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SSAB Swedish Steel Pty Ltd

Investigation into the alleged dumping of quenched and tempered steel plate exported from Finland, Japan and Sweden

SSAB steel plate has not caused material injury to the Australian industry

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A Introduction

- 1 We make this submission on behalf of SSAB Swedish Steel Pty Ltd (“SSAB”) in relation to the investigation into alleged dumping of quenched and tempered steel plate (“Q&T steel plate”) exported from Finland, Japan and Sweden. The investigation was initiated by the Anti-Dumping Commission (“the Commission”) on 8 January 2014, pursuant to Anti-Dumping Notice No. 2014/01.
- 2 The investigation was initiated by an application seeking the publication of a dumping duty notice in relation to Q&T steel plate lodged by Bisalloy Steels Pty Ltd (“the Applicant”) in November 2013. The Applicant claims that it is the only Australian-based manufacturer of Q&T steel plate, and that it represents the Australian industry. SSAB imports Q&T steel plate (“SSAB steel plate”) produced by its related company SSAB EMEA AB in Sweden.
- 3 The public statements of the Applicant and information about it that is publicly available do not demonstrate the injury it now claims to have suffered. Moreover, if it is true that it has suffered material injury, then SSAB does not agree with the proposition that such injury was caused by imports, or by SSAB’s imports.
- 4 In our client’s opinion, the Applicant’s allegations are variously unfounded, deficient and unreasonable. In many cases they rely on broad generalisations and misguided assumptions. They lack any fair and realistic consideration of non-dumping related factors which would have been more than likely to have caused the Applicant injury. In particular, the Applicant downplays – almost to the extent of ignoring – the dramatic decline in customer demand caused by the downturns in the Australian mining and construction industries. It is plainly evident that this caused a very extreme contraction in the Australian market for Q&T steel plate. Imports are not to blame for these market downturns, and in reality all market participants were hit by the same injury-causing factor during the identified period of investigation.
- 5 Rather than acknowledging that any injury is largely due to a weak economy and normal fluctuations in its business, the Applicant has alleged that Q&T steel plate has been exported to Australia at prices less than their normal value and that this “dumping” has caused “material injury” to the Australian industry through:
 - (a) lost sales volume;
 - (b) price depression and suppression;

- (c) reductions in profits, profitability, return on investment, attractiveness for re-investment, revenues, capacity utilisation and wages; and
- (d) increased stock levels of like goods.

B Legal background

- 6 In accordance with Australia's obligations as a signatory to the *General Agreement on Tariffs and Trade 1994*, anti-dumping duties can only be imposed on imported goods where those goods have been found to have been dumped and, as a result of that dumping have caused, or threaten to cause, material injury.¹ This requirement is replicated in Australian law, under which it is a prerequisite to the publication of a dumping notice under Sections 269TG(1) or (2) of the *Customs Act 1901* (Cth) ("the Customs Act") that the goods for which the notice is published are dumped, and because of that dumping:

material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered.

- 7 A consideration of whether a domestic industry has suffered material injury cannot be done in a cursory or shallow manner. Article 3.1 of the WTO's *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("the AD Agreement") makes it clear that an investigating authority must base the injury determination on positive evidence, and on an objective analysis of the volume and effect of the "dumped imports" on prices in the domestic market for like goods, and the consequent impact on domestic producers of like goods.²
- 8 Australia recognises and expresses this requirement through Section 269TAE(2AA) of the Customs Act, which provides that a determination of material injury "*must be based on facts and not merely on allegations, conjecture or remote possibilities*". Therefore, even if dumping has been found to have occurred, evidence would need to be provided that the dumping of the subject goods had caused injury to the domestic industry and that the injury found to have been suffered by the domestic industry was "material".

¹ *General Agreement on Tariffs And Trade 1994*, Article IV(1).

² Report of the WTO Appellate Body in *United States – Anti-dumping Measures on Certain Hot-Rolled Steel products from Japan* (WT/DS184/AB/R) 24 July 2001, paragraph 192.

- 9 In order to confirm that the injury caused by dumping is material, Article 3.5 of the AD Agreement requires the investigating authority to examine “any known factors other than the dumped imports which at the same time are injuring the domestic industry”, and requires that any such injury should not be attributed to the subject imports. Relevant to this investigation, this non-attribution requirement is set out in Section 269TAE(2A) of the Customs Act, which provides as follows:

In making a determination... the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

- (a) *the volume and prices of imported like goods that are not dumped; or*
- (b) *the volume and prices of importations of like goods that are not subsidised; or*
- (c) *contractions in demand or changes in patterns of consumption; or*
- (d) *restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or*
- (e) *developments in technology; or*
- (f) *the export performance and productivity of the Australian industry;*

and any such injury or hindrance must not be attributed to the exportation of those goods.” [underlining supplied]

- 10 SSAB was the only importer of Q&T steel plate exported from Sweden by the one Swedish manufacturer cooperating with the investigation. This submission addresses the injury allegations made by the Applicant, in order to substantiate SSAB's position that those allegations are incorrect. If any form of actionable injury is demonstrated by the Applicant – which is not accepted – it is still the case that any alleged dumping has not caused the Applicant injury. The allegations rely on misguided assumptions and on a lack of consideration of non-dumping related factors.
- 11 Specifically, this submission will address the following factors:
- (a) that the Applicant did not suffer material injury during the period of investigation;
 - (b) that any injury suffered by the Applicant during the period of investigation was not caused by imports of the subject goods;

- (c) that the Applicant is incapable of manufacturing certain types of Q&T steel plate within the range of “like goods” as claimed by the Applicant; and
- (d) that SSAB steel plate has not caused injury to the Applicant because it is technically different to the Applicant’s steel plate, and is supplied to different markets at higher price points.

C Bisalloy claims not to have suffered material injury

- 12 The Applicant’s public pronouncements and dividend behaviour are at odds to the complaint of financial injury made in the Application. The Commission is requested to carefully consider the reality of the situation and the credibility of an organisation that professes that one state of affairs exists to one interest group – its shareholders – and that a different state of affairs exists to another - the Commission.
- 13 The investigation covers the period of 2013. This is in line with the Applicant’s consideration that the injury it suffered as a result of dumping became material during the “*twelve months to September 2013*”.³ However, SSAB questions whether this is accurate, because the information that the Applicant has itself made available to the market does not bear out this claim. In fact that information contradicts that claim. According to the Applicant, its performance during the period of investigation was not only in line with its performance in preceding years, but was actually better.
- 14 The FY 2013 Annual Report of the Bisalloy Steel Group, states that it “*maintained its market share for FY2013*” and that “*the Group’s financial position strengthened over the year*”.⁴ This contradicts the contention that it suffered from reductions in profits, profitability, return on investment and revenues.
- 15 SSAB further notes that the profitability of the Bisalloy Steel Group, demonstrated by its EBITDA⁵ figures, shows an increase over the injury investigation period. Its EBITDA at the

³ Application, page 21.

⁴ Bisalloy Steel Group Limited 2013 Annual Report, page ii. This is supported by the analysis on page 20 of the Consideration Report.

⁵ Earnings before interest, taxes, depreciation and amortization

commencement of the injury investigation period in FY 2010 was \$5.7 million.⁶ In FY 2013 its EBITDA was \$8.1 million, a 42% increase over that period.⁷ Furthermore, an ASX/Media Release published by the Bisalloy Steel Group on 21 August 2013 has as its heading “*Bisalloy Delivers Profit and Reintroduces Dividend in Challenging Market*”.⁸ It is notable that Bisalloy did not distribute dividends from 2008 to 2012 due to challenges faced during that period of time. However on 25 November 2013 - during the period that the Applicant alleges that dumping caused it material injury - it was able to pay and did pay a dividend.

16 The ASX/Media Release also states:

Despite these competitive pressures, Bisalloy is pleased to report it has maintained its market share for FY2013 while continuing to reduce its debt through managing its costs and inventory, and is well placed to take advantage of any upturn in domestic demand.
[underlining supplied]

17 These statements made to the market by the Applicant do not accord with the idea that the Applicant suffered material injury during the period of investigation. If no material injury has been suffered during the period of investigation, then there can be no positive finding of any injurious dumping. In the absence of such a finding, dumping notices cannot be published.

D Other factors would have been the cause of any injury

18 Without detracting from the comments in C above, SSAB does not believe that there can be a sufficient factual basis upon which to find that any injury that the Applicant may have incurred during the period of investigation was caused by the imports that are the subject of the investigation. Rather, the injury can be seen to have been caused by:

- (a) decreased demand and therefore reduced sales caused by downturns in the construction and mining industry;
- (b) imports from countries other than those subject to the investigation; and

⁶ http://investor.bisalloy.com.au/application/assets/uploads/announcement/08_2010_FY10_presentation.pdf

⁷ http://investor.bisalloy.com.au/application/assets/uploads/announcement/Investor_presentation_September_2013.pdf

⁸ http://investor.bisalloy.com.au/application/assets/uploads/announcement/Media_Release_Full_Year_Results_FY13.pdf

- (c) the Applicant's debt levels and its business model.
- 19 Under Section 269TEA(2A) of the Customs Act, any injury caused by factors other than the subject imports cannot be attributed to the subject imports. SSSAB submits that when these factors are taken into account in this case, the Commission should conclude that it cannot make a positively-evidenced finding that the subject imports have caused material injury to the Australian industry. Resultantly, the investigation should be terminated under Section 269TDA(13).

Injury was caused by construction and mining industry downturns

- 20 Any injury suffered by the Applicant was likely to have been caused by non-dumping related injury factors. A severe reduction in demand - caused by downturns in Australia's economy and in its construction and mining industries - was one such factor, and it had a major impact. This is reflected in the Application, with the Applicant indicating that the Australian market for Q&T steel plate contracted in 2012/13 compared with 2011/12.
- 21 It is submitted that this strong contraction in Australian demand has significantly affected the sales volumes and profits of all Q&T steel plate suppliers, and not just those of the Applicant. It is eminently reasonable to accept that in a period of such reduced activity and depressed prices the Applicant's ability to increase prices will be constrained by factors other than price relativities. The kind of financial injury that the Applicant claims to have suffered in 2013 would also have been suffered by the majority of Q&T steel plate suppliers during this very challenging year, including by SSAB.
- 22 The negative impact of this contraction on SSAB is illustrated by the graph below:

Figure 1: Sales Volume of SSAB's Q&T steel plates

[CONFIDENTIAL INFORMATION DELETED – SSAB sales volumes]

- 23 The Australian construction and mining industries experienced a significant reduction in activity over the past two years, resulting in a dramatic decline in market demand for Q&T steel plate. That this has negatively impacted on the Applicant's business is admitted by the Applicant in its

FY2013 Annual Report, which describes the market as “challenging and volatile”,⁹ and refers to the “rapidly declining demand in the Australian domestic market” as follows:¹⁰

*...trading conditions were challenging for Bisalloy over the FY2013 as the resources sector faced deteriorating conditions... there have been widely publicised deferrals or cancellations of a number of planned resources projects leading to a rapid decline in demand for Q&T steel*¹¹

- 24 The Applicant has publicly stated that demand for its Q&T steel plate is underpinned by the resources industry. The Applicant’s own estimates are that around 70% of its Q&T steel plate is used in resources-related activities.¹² It is common knowledge that the Applicant’s major customers, BlueScope Steel and OneSteel, have themselves been severely negatively affected by recent economic conditions. Logically, lower volumes and cost-cutting would result in them buying fewer products from the Applicant. This was reflected in Bisalloy Steel Group’s FY2013 Annual Report, which states the following:

*A fall in prices for Australia’s major commodities, particularly iron ore and coal, led 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.*¹³

- 25 As noted above, Section 269TAE(2A) of the Customs Act requires that the Minister identify any other factors that have caused injury to the Australian industry, and ensure that such injury is not attributed to dumping. Section 269TAE(2A)(c) specifically cites contractions in demand as a factor that must be considered by the Minister. Such a contraction in demand during the period of investigation is clearly evident.
- 26 In its submission to the Commission dated 5 March 2014, the Applicant has asserted that macro-economic factors such as the downturn in the resources industry “have in Bisalloy’s opinion not been significant causal factors to injury to the Australian Industry”. With respect, that proposition cannot be sustained and we are surprised that a company involved in the industry

⁹ Bisalloy Steel Group Limited 2013 Annual Report

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Bisalloy Steel Group Limited AGM Presentations, Chairman’s Address, 21 November 2012

¹³ Bisalloy Steel Group Limited 2013 Annual Report

would say it, especially considering that it contradicts everything else that we have quoted from the Applicant's own market statements in the preceding paragraphs.

- 27 In addition, the Applicant alleges that the contraction in the resources industry could not cause injury because that industry was still of sufficient size for the Applicant to compete and maintain profitable operations, if it were not for the alleged dumping. The Applicant's position regarding the contraction in demand is not logical, and contradicts the facts that have been provided by the Applicant. A contraction in demand will lead to fewer products being sold overall. The Consideration Report identifies such an overall fall in sales.¹⁴ Despite this severe contraction in demand during the period of investigation, the Applicant was essentially able to maintain its market share. This means that although the Applicant was selling less Q&T steel plate in absolute terms, it was selling the same amount of plate relative to the "market" size.
- 28 SSAB respectfully submits that the contraction in demand is solely responsible for the "*loss of sales volume*" complained of by the Applicant. If the loss of sales volume was caused by imported products, we would expect to see a substantial change in market share - however there is no evidence of this occurring during the period of investigation. Instead, every seller of Q&T steel plate lost sales because of the dramatic contraction in demand. This must lead to the conclusion that the loss of sales suffered by the Applicant was caused solely by the contraction in demand.
- 29 The loss of sales volume suffered by the Applicant as a result of the contraction in demand is also the cause of the increased stock levels of which it also complains.¹⁵ The Applicant's production continued, meaning that it was producing more product than it was able to sell in the contracted market. The mixture of the lower sales volume and the increased stock would cause reductions in profits, profitability, return on investment, attractiveness for re-investment, revenues and wages.

¹⁴ Consideration Report, page 19.

¹⁵ Because, as per page 27 of the Application, the Applicant continued to produce more product than was demanded by customers. Presumably, this was a result of the suddenness and the severity of the contraction, mixed with the need for the Applicant to continue to produce an efficient volume of plate in order to keep per unit fixed costs at a manageable level.

Injury was caused by imports of Q&T steel plate from other countries

- 30 SSAB does not consider its Q&T steel plate caused any form of price injury to the Applicant. As will be discussed in greater detail (see F below), SSAB does not consider there is any competitive interaction between its product and the products produced by the Applicant. Further, for the purposes of these non-attribution submissions, SSAB wishes to alert the Commission to the fact that – based on its own commercial experience of recent price conditions in the Australian market - the lowest-priced Q&T steel plate available in Australia is imported from China and Korea.
- 31 This is relevant to the injury determination, because if Q&T steel plate is available in Australia at prices lower than that charged for Q&T steel plate from one or other of the countries subject to the investigation, then the Commission cannot find that the subject imports from that country or countries have had an effect on the prices charged by the Applicant. Any downward price pressure to which the Applicant claims to have responded would be due to the lowest price competitors, and not to competitors operating at higher price points.
- 32 Furthermore, SSAB notes that the Applicant's parent company has a joint-venture with Chinese-based Shandong Iron and Steel, known as Bisalloy Jigang (Shandong) Steel Plate Co., Ltd ("Bisalloy China"), from which the Applicant imported both raw materials ("greenfeed") and Q&T steel plate during the period of investigation.
- 33 In its Application the Applicant did not request an investigation to be initiated into exports from China and Korea. The Commission must take the position that exports from those countries are not dumped, and must not attribute any injury caused by them to the imports that the Applicant has alleged are dumped. SSAB would put the position even more strongly than that, because it is those lower priced imports that create the conditions of competition within which the Applicant operates.¹⁶ Thus, those imports – and not SSAB imports - can be seen to be totally responsible for the direct price competition that the Applicant faces.
- 34 SSAB recommends that the Commission look closely at the imported price of goods from countries that are not under investigation, in order to reveal who the real "price leaders" are.

¹⁶ See F below, which explains the differentiation between the lower priced commodity market typified by distributor sales, and the higher priced OEM and direct to end-user market.

Injury caused by imports from other countries, including not only those from China and Korea, but also those from Austria, Belgium, France, Germany and the UK, must be identified and cannot be attributed to imports from the countries subject to the investigation, in accordance with Section 269TAE(2A) of the Customs Act.

Injury was caused by Bisalloy's debt structure

- 35 SSAB also submits that any further injury found to have been suffered by the Applicant was most likely to have been caused by the Applicant's existing financial situation, in particular, the Applicant's ability to compete has been severely hampered by large debts. As demonstrated in its Annual Reports and Investor Presentations, the Applicant has been concentrating on debt reduction over the past few years. Approximately four years ago its net debt totalled more than \$36.5 million.¹⁷ The necessity to service such high levels of debt can be safely assumed to have negatively impacted its financial performance.

Injury was caused by Bisalloy's business model

- 36 Bisalloy manufactures Q&T steel plate from imported greenfeed (see F below). It does not operate an integrated production facility in Australia. Greenfeed plate manufactured in China is shipped to Australia where Bisalloy further processes it into a form of Q&T steel plate. This involves significant double-handling and two separate production activities taking place at different times and in different countries. The Applicant no doubt considers its production model to be adequate for lower order "commodity grade" production, but we suggest that it should also be conceded that the model is sub-optimal for the kind of higher order and more specialised uses of Q&T steel plate, which is where SSAB operates.
- 37 The Applicant's market supply model is also lacking, in a comparative sense. It relies on a distribution chain to access the market, and operates limited warehouses sites of its own. SSAB understands that the Applicant requires extra payments if a customer wants to access the Applicant's plate from say the Applicant's Brisbane stocks. Alternatively the customer must wait for the stock to come from the Applicant's NSW warehouse. SSAB presents a different model. It offers maximum 24 hour delivery and does not charge extra based on the benefit to the customer of a nearby stock location. In most cases, SSAB stock is close by the customers

¹⁷ Bisalloy Steel Group Limited 2013 Investor Presentation.

concerned, because SSAB has warehouse locations at Brisbane, Melbourne, Adelaide and Perth. SSAB supports its customers by ensuring excellent supply chain solutions and by generally carrying [CONFIDENTIAL TEXT DELETED – period of time] months stock of the fast-moving line items.

- 38 For these reasons SSAB believes that the Applicant's business model places it at a disadvantage in the markets in which it operates.

E Bisalloy cannot make the range of Q&T products under investigation

- 39 SSAB submits that the Applicant has defined the "like goods" in an overly broad manner. Specifically, the investigation relates to Q&T steel plates of *"widths from 600mm up to and including 3,200mm, thickness between 4.5-110mm (inclusive)"*. However, we have been instructed that the Applicant can only produce Q&T steel plate with:

- (a) maximum width of 3,140mm; and
- (b) minimum thickness of 8mm and maximum thickness of 100mm.

Accordingly, there is discord between what is actually produced by the Australian industry, and the types of products that are covered by the investigation.

- 40 SSAB is concerned by this "overreach" in the scope of the investigation. The fact is that there is no substitutability between a plate with a width of 3,140 mm and a plate with a width of 3,200mm. For example, a customer cannot simply weld a 60mm width plate to a 3,140mm width plate if it really wants a 3,200mm plate. The same lack of substitutability occurs with regard to the thickness of the plates. Nor are plates outside the Australian industry's thickness capacity substitutable with plates that are within that capacity.

- 41 To illustrate this point, we present the following schematic diagrams:

[CONFIDENTIAL INFORMATION DELETED – diagrams showing SSAB specifications]

- 42 The Applicant cannot produce products that directly compete with imported steel plate made to specifications outside of the Applicant's production capability. SSAB therefore submits that such products cannot appropriately be considered to be "like goods". Resultantly, SSAB requests

that any imports that fall outside the Applicant's production capacity be excluded from any final dumping duties imposed under Section 269TG(1) or (2) of the Customs Act.¹⁸

F SSAB steel plate has not caused injury to the Applicant

43 SSAB submits that there is insufficient evidence before the Commission for it to be able to conclude that imports of the subject goods have caused injury – material or otherwise – to the Applicant. Without derogating from this position, SSAB also submits that the Commission cannot find that *imports of SSAB steel plate* have caused material injury to the Applicant, because there is no competitive interaction between SSAB steel plate and the Q&T steel plate produced by the Australian industry. In the absence of such interaction, the imports of SSAB steel plate cannot be said to have had any impact, whether or not injurious, on the products produced by the Applicant.

44 This lack of competitive interaction can be discerned from the following facts:

- (a) SSAB steel plate and Bisalloy steel plate are supplied to different customers occupying different markets;
- (b) there are substantial differences between SSAB steel plate and Bisalloy steel plate; and
- (c) reflecting (a) and (b), the price points of SSAB steel plate are much higher than those of Bisalloy steel plate.¹⁹

45 Based on these points, it is submitted that SSAB steel plate is a sufficiently different product that cannot be found to have caused material injury to the Australian industry, because SSAB steel plate - in reality - is a different kind of product which is sold into different markets than the Q&T steel plate produced by the Applicant. In the absence of competitive interaction between SSAB's products and the Applicant's products, it is submitted that SSAB steel plate cannot be found to have caused material injury to the Australian industry.

¹⁸ The ADRP and the Parliamentary Secretary have accepted this principle. See *Decision of the Anti-Dumping Review Panel – Review of Decision to Impose Dumping Duties on Aluminium Zinc Coated Steel Exported from the Republic of Korea* (8 November 2013).

¹⁹ Trademarked SSAB steel plate products are world renowned. SSAB strives to receive a corresponding price premium to ensure that it is adequately compensated for these market-leading, high quality products.

SSAB steel plate and Bisalloy steel plate are supplied to different markets

46 It is incorrect to consider that all sales of Q&T steel plate subject to the investigation occur in the same market and compete for the same customers. SSAB firmly maintains that its steel plate is of a higher quality than the Applicant's, and is resultantly sold to different customers, who purchase that plate for different purposes. This is a scientifically based fact, and is not put forward as merely being a subjective perception held by SSAB or by the market. Accordingly, customers do not consider SSAB steel plate to be substitutable for the Q&T steel plate produced by the Applicant, and *vice versa*. In the absence of this competitive interaction, SSAB would submit that there can be no finding that imports of SSAB steel plate have any impact - let alone injurious impact - on the Applicant's sales of its Q&T steel plate.

47 The Applicant supplies cheaper Q&T steel plate that is accepted to be [CONFIDENTIAL TEXT DELETED – technical product difference]. SSAB supplies to customers who require higher quality Q&T steel plate. It can be demonstrated – and is accepted by customers - that SSAB steel plate has unique and advanced features. SSAB steel plate exceeds industry “norms” in terms of [CONFIDENTIAL TEXT DELETED – SSAB product qualities]. SSAB group companies in other world locations do produce lesser quality and resultantly cheaper “commercial grades” for foreign markets, which SSAB would consider to be similar to the Applicant's Q&T steel plate. However SSAB's sales policy for the Australian market is to service Australian customers that require high quality products, and accordingly SSAB has resisted bringing these lower quality grades into Australia.

48 To illustrate this point further, we can consider the customer base of each organisation. In the Application, the Applicant has stated that:

- (a) it sells approximately 80% of its Q&T steel plate domestically via a network of distributor companies; and
- (b) its major customers include the four main distributors.

49 In contrast, SSAB sells to the following, specific, steel plate user customers:

[CONFIDENTIAL TEXT DELETED – details of SSAB customers]

50 A large part of SSAB's customer base is made up of companies that operate on a global scale. They require a consistency of product and a consistency of technical support from a similarly

multinational corporate organisation. The SSAB Group is such a multinational organisation. The SSAB Group has long-term relationships with a many international companies, and sells SSAB steel plate to these companies in a multitude of countries. [CONFIDENTIAL TEXT DELETED – details of SSAB customers]. For example, some of SSAB's main customers include:

[CONFIDENTIAL TEXT DELETED – details of SSAB customers]

- 51 SSAB's growth over the many years it has been active in the Australian market has not been achieved by "dumping" products at less than their normal value. Rather, a large part of SSAB's Australian sales are to customers that are serviced by the SSAB Group globally. For those customers, SSAB has replicated the kinds of relationships that exist in overseas countries, and has supplied the same kinds of products that are supplied to them in those other countries. [CONFIDENTIAL TEXT DELETED – details of relationship between SSAB and a customer]. This is a prime example of the kind of close and enduring relationship that SSAB develops with its customers.
- 52 The Applicant cannot break into these supply channels as the Applicant does not operate globally and is unable to develop the same relationships with the customers concerned. Accordingly, the Applicant's Q&T steel plate is simply not under consideration – irrespective of the price charged by the Applicant – when SSAB's customers seek to fulfil their steel plate supply requirements.
- 53 [CONFIDENTIAL TEXT DELETED – details of relationship between SSAB and customers] These close relationships involve the development of specific technical solutions, and long term forecasting in terms of product requirements and likely pricing. They are "partnerships" – locally and globally – and not just buyer-seller relationships.
- 54 The Applicant works via distribution chains, and has little contact with end users. It appears to SSAB that the Applicant's commercial operations are not based on the quality of the products supplied and the longevity of the relationships involved. Rather, the business the Applicant seeks is volume and commodity based. For example, the Applicant's market involves "full and cut plate distribution" through the large scale distributors BlueScope and Onesteel. This is a completely different market to the market for SSAB steel plate which, as we have pointed out, is generally sold directly to OEMs and end users.
- 55 [CONFIDENTIAL TEXT DELETED – SSAB sales information].

SSAB steel plate and Bisalloy steel plate are technically different

- 56 The lack of competitive interaction between the products is further demonstrated by, and is also attributable to, the differences between SSAB steel plate and the Q&T steel plate produced by the Applicant. SSAB and the Applicant employ different production methods, which radically affect the technical characteristics of the final products produced by each of them. SSAB steel plate is of a high quality and exhibits more extreme performance characteristics – with exceptional weldability and bendability - than does the Applicant's steel plate.
- 57 SSAB steel plate has unique features, and is resultantly very different to the Applicant's steel plate. The differences can best be understood through a consideration of the raw materials used, the actual physical processes employed by each manufacturer and the finishes applied to the goods. These different production processes result in dramatically different quality, features and performance characteristics.
- 58 SSAB steel plate is manufactured in a fully integrated production process. SSAB EMEA AB has complete control over every step in the production process, from selecting the raw material from the highest quality sources around the world, to delivery to the customer's door. In contrast, the Applicant's processes are often carried out by companies other than the Applicant itself, such as by Bisalloy China.
- 59 SSAB manufactures superior quality steel plate from iron ore mined in Sweden and with coal from Australia. By contrast, the Applicant uses low-quality greenfeed plate imported from China which, so far as SSAB is aware, is made from steel scrap. As a result, the Applicant's plate does not have the purity and cleanliness that even approaches that of SSAB steel plate. Greenfeed plate suffers from chemical impurity and is generally considered to be low grade. The use of greenfeed plate in the production of Q&T steel plate is less favourably considered than the production from virgin raw materials. The quality of the plate is not considered to be as good or as reliable as steel plate produced from raw materials in an integrated process.
- 60 [CONFIDENTIAL TEXT DELETED – production process] in order to create a finished Q&T steel plate with the correct microstructure to impart the hardness and toughness required by end users. This manufacturing method causes there to be a higher carbon equivalent value (also known as CEV/CET value) in the Applicant's finished products. This results in a less weldable product as compared to SSAB steel plate.

- 61 SSAB EMEA AB employs a completely unique production process – that it refers to as a [CONFIDENTIAL TEXT DELETED – production process] - when producing SSAB steel plate. SSAB employs non-conventional manufacturing equipment, developed in-house, to create this high quality product quality. This equipment includes:
- [CONFIDENTIAL TEXT DELETED – specialised production equipment]
- 62 Additionally, SSAB employs unique [CONFIDENTIAL TEXT DELETED – details of steel manufacturing process] that it has not yet observed any other manufacturer employ. [CONFIDENTIAL TEXT DELETED – details of steel manufacturing process]. This unique process gives SSAB steel plate a consistent combination of strength, hardness and toughness in all strength levels. In contrast, the Applicant's products are based on a "high alloyed" concept using scrap-based greenfeed made in China.
- 63 High-alloyed Q&T steel plates such as those produced by the Applicant are considered by customers to be inferior products to [CONFIDENTIAL TEXT DELETED – SSAB produced Q&T steel plates]. Because of the [CONFIDENTIAL TEXT DELETED – production process] and the minimal levels of impurities in the raw materials used to produce SSAB steel plate, the end-product provides excellent workshop properties and excellent bendability, and requires less preheating prior to and during welding. The impurity of the raw materials in the greenfeed used by the Applicant and the Applicant's "high-alloy" production method results in an end-product that has inferior thickness and surface tolerance, that is harder to handle and cut, and that is more likely to crack. Softer steel is often referred to in the industry as "marshmallow" – crackly on the outside, and soft on the inside. This softness poses major problems for mining and engineering companies who require extremely hard steel such as that found in SSAB steel plate.
- 64 There are further important differences between the finished goods that SSAB offers to customers, and those offered by the Applicant.
- (a) Customisation, in terms of specification and dimension - SSAB offers customised products tailored to the requirements of its premium clients, and can produce SSAB steel plate to the exact dimensions required by those customers.
 - (b) Finish - [CONFIDENTIAL TEXT DELETED – details of SSAB finish].

- (c) Flatness and surface tolerance - SSAB steel plate has a specific flatness and surface tolerance which maintains flatness. [CONFIDENTIAL TEXT DELETED – details of flatness and surface tolerance of SSAB produced Q&T steel plates].

- 65 As a result of these differences in the quality of the raw material inputs, the production processes to which those raw materials are subject and the advanced and unique features of SSAB EMEA's finished product, SSAB submits that its steel plate is a fundamentally and substantially different product to the Q&T steel plate produced by the Applicant. Despite the fact that similarities can be expressed in general criteria such as "size" and "grade", SSAB is fully confident that its products are in a different category to that of the Applicant.
- 66 Different customers will purchase Q&T products to fulfil their individual needs. SSAB's customers do not check the prices of the Applicant's Q&T steel plate before deciding whether to order from SSAB, because it is not price which dictated their choice of SSAB steel plate in the first place. SSAB steel plate and the Applicant's steel plate cannot be considered to be the same product sold in the same market, and accordingly SSAB steel plate cannot be considered to have caused material injury to the Applicant's sales of its own steel plate.
- 67 In summary, even if the Commission comes to the view that there has been dumping of Q&T steel plate and that this has caused material injury to the Australian industry, we submit that there can be no finding of relevant injury caused to the Applicant by *SSAB steel plate*. In statutory terms, this means that the injury caused by imports of SSAB steel plate must be considered to be "negligible". Accordingly, we submit that the investigation should be terminated under Section 269TDA(13) of the Act insofar as it relates to SSAB steel plates. In the alternative, SSAB steel plate should be excluded from the imposition of anti-dumping duties by way of exemption under Section 8(7)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*.

G Conclusion

- 68 The Applicant's allegations must be carefully tested by the Commission. From SSAB's perspective, those allegations are unfounded. They are contradicted by the Applicant itself. They appear to rely on broad generalisations. They lack any reasonable consideration of non-dumping related factors which have caused the Applicant injury. SSAB submits that the Applicant has not suffered material injury as a result of the importation of the subject imports. Accordingly, SSAB submits that the Commissioner terminate the investigation under Section 269TDA(13).
- 69 Further, and in the alternative, SSAB submits that *SSAB steel plate* has not caused any form of injury to the Applicant. In this regard we wish to point out that Section 269TDA(13) of the Customs Act provides that Commissioner must terminate an investigation so far as it relates to a *particular country of export* if satisfied that the injury caused by *that export* is negligible. The wording of the Section quite clearly contemplates the termination of an investigation as against one exporting country under investigation but not necessarily as against all exporting countries. This can only be because the legislature was satisfied that the individual circumstances of the products exported from a particular country could justify the termination of the investigation on the grounds that those particular products had not caused injury (or had only caused "negligible" injury). Thus, for the separate reasons advanced in this submission, SSAB requests that the investigation be terminated under Section 269TDA(13) insofar as it relates to imports of SSAB steel plate, on the twin bases that SSAB steel plate was the only steel plate exported from Sweden and did not cause injury to the Applicant's sales of its own steel plate.²⁰
- 70 In any event, and without detracting from the foregoing, SSAB submits that any final dumping notices published under Section 269TG(1) and (2) of the Act specifically exclude from anti-dumping duties:

²⁰ In light of the administrative precedent established in previous investigations concerning silicon metal and aluminium zinc coated steel, the exclusion of steel plate with the characteristics of SSAB steel plate could equally be achieved by exclusion from the product group in respect of which measures might finally be considered. In the silicon metal investigation, the exclusion was in respect of secondary use silicon - see *Certain silicon - People's Republic of China - revocation and substitution of dumping duty notice - findings in relation to a dumping reinvestigation* (Australian Customs Dumping Notice No. 2006/04). In the aluminium zinc coated steel investigation, the exclusion was in respect of unchromated aluminium zinc coated steel - see *Aluminium zinc coated steel exported from the Republic of Korea - Variation of decision to impose measures* (Australian Dumping Notice No 2014/13). In relation to another method for "exempting" SSAB steel plate, please also refer to paragraph 67 above.

- Q&T steel plate of a width above 3,140mm; and
- Q&T steel plates with a thickness below 8mm or above 100mm.

71 SSAB requests that the Commission give full consideration to the matters raised in this submission. As a result of that consideration, the Commission should either exclude SSAB steel plate from the investigation at the earliest available opportunity or, failing that, exclude it from any final measures recommended to the Minister.

Submitted by Moulis Legal
on behalf of SSAB Swedish Steel
and its associated companies