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By email

Dear Matthew

Statement of Essential Facts 234 Quenched and tempered steel from Finland, Japan and Sweden

As you know, we act on behalf of SSAB Swedish Steels Pty Ltd and its related companies ("SSAB") in this matter.

Our client has reviewed Statement of Essential Facts 234 ("the SEF") and continues to insist that the Commission is mistaken insofar as it has decided not to terminate the investigation with regard to imports of quenched and tempered steel plate ("Q&T steel") from Sweden, in accordance with Section 269TDA(13) of the *Customs Act 1901* ("the Act"). SSAB respectfully submits that the correct decision - indeed the only decision when all the facts are fully considered - is that any injury caused by imports of Q&T steel from Sweden during the period of investigation would have to be considered to have been negligible.

In that regard, SSAB wishes to address the following aspects of the SEF.

- the dumping margin determined in the case of SSAB;
- the consideration of the cumulative effect of the exports of the goods to Australia;
- the technical superiority of the SSAB Group's product;
- the form of interim duties to be applied to exports of Q&T steel from Sweden; and
- the non-injurious price.

A The "materiality" of a dumping margin is secondary to the question of whether injury has been caused by dumping

SSAB notes that the SEF adopts several references to the "*materiality*" or the "*level*" of the dumping margins, to support the conclusion that the Australian industry has suffered injury as a result of dumped exports.¹

The SEF concludes that the dumping margin applicable to SSAB was 34%.

In this regard, SSAB firstly wishes to emphasise that the "materiality" of the Swedish dumping margin is essentially a result of the higher domestic market prices within Sweden. It was not a result of "unprofitable" sales to Australia from the collective perspective of the SSAB group of companies that were involved in making those sales. Based on a flow-through analysis of the costs of SSAB EMEA AB ("SSAB EMEA") as manufacturer, SSAB Swedish Steel Pte Ltd as trader intermediary and SSAB Swedish Steel Pty Limited as Australian distributor, the export sales were profitable. Although it is

¹ Pages, 48, 59 and 60 of the SEF for example.

conceded that those sales were profitable to a lesser extent than the comparative domestic sales, SSAB does not wish it to be thought that the relevant companies were collectively losing money on their Australia-destined sales. That was not the case.

In this context, SSAB does wish to highlight that a recommendation to impose measures against Q&T steel from Sweden – a proposition which we continue to argue against in this submission – would be a recommendation which penalises the kind of above cost sales behaviour that in a solely domestic context would be considered to be commendable competition.

Secondly, the “dumping margin” is not the “effective rate” of any duties that might be recommended. SSAB’s effective rate is the lowest amongst the investigated exporters. This supports the proposition that SSAB’s export prices at the customs border were higher than the prices for other Q&T steel that was on offer to the Australian market, even after work-back adjustments were deducted from SSAB Australia’s first independent resale. We have seen nothing in the SEF that contradicts this. We maintain that this is entirely explicable, because SSAB’s Q&T steel is manufactured to higher standards than other Q&T steel. It is purchased at higher prices because that quality difference is understood and accepted by the market place.

Thirdly, and most importantly, the Commission must assess whether dumping has caused material injury. To observe that there was a large dumping margin and then to assume that the exports caused injury on some kind of *ipso facto* basis would be to fall into serious legal error. The question is not whether exports were dumped at large margins: the question is whether the dumped exports caused material injury. Even if there was a higher dumping margin in respect of Q&T steel from Sweden, but that steel was proven to be a higher quality and higher priced steel that did not interfere with Q&T steel sales by Bisalloy, the Swedish Q&T steel still could not be said to have caused injury.

B The conditions of competition *exclude* any consideration of the “cumulative effect” of exports

SSAB welcomes the finding that dumped imports have not caused volume injury.²

Having concluded that no volume injury was caused by dumping, the material injury finding is based only upon price injury, specifically price undercutting, price suppression and price depression. This “injury” is said to be the cumulated injury resulting from imports of Q&T steel from Sweden, Finland and Japan.

With respect, SSAB strongly disagrees with the decision in the SEF to consider the cumulative effect of exports from each of the countries subject to the investigation. Under Section 269TAE(2C) of the Act the Parliamentary Secretary can only consider the cumulative effect of dumped exports where he is satisfied of a number of things, including whether it is appropriate to consider the cumulative effect of those exportations having regard to:

- (i) *the conditions of competition between those goods; and*
- (ii) *the conditions of competition between those goods, and like goods that are domestically produced.*

This requirement is addressed only briefly in the SEF, and is dismissed on the basis that importers and Bisalloy “*both sell goods into the same markets*”, or, alternatively, that “*domestically produced Q&T plate steel can be substituted with the imported Q&T steel plate*”. Additional reasons given are that that the imported goods and the domestically produced goods are used by the same or similar customers, that importers’ customers compete with Bisalloy’s distribution network, and that the domestic and imported goods are like, have similar specifications, are manufactured to similar recognised industry standards, and having similar end-uses.³ At the risk of being reductive, SSAB notes that each of these “conditions of competition” would be found in relation to any set of “like goods” from different countries. With respect, the analysis lacks rigour.

² Page 45

³ Pages 44 to 45

A major “condition of competition” that has not been considered in this regard is the price relativities between SSAB’s product and those of the other countries subject to the investigation, as well as between SSAB’s product and that produced by Bisalloy. These conditions of competition are of particular significance where the only injury that can be found to have been suffered is price related injury.

Throughout this investigation, SSAB has maintained that its prices are the highest in the Australian market. This has been supported by submissions made by several interested parties,⁴ as well as by pricing information submitted by SSAB.⁵ In addition, we consider that the securities recommended by the Commission – specifically that SSAB EMEA has the lowest effective anti-dumping rate - show that the Commission has also concluded that SSAB’s product is higher priced than Q&T steel from Japan and Finland.⁶

SSAB notes that the SEF does not directly address this matter. The closest the SEF comes to discussing prices of Q&T steel from Sweden is at page 60 where, in relation to SSAB’s position that injury caused by exports of Q&T steel from Sweden is negligible, it explains that “...pricing for all countries under investigation are at lower or similar levels to the Australian industry’s prices”.⁷ SSAB finds it odd that, in a section that relates only to SSAB EMEA exports, reference is had only to pricing from all countries, rather than pricing from Sweden specifically. In any regard, there is no discussion of the relativity of Swedish prices, whether against exports from the other countries subject to the investigation, or as against those set by the Australian industry. Indeed, there is nothing in the SEF that would indicate that SSAB’s prices were below those set by the Australian industry.

With regard to “cumulative” price injury, the SEF concludes that “price undercutting could not be consistently demonstrated for every grade, customer, month and level of trade”.⁸ Instead, the price undercutting finding is based on the idea that the levels of dumping “created a competitive benefit to importers, and demonstrates that the Australian industry faced price pressure from imported goods”.⁹ With respect, this does not explain why Q&T steel from Sweden must be cumulated with other exports. It is nothing more than a simple reiteration of the dumping finding against SSAB .

In the presence of the aforementioned evidence of SSAB’s high price, SSAB respectfully submits that the competitive conditions in the period of investigation render it inappropriate to consider the cumulative effect of the exports from the subject countries. It is inappropriate because the Commission attributes price injury to SSAB EMEA exports where SSAB EMEA exports caused no such injury. They were (and remain) higher quality products that SSAB’s customers continued to purchase for their specialised requirements at higher prices than other Q&T steel, in a market where prices and volumes were in an overall and significant decline.

Resultantly, SSAB submits that it was not appropriate to consider the cumulative effect of exports from Sweden, Finland and Japan, in the circumstances of this investigation. SSAB further submits that, if injury caused by exports of Swedish Q&T steel is considered in isolation, the Commission would be required to terminate the investigation against imports from Sweden, under Section 269TDA(13), on the basis that such imports caused negligible injury to the Australian industry.

C SSAB’s Q&T steel is technically superior

With regard to its consideration of the scope of the “like goods” the SEF refers to SSAB’s submission dated 4 July 2014, noting that the confidential comparison of technical attributes between SSAB’s

⁴ Submissions by Australian Steel (submission no 069) and Sheperd Transport Equipment (submission no 030) for example.

⁵ Referred to as “Attachment 75 – Australian pricing information”.

⁶ SSAB also notes that suggestions in the Commercial Metals Pty Ltd visit report stating that SSAB was the price leader are without merit, and we can see nothing in the SEF that gives those suggestions any credence or support.

⁷ Page 60

⁸ Page 48

⁹ *Ibid.*

product and of those produced by the Australian industry would not be considered until a further non-confidential version of that comparison was provided.¹⁰

SSAB's argument seems to have been misinterpreted. SSAB did not provide this information as evidence that its product was not "like" that produced by the Australian industry. Rather, the point was to highlight that, although both products can generically be described as Q&T steel, the quality and technical acuity of SSAB's plate was such that customers did not consider them to be substitutable. The point being made was that there was no real competitive interaction between SSAB's Q&T steel, and that sold by the Australian industry.¹¹

However, although the SEF accepts that there are differences in the "*perceived quality of different manufacturers*" it also considers that the existence of "*common customers*" is sufficient to establish that there is a competitive interaction between the products.¹² SSAB disagrees with this conclusion. Customers have a multiplicity of needs, not all of which will require SSAB's premium product. SSAB requests the Commission to seriously reconsider whether sales to a common customer is enough to establish a competitive interaction between SSAB's product and that produced by the Australian industry.

SSAB once again wishes to emphasise that its product is technically superior to that produced by the Australian industry. This technical superiority is a result of the unrivalled process control employed by SSAB, not only at SSAB EMEA in Sweden but elsewhere as well. The premium quality of SSAB's Q&T steel is a hallmark of all products produced by SSAB worldwide. As an international steel company with multiple production sites, SSAB deals with many customers on a global scale. These customers require product consistency and strong technical support at all their manufacturing locations. To ensure product consistency, SSAB has proprietary internal specifications for properties, consistency and workshop performance, all of which must be met before a facility can release SSAB branded products on to the market. All SSAB products sold by SSAB Australia have been certified to meet these internal standards.

D The form of interim duties applicable to Q&T steel exported from Sweden

The Commission's preliminary position is that duties payable on imports of SSAB Q&T steel will be subject to a fixed/variable duty collection mechanism. The basis for this position is that "*there are complex company structures involving related parties*".

Without detracting from SSAB's primary position – which is that its products have not caused material injury to the Australian industry – SSAB contests the basis for the adoption of the fixed/variable dumping duty liability mechanism.

Although it is not expressly stated, our appreciation of the adoption of a "variable" duty component for related parties is based on the notion that transactions between related parties can be structured in such a way as to minimise duty liability. However this notion is rebutted by the evidence available to the Commission, with regard to SSAB's pricing policies.

Throughout the investigation, SSAB went to great efforts to explain and document its pricing policies, and in particular we refer to "Confidential Attachment EXP 1" and "Confidential Attachment EXP 2" of the SSAB EMEA AB Exporter Visit Report, and the conversation surrounding those documents that took place during the verification visit. Those documents underline that the fundamental consideration with regard to SSAB's pricing policy to Australia is local market conditions (taking into account the unique position of SSAB's products within that market) and compliance with multiple taxation regimes. Within this framework SSAB does not structure its prices so as to minimise or avoid dumping duty liability. Any duty liability – "ordinary" or "dumping" – is a cost consideration that will be taken into account in price setting by SSAB companies in the same way as any unrelated companies would take it into account. SSAB strictly applies OECD pricing guidelines within the SSAB organisation. SSAB does not plan to avoid dumping duty – it plans to price according to the market

¹⁰ Page 17

¹¹ [CONFIDENTIAL TEXT DELETED – identification of end user of SSAB Q&T steel and assumptions about its confidential opinions]

¹² Page 60.

conditions that its group companies encounter at their different levels of trade. SSAB will pay dumping duty as it applies to its market prices. SSAB does not and will not manipulate its prices to its own ends to avoid the payment of dumping duty.

Therefore, the “issue” that the fixed/variable duty collection mechanism is designed to redress does not arise. In these circumstances, SSAB considers the use of a variable component of the duty mechanism to be punitive and a bar to competition. SSAB requests that it be treated fairly and equitably, and be subject only to an *ad valorem* duty collection regime, as is intended to be the case for other cooperative exporters.

E Bisalloy’s “full margin of dumping” submission

Lastly, SSAB has lately noticed the submission dated 12 September 2014 that has been made by Bisalloy in response to the SEF. In that submission, Bisalloy argues that the non-injurious price (“NIP”) should reflect the full margins of dumping. SSAB has already discussed the relevance of the full “dumping margins” to the material injury determination in A above.

SSAB’s clear and consistent position is that its products have not caused material injury to the Australian industry – clearly, under such circumstances there is no need for any duties to be imposed and the question of an NIP for SSAB’s exports is therefore irrelevant. However, without prejudice to SSAB’s primary position, we would note that the only bases put forward by Bisalloy for the Commission to ignore the lesser duty rule are two errant references within the SEF, neither of which are made in connection with the substantive NIP analysis, and neither of which can strip the detailed NIP analysis of its relevance and effect. If the Commission thinks it can express its Report more clearly, given that the references have caused confusion to Bisalloy at least, it now has the opportunity to make that clarification. The references that Bisalloy has fastened upon cannot override the considered need for a NIP or what the Commission believes is the level of that NIP.

SSAB’s primary position is that the Commission should terminate the investigation against exports from Sweden under Section 269TDA(13) of the Act, on the basis that quenched and tempered steel exported from Sweden has not caused material injury to the Australian industry.

In the alternative, and without detracting from SSAB’s primary position, SSAB denies the need for dumping duty to be collected on imports of its quenched and tempered steel from Sweden using a combination method as has been proposed. There is no evidence of an intention or likelihood to circumvent dumping duties, and SSAB firmly declares that it has no such intention. The adoption of such a method against SSAB is uncalled-for, discriminatory and anti-competitive.

Yours sincerely

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Lawyer