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Sydney Melbourne Brisbane Perth Canberra Darwin Hong Kong

The Director
Operations 3
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008

17 February 2014

ATTN: Mr Matthew Williams

Our ref 11276/80152428

Dear Sir

Quenched and Tempered Steel Plate Investigation - Submission in response to initiation of anti-dumping investigation and proposed anti-dumping measures in relation to exports from Japan

We act for Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation and Kobe Steel, Ltd. and refer to:

- the application for the publication of an anti-dumping duty notice with respect to quenched and tempered steel plate (**Q and T Steel**) from Finland, Japan and Sweden lodged by Bisalloy Steel Ltd on 20 November 2013 (**Application**);
- the Australian Anti-Dumping Commission's (**ADC**) consideration report in relation to the application (**CON 234**) dated 30 December 2013; and
- the subsequent Anti-Dumping Notice (ADN 2014/01) providing notice of the initiation of an investigation into alleged anti-dumping pursuant to the ADC's consideration of the application.

We provide the following joint submission on behalf of our clients and reserve the right to expand upon or supplement this submission at a later point in time.

1. **Introduction**

- 1.1 Our clients consider the claims made by Bisalloy Steel Ltd (**Applicant**) in the application, as reflected in CON 234, to be significantly deficient of substance and to rely upon misguided assumptions and assertions regarding the conditions of the Australian market for Q and T Steel during the period of investigation.
- 1.2 Specifically, our clients submit that the claims made by the Applicant that it has suffered injury and that its injury was caused by dumped imports from Japan to be implausible, inherently unsubstantiated and reflect a gross lack of consideration of market variables other than product competition.
- 1.3 We will deal in turn with issues of dumping, injury and causation separately below.

2. **Dumping**

- 2.1 Our clients appreciate that, for the purposes of consideration of the application and initiation, the application must be supported by evidence of dumping - that is, the export price of goods that have been exported to Australia is less than the normal value of those goods.

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- 2.2 We appreciate that at this stage of the investigation the Applicant is only required to furnish evidence to satisfy the decision maker that the goods have been dumped, and that the margin of dumping is not under the de-minimis threshold of 2%.
- 2.3 We note the ADC's methodology for the calculation of dumping in CON 234 and specifically:
- (a) the use of Australian Customs and Border Protection Service (ACBPS) import data for the purposes of determining quarterly weighted average unit export prices from the nominated countries (set out at 5.3.2 of CON 234); and
 - (b) the construction of quarterly unit values for the goods for each nominated country (set out at 5.4.2 of CON 234).

Export prices

- 2.4 As a caveat to our response, we note that we do not have access to the source data exported from the Integrated Cargo Systems (ICS) database by the ADC for the purposes of calculating weighted average export prices.
- 2.5 We note however, the ADC's consideration of the Applicant's claims regarding the unreliability of the import data prepared by the Australian Bureau of Statistics (ABS) and the finding by the ADC that this claim was not sufficiently substantiated by the Applicant either as a matter of "reasoning or probative evidence" in so far as it relates to Japan.¹
- 2.6 We support the ADC's views in this regard. We submit that the Applicant's claims regarding the unreliability of the ABS import data reflect the Applicant's reliance upon assumption and misguided assertion rather than fact which is inherent in the grounds for its application.

Construction of normal values

- 2.7 We understand the basis and methodology for the construction of normal values of the goods for each of the nominated countries for the purposes of examining the existence and quantum of dumping (or lack thereof).
- 2.8 We note the explanation of the methodology proposed by the Applicant, and the consideration of the ADC, provided at 5.4.1 and 5.4.2 respectively in CON 234.
- 2.9 Whilst we do not object to this construction methodology for the purposes of consideration of the application pursuant to section 269TC of the *Customs Act 1901* (Cth) (**Customs Act**), we query the basis upon which the ADC has used selling prices for standard grade plate steel as the foundation for the construction of normal values, without making adequate adjustment to account for selling, general and administrative costs (SGA) and profit margins which would be incorporated into such prices.
- 2.10 In this regard we note that at 5.4.2 of CON 234 the ADC specifically notes that:

"The Commission considers that incorporating reported selling prices for standard grade plate as the starting point for the constructed normal values could result in the

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normal values being marginally overstated as the reported selling prices would include selling expenses and a margin for profit that would not be incurred by an integrated Q&T steel plate producer."

- 2.11 Notwithstanding the ADC's explicit consideration of the issues associated with using unadjusted selling prices as the basis for the construction, it is apparent that the ADC has not made any attempt to apply any reasonable adjustment to these selling prices to mitigate the overstatement of normal value.
- 2.12 We submit that information regarding average SGA and profit ratios for the sale of 250mpa plate steel would be available to the ADC from previous investigations into Plate Steel (ITR 196).
- 2.13 We submit that the ADC must recalculate the constructed normal value by applying a downward adjustment to the plate steel selling price.
- 2.14 Our client otherwise reserves its rights to provide further submissions regarding the calculation of normal values as the investigation progresses.

3. Injury

Cumulative injury analysis

- 3.1 We appreciate that section 269TAE(2C) of the Customs Act provides that injury analysis may be approached by way of consideration of the cumulative effects of import competition because of the specific dynamics between:
- (a) imported products; and
 - (b) imported products and the Australian industry.
- 3.2 However, we submit that, in order for this section to be enlivened, it is necessary that evidence of the particular 'dynamics' between the imported products **AND** between the imported products and the Australian industry be undertaken.
- 3.3 We submit that, on the facts available to the ADC, and given the absence of information which would reasonably satisfy the necessary factual indicia of competition between imported product, the requisite circumstantial conditions of section 269 TAE(2C) of the Customs Act were not satisfied and, accordingly, cumulative injury analysis was not reasonably open to the ADC.
- 3.4 We note the ADC's analysis of export prices (developed using data drawn directly from ACBPS import database) reflects the export price trends between the nominated countries by quarter during the period of investigation (POI) set out in the table below.

Country	Dec quarter 2012 (AUD)	Mar quarter 2013 (AUD)	Jun quarter 2013 (AUD)	Sep quarter 2013 (AUD)
Finland	\$1,432	\$1,457	\$1,349	\$1,292
Japan	\$1,448	\$1,404	\$1,358	\$1,500
Sweden	\$1,449	\$1,226	\$1,289	\$1,217

- 3.5 The table reflects a consistent decline in prices from Finland and Sweden across the quarters of the POI and similarity between the unit price of the goods under consideration (GUC) from these two countries.
- 3.6 Our client considers that the evidence could be extrapolated to indicate that there is significant price competition between these two Scandinavian countries and that prices from the region are affected by competitor parity concerns.
- 3.7 The table clearly indicates however, that, notwithstanding the similar drop in unit prices from Finland and Sweden, prices from Japan remained reasonably consistent during the POI and were, in fact, higher in the final quarter of the POI than at the beginning and significantly higher than their alleged major export competitors.
- 3.8 Whilst our clients reserve their rights with respect to discussing the variables which affect export pricing at this time, they refute the implication that competition between exporters into the Australian market has an impact on their pricing policies.
- 3.9 Our clients wish to emphasise that all export activities, and associated pricing policies, are conducted on the basis of market negotiation with their customers in Australia.

4. **Injury factors**

Volume effects

- 4.1 Our client refers to the discussion regarding the Applicant's declining sales volumes under section 6.7 of CON 234, and, specifically, the graphical extrapolation of sales data for the injury analysis period in Figure 3.
- 4.2 The Applicant has itself noted in its application to the ADC, referred to at section 4.5.2 of CON 234, that the most significant source of demand for the GUC in the Australian market comes from the resources sector.
- 4.3 It is no secret that the Australian resources market has experienced a significant reduction of activity over the past 2 years, which reduction has increased sharply in the 2012-2013 financial year. This decline in market demand, driven by the fall in activity in the Australian resources sector and related markets, is specifically referred to by the Applicant in its FY13 Annual report which states:
- "A fall in prices for Australia's major commodities, particularly iron ore and coal, lead to widely publicised deferrals or cancellations of a number of planned resources projects which quickly led to a rapid decline in forecast demand and prices for steel, including Bisalloy's products"*
- 4.4 Figure 3 of CON 234 clearly reflects this contraction in the Q and T Steel market generally, and when read with figure 1, reflects the significant reduction in import volume from the nominated countries. Our clients submit that this contraction in Australian demand has significantly affected its own commercial activities in the sector and significantly reduced its sales volumes to its Australian customers.
- 4.5 Our clients submit that Japanese mills, individually and collectively, have experienced sharp fluctuations in demand over the 2010 -2013 period. The summary below reflects our client's

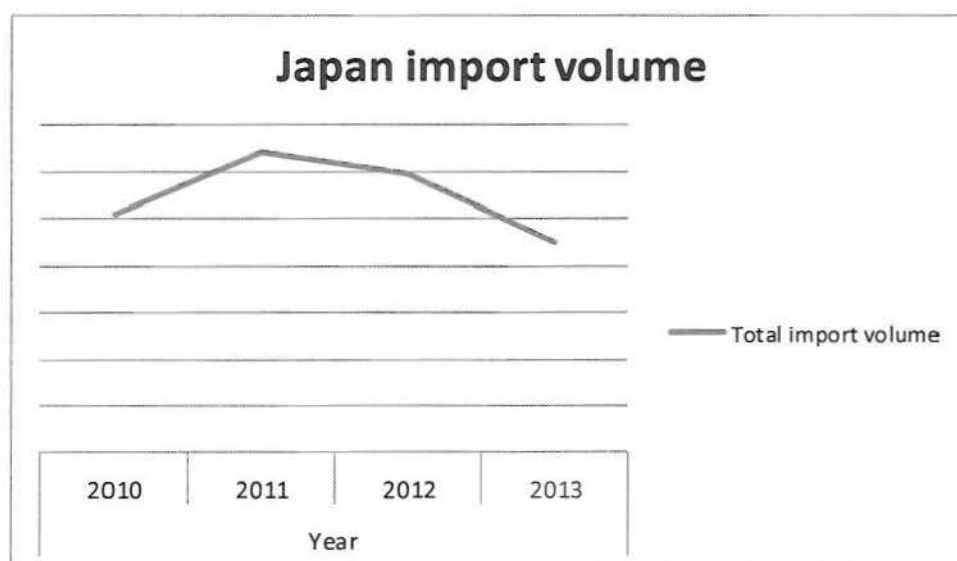
summary of import statistics of the GUC during the period, and the proportionate difference of annual import volumes of Q and T Steel into Australia from JFE and NSSMC.

Year	Total imports (MT) (000's)	% difference
2010	25.5	
2011	32.1	21%
2012	29.7	-8%
2013	22.4	-33%

4.6 The table above highlights that:

- (a) Imports increased in 2011 relative to 2010 levels;
- (b) There was a relatively sharp decline in volume in 2012; and
- (c) There was a sharp decline in 2013 relative to 2012 levels.

4.7 These trends become more apparent when represented graphically:



4.8 The above data is consistent with the trends, reflected in Applicant's own sales data, regarding the significant decline in market demand for the GUC during 2012-2013.

4.9 What is interesting to note, however, is that whilst the data reflected in figure 3 shows the Applicant achieving an increase in sales volumes in 2012, Japanese imports experienced a relatively sharp decline.

4.10 Our clients note, to this end, that the Australian market data extrapolated by the ADC indicates that, notwithstanding the overall contraction of the market generally, and the alleged heightened

market competition, the Applicant has managed to increase its market share in 2013, relative to 2011 levels.

- 4.11 Whilst our clients share the Applicant's concerns regarding the contraction of the market for the GUC generally in Australia, they do not consider that the decline in volume, of itself, to be an indicia of injury related to import trade activity, dumped or otherwise.

Price effects

- 4.12 Our clients understand that price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

Price Suppression and Depression

- 4.13 We refer to figure 4 of CON 234 which extrapolates the relative margin between the Applicant's cost to make and sell (CTMS) and revenue on a quarterly basis during the injury analysis period (September 2010 to September 2013).
- 4.14 The graph clearly indicates that during this period Bisalloy's CTMS the GUC was subject to quite significant fluctuation. Specifically, we note that when the CTMS fluctuations in Figure 4 are analysed relative to the volume variables during the same period reflected in Figure 3, an inverse correlation is apparent between volume and CTMS - that is, when sales volume rises, unit CTMS falls and the converse is true where sales volume decreases.
- 4.15 Our clients consider that this pattern is consistent with the Q and T industry globally and is not a phenomenon unique to the Applicant's situation in the Australian market. Simply put, Q and T Steel production is a volume dependent process - costs per unit will rise when throughput in the production falls. The relative ratio between cost and revenue will depend on internal variables related to the costs of production and manufacturing efficiencies.
- 4.16 Logically, production volumes and associated unit costs are inextricably linked to demand for the goods in the market. The pattern in question between September 2012 and September 2013 appears consistent with a changing pattern of demand and changing trends in the market.
- 4.17 Figure 4 reflects that the revenue attained by Bisalloy remained relatively stable during the injury analysis period, notwithstanding the peaks and troughs in volume and associated spikes in CTMS.
- 4.18 Our clients submit that the stability of unit revenue is not, of itself indicative of price depression, but symptomatic of the historical stability of Q and T Steel prices in the Australian (and global markets).
- 4.19 Our clients submit that, as shown by the quarterly export price data relied upon by the ADC, the attainable market price for its goods have remained at historically stable levels during the course of the POI, notwithstanding the fact that this period was one of dramatic decline in consumer demand.
- 4.20 As to the implied assertion that prices have been suppressed on the basis that the Applicant has experienced periods where the Applicant's costs of production outstripped revenue, our clients consider that these issues are symptomatic of the turbulence in the market and the difficulties all

producers of the GUC are experiencing in adjusting to the extreme decline in demand in what has been historically a booming market in Australia.

Reduced Profitability

- 4.21 Our clients submit that the above views on the Applicant's commercial position regarding the GUC are further supported by the data reflected in Figure 5 relating to the Applicant's profit and profitability during the injury analysis period.
- 4.22 Again, this table further indicates the extent of the volatility in the Q and T market in Australia from 2010 to 2013 and the extreme peaks and troughs in demand from the main sectors of consumption - predominantly the resources sector.
- 4.23 As explained above, profitability in relation to the production and sale of Q and T product is a product of demand, which in turn drives production throughput. The lower the throughput, the higher the cost of manufacture. Unit selling prices, and in turn revenues, are less dynamic and are much slower to respond to systemic market change such as has been experienced in the Q and T market in Australia during the POI.
- 4.24 Logically, the relative ratio between cost and revenue (that is the inherent profitability of sales activities) will depend on a number of internal variables related to the costs of production and manufacturing efficiencies and the ability of a business to adapt and innovate production processes in line with changes in market demand.
- 4.25 When viewed alongside Figures 3 and 4, Figure 5 reflects the financial impact of unprecedented declines in market demand which led to rising manufacturing costs and the inability of the industry generally to adapt to market movements.

Other injury factors

- 4.26 We note that the Applicant has claimed that a number of 'other injury factors' have been experienced during the period.
- 4.27 We also note that the ADC was not satisfied that the Applicant has provided sufficient evidence of the significant majority of these claims. We commend the ADC's rigor in this regard. We submit that the unsubstantiated nature of these specific claims made by the Applicant is emblematic of the inherent deficiency of the application itself and the misguided attempts by the Applicant to attribute the source of commercial losses suffered in the ebb and flow of business in an increasingly volatile marketplace through unfounded assumptions, assertions and insufficient evidence.
- 4.28 We note the ADC's comments regarding claimed 'other injury factors' raised by the Applicant, and specifically its finding that there are reasonable grounds to support the claim that the Applicant has suffered material injury in the form of reduced capacity utilisation, reduced revenues and increased stock levels of like goods. Our clients have no basis upon which to currently dispute whether or not the Applicant has experienced these factors.
- 4.29 However, we submit that these injury factors are not unique to the Applicant and have been experienced by all parties in the Australian Q and T market as a result of the overall contraction of the market - leading to under-utilisation of production facilities, greater levels of stock in inventory and reduced revenues as a result of contraction of sales.

- 4.30 The data reflects that the Applicant did, in fact, achieve a small increase in its market share during 2013 relative to 2011 levels, notwithstanding the contraction of the market. We submit that this is indicative of the fact that 'other injury factors' suffered by the Applicant are the result of overall market forces and are not attributable to market competition from imported goods, dumped or otherwise.

Conclusion on injury factors

- 4.31 Overall, our clients submit that whilst the tables reflect that, prima facie, the Applicant has suffered financial injury during the injury analysis period - these injury factors are symptomatic of unparalleled market changes which have affected all parties in the Q and T market.

5. Causation

The Applicant's claim

- 5.1 We note the claims made by the Applicant, summarised at 7.1.1 of CON 234, regarding the alleged causal link between the injury it has suffered in relation to its Q and T Steel business and increased competition in the market from dumped exports from the nominated countries.
- 5.2 We note that the underlying basis for these claims is the allegation that due to competitive forces in a contracting market, and aggressively low prices from export competition of allegedly dumped goods which have undercut the Applicant's prices, the Applicant has been forced to lower its prices to compete and retain sales volumes.
- 5.3 We note that in accepting the Applicant's claims regarding price undercutting in the Australian Q and T market, the ADC has relied upon 'internal management reporting' relating to the Applicant's price monitoring activities and examples of written quotations' apparently relating to price offers of imported goods.
- 5.4 We note that the material provided by the Applicant has been used by the ADC to calculate the alleged degree to which quoted prices of goods imported from the nominated countries put to market have undercut the selling prices of the Applicant's product.
- 5.5 We note that, on the data available to, and relied upon by the ADC, goods of Japanese origin are alleged to have significantly undercut the Applicants selling prices in all quarters of the POI.

Our client's response

- 5.6 We acknowledge that in responding to these claims we are limited in our knowledge of the specific data provided by the Applicant to the ADC to support its claims of price undercutting. However, we submit that the ADC must carefully consider the veracity and accuracy of this data for a number of reasons:

(a) quotations

Market quotations, without context can often be misleading, either by default or by design, and are often used as negotiating mechanisms in the down stream market.

Whilst our clients cannot respond to the nature of the specific quotations supplied by the Applicant, we submit that the fact that the Applicant has these quotes available to

them raises concerns regarding their legitimacy as accurate indicators of selling prices in the market.

(b) **market data**

The Applicant has claimed that it gathers market intelligence and import pricing data as a basis for monitoring the market and measuring price competition.

We note that, in relation to its import price monitoring activities, the Applicant has, unsuccessfully, suggested that the data prepared by the ABS is not consistent with its internal intelligence regarding market pricing of imported product and is unreliable. We note that the ADC has already found this claim unwarranted and has relied upon its own ICS database for the purposes of determining weighted average quarterly export prices.

Our clients submit that this is indicative of the inherent unreliability of the Applicant's commercial awareness of the market, and of the basis for its assertions regarding price undercutting.

5.7 To illustrate the concerning inconsistencies with the Applicant's claims in this regard, we have compared the export price information calculated by the ADC with the preliminary undercutting margins calculated using the Applicant's alleged 'offer price' information.

5.8 This information is provided in the below table, which illustrates significant anomalies in the relationship between export price and undercutting margin for each nominated country.

Period	Japan export price	Japan undercutting	Sweden export price	Sweden undercutting	Finland export price	Finland undercutting
Oct-Dec 2012	\$1,448	14.2 – 19.5 %	\$1,449	Nil – 3.5 %	\$1,432	18.3 – 23.4 %
Jan-Mar 2013	\$1,404	2.4 – 18.6 %	\$1,226	7.5 – 13.3 %	\$1,457	n/a
Apr-Jun 2013	\$1,358	2.3 – 16.5 %	\$1,289	3.9 – 9.5 %	\$1,349	2.8 – 12 %
Jul-Sep 2013	\$1,500	10.5 – 16.5 %	\$1,217	8.0 – 13.8 %	\$1,292	12.0 – 18.0 %

5.9 We note that, notwithstanding the fact that:

- (a) the weighted average export price of the goods from Japan remained relatively consistent during the POI, and in fact increased in the final quarter of the POI;
- (b) the weighted average export price of the Finland and Sweden decreased significantly across each quarter of the POI,

the undercutting margin for Japan remained positive during each quarter of the POI and, inexplicably, was higher, on average, in the final quarter (when export prices were at a premium) than they were in the previous quarter (when export prices were 9% lower).

5.10 Additionally, the data also reflects some very anomalous dynamics:

- (a) notwithstanding that export prices from Japan were marginally lower (\$1AUD) than the export price of Sweden in the first quarter of the POI, the margin of undercutting was significantly higher for Japanese imports;
- (b) in the second quarter of the POI, Japanese export prices were 13% higher than export prices from Sweden but a similar average undercutting margin has been calculated for both countries;
- (c) in the fourth quarter of the POI, when Japanese export prices were 19% higher than prices from Sweden and 14% higher than prices from Finland, the range of price undercutting remained higher than the margin calculated for Sweden and relatively similar to that calculated for goods from Finland.

5.11 We submit that the patent, significant anomalies presented by the data relied upon by the ADC raise significant concerns regarding the reliability of the market price data provided by the Applicant as the basis for preliminary undercutting analysis.

5.12 For the above data to be accurate, the price offered into the downstream market would have to routinely, and significantly, outstrip the export price paid for the goods. Our clients submit that such a phenomenon is so divorced from reality so as to be commercially impossible in current global climates.

5.13 We respectfully encourage the ADC to carefully reconsider the data relied upon to determine its undercutting margins for the purpose of causation analysis.

6. Injury caused by factors other than dumping

6.1 As discussed in detail previously, our clients agree with the Applicant's claims, at a broad level, that the Australian Q and T Steel market has experienced significant volatility in 2012/13 evidenced most pointedly by a dramatic decline in demand.

6.2 However, we submit that the Applicant's claims that but for the impact of dumped imports it would have retained volume in a smaller market and not suffered such a decrease in its performance to be unfounded and supported only by its own under-appreciation of the scale of market contraction.

6.3 Our clients submit that demand for Q and T products has declined dramatically in Australia, which has effected volume - both in terms of manufacturing throughput and sales volume - for all parties in the manufacture and sale of the goods. This has had dramatic impacts on the performance of these parties.

6.4 We note that, notwithstanding the above, the Applicant successfully achieved greater market share in 2013, relative to 2011 levels, which contradicts its assertions regarding its inability to increase market share in the protracting Australian market.

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6.5 As mentioned previously in this submission, issues with performance - and most notably the profitability of Q and T manufacture and sales - are the result of the unprecedented decline in the Australian and overseas markets in 2012 and the inability of manufacturers to adjust to the scale of decline. Again, we submit that these issues are not unique to the Applicant and are not attributable to import competition, dumped or otherwise.

6.6 We submit that the ADC must give careful, comprehensive consideration to the nature of the Q and T market and the factors which have been affecting it during the period of investigation when considering the proportionate impact of injurious factors in the market other than dumping.

7. Non Injurious Price

7.1 Our client notes the ADC's calculation and application of the unsuppressed selling price (**USP**) and non-injurious price (**NIP**) in its assessment of causation. We reserve our clients' rights to provide specific submissions regarding the calculation of the USP and NIP at a later date.

8. Conclusion

8.1 In summation, we submit on behalf of our clients, that the application made by Bisalloy on behalf of the Australian industry, for the publication of anti-dumping duties with respect to exports of the goods from Japan is based upon unsubstantiated assumptions, unreliable evidence and an apparent under-appreciation of the factors affecting the Australian Q and T market.

8.2 We submit that the injury factors suffered by the Applicant are not unique to the Applicant and reflect the commercial condition of all parties involved in the Q and T market. Additionally, the injury claimed by the Applicant is the result of market volatility caused by, among other things, the contraction of demand for the goods on an unprecedented scale. In our opinion, import competition, be it at dumped prices or otherwise, has not caused the injury allegedly suffered by the Applicant.

8.3 We trust that the ADC will carefully consider the issues raised in this submission in the context of its analysis of material injury and causation.

8.4 Our clients are committed to assisting the ADC to achieve a complete and accurate understanding of the Australian Q and T market and the dynamics that have affected the market, and the parties operating within this market, during the POI.

8.5 Do not hesitate to contact me should you have any questions regarding this submission or should you require specific information from our clients.

Yours sincerely


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