation;

Force Majeure means any event or cause outside the reasonable control of the affected party (including strikes or labour disputes, a governmental restraint, directive or requirement) and which could not have been avoided or overcome by that party by the exercise of reasonable care or due diligence;

Implementation Date means the date on which the joint venture of the structural pipe and RHS manufacturing businesses of OneSteel and Smorgon commences manufacturing operations;

Joint Venture Transaction means the transaction described in clause 1.1;

OneSteel means OneSteel Limited (ACN 004 410 833);

P&T JVC means P&T Joint Venture Company Pty Limited (ACN 123 160 172);

RHS means rectangular hollow sections;

Smorgon means Smorgon Steel Group Limited (ACN 082 181 726).

8. Interpretation

8.1 The following rules of interpretation apply:

- (a) the singular includes the plural, and vice versa;
- (b) referring to anything after the words include, includes or including does not limit what else might be included; and
- (c) a reference to "these Undertakings" is a reference to all the provisions of this document.

8.2 In the interpretation of a clause of this Undertaking, a construction that would promote the purpose or object underlying the Undertaking (whether that purpose or object is expressly stated in the Undertaking or not) shall be preferred to a construction that would not promote the purpose or object.

8.3 In the interpretation of this Undertaking, material not forming part of this Undertaking may

be considered if that material is capable of assisting in the ascertainment of the meaning or context of a clause of this Undertaking in order to:

- (a) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
- (b) determine the meaning of a clause when the ordinary meaning conveyed by the text of the clause taking into account its context in the Undertakings and the purpose or object underlying the Undertaking leads to a result that does not promote the purpose or object underlying the Undertaking.

8.4. In determining whether consideration should be given to any material in accordance with clause 8.3, or in considering any weight to be given to any such material, regard shall be had, in addition, to any other relevant matters, to:

- (a) the effect that reliance on the ordinary meaning conveyed by the text of the clause would have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
- (b) the need to ensure that the result of the Undertaking prevents any substantial lessening of competition which the Joint Venture Transaction would otherwise cause.

9. Notices

9.1 Any notice or other communication to the Commission pursuant to these Undertakings must be sent to:

General Manager – Mergers and Assets Sales Branch
Australian Competition and Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602
Facsimile (02) 6243 1199

or to any other address which the Commission subsequently notifies to P&T JVC.

9.2 Any notice or other communication to P&T JVC pursuant to these Undertakings must be sent to:

Chief Executive Officer – Pipe & Tube Joint Venture
Level 40, 259 George Street
SYDNEY NSW 2000
Facsimile: (02) 9239 6608

or to any other address which P&T JVC subsequently notifies to the Commission.

Schedule 1

Reimbursement Deed

P&T JV Company Pty Ltd

[name of importer]

Date	[date]
Parties	
1.	P&T JV Company Pty Limited (ACN 123 160 172) registered in Victoria of Level 40, 259 George Street, Sydney NSW 2000 (P&T JV)
2.	[name of importer] [address] (the Importer)
Recitals	
A	On [date] the Australian Competition and Consumer Commission accepted pursuant to section 87B of the Trade Practices Act 1974 (Cth) an undertaking proffered by P&T JV (the Undertaking) which required P&T JV to execute a deed in the following terms in favour of certain importers if P&T JV lodged or participated in an unsuccessful anti-dumping application.
B	On [date of application] P&T JV participated in an anti-dumping application in respect of structural pipe and RHS pursuant to Part XVB, Division 2 of the Customs Act 1901 (the Application) which was unsuccessful as defined by clause 3.2 of the Undertaking. As a result, P&T JV is required to enter into a deed in the following terms with the Importer.

It is agreed as follows.

1. Reimbursement

- 1.1 If the Importer wishes to obtain reimbursement of Expenses, the Importer must provide to P&T JV a written claim for reimbursement of Expenses within 30 days of the date of P&T JV executing this Deed, providing details of the Expenses, tax invoices and receipts to verify the Expenses claimed and any other information in respect of the Expenses which is reasonably requested by P&T JV.
- 1.2 P&T JV must pay to the Importer the amount of the Expenses claimed by the Importer up to the Maximum Amount within 30 days of receipt of the information required by clause 1.1, unless P&T JV seeks verification of the Expenses claimed in accordance with clause 2.

2. Verification of Expenses

- 2.1 P&T JV may notify the Importer that P&T JV requires verification of the Expenses within ten Business Days of receipt of the information required by clause 1.1. Within five days of giving notice to the Importer that verification is required, P&T JV must appoint an independent auditor who is a partner in a reputable accounting firm which does not audit

the accounts of P&T JV to review and, if appropriate, certify that all or part of the Expenses claimed by the Importer:

- (a) relate to the Application;
- (b) were reasonably and properly incurred by the Importer; and
- (c) have been paid by the Importer,

and to provide a copy of any certificate to both P&T JV and the Importer.

- 2.2 If a certificate is issued by the auditor appointed pursuant to clause 2.1, P&T JV must pay the Expenses which have been certified, up to the Maximum Amount within ten Business Days of receipt of the certificate.
- 2.3 If the auditor either does not issue a certificate pursuant to clause 2.1 or issues a certificate in respect of only part of the Expenses, having formed the view that all or part of the Expenses claimed by the Importer did not relate to the Application or were not reasonably and properly incurred by the Importer or have not been paid, the auditor must provide this view in writing to both P&T JV and the Importer. P&T JV will have no obligation to make any payment in respect of those Expenses which in the auditor's view did not relate to the Application or were not reasonably and properly incurred by the Importer or have not been paid.
- 2.4 Neither party may challenge the conclusions made by the auditor pursuant to clause 2.1, unless a manifest error has been made by the auditor.
- 2.5 The costs of the auditor must be paid by P&T JV if the auditor certifies that all of the Expenses claimed by the Importer relate to the Application, were reasonably and properly incurred by the Importer and have been paid. In all other cases, the Importer must pay the costs of the auditor and these costs will be deducted from any amount otherwise payable to the Importer by P&T JV pursuant to this deed and paid by P&T JV to the auditor.

3. Definitions and Interpretation

3.1 Definitions

The following definitions apply unless the context requires otherwise.

ACCC means the Australian Competition and Consumer Commission;

Application means the anti-dumping application in respect of structural pipe and RHS pursuant to Part XVB, Division 2 of the Customs Act 1901 in which P&T JV has participated;

Business Day means a day on which trading banks are open for business in Melbourne and Sydney, Australia, but does not include any Saturday, Sunday or public holiday;

Eligible Importer means an importer of the Goods Under Consideration in the Application with import volumes exceeding 1000 tonnes over the Customs investigation period, and in respect of whom Customs has published an importer visit report indicating that the importer has supplied the requisite information to Customs during the investigation;

Expenses means external legal and external consultant expenses incurred by the Importer in respect of the Application excluding GST;

GST has the meaning given by the GST Law;

GST Law has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Importer means [name of importer];

Maximum Amount means the lesser of A\$50,000 and the figure which results from dividing A\$400,000 by the total number of Eligible Importers who submit claims for expenses in respect of the Application;

P&T JV means P&T JV Company Pty Limited (ACN 123 160 172);

Undertaking means the undertaking proffered by P&T JV and accepted by the ACCC under section 87B of the Trade Practices Act on [date] in respect of future Applications.

3.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause is a reference to a clause of this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form and includes a communication by electronic mail.
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.

7. Assignment

The Importer cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed or attempt or purport to do so, without the prior written consent of P&T JV. The consent of P&T JV may be withheld in its absolute discretion without giving any reason for doing so.

8. No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

9. Costs and Stamp Duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All stamp duty (including fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne by P&T JV.

10. Governing Law and Jurisdiction

This Deed is governed by the laws of Victoria. Each party submits to the jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

11. Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Executed and delivered as a Deed in [Sydney, New South Wales]

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
P&T JV Company Pty Limited:

Director Signature

Director Signature

Print Name

Print Name

Executed as a deed by [name of importer]:

Director Signature

Director Signature

Print Name

Print Name

**Signed for P&T JV Company Pty Limited
(ACN 123 160 172) by:**

Director Signature

Director/Secretary Signature

Print Name

Print Name

Date:

This Undertaking offered by P&T Joint Venture Company Pty Limited (ACN 123 160 172) is accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Trade Practices Act 1974*

Graeme Julian Samuel

Chairman

Date: