

FOR PUBLICATION

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

30 May 2014

Attention: Mr Matthew Williams

Dear Sir

Investigation Into Alleged Dumping Of Quenched and Tempered Steel exported from, inter alia, Japan (Japanese Mills Injury Submission)

1. Introduction

We act for the Japanese Mills - Nippon Steel & Sumitomo Metal Corporation (**NSSMC**); JFE Steel Corporation (**JFE**) and Kobe Steel Ltd (**Kobe**).

We refer to and repeat the content of our clients' submission dated 17 February 2014 but supplement the arguments in it by this submission, which is directed to injury. We submit the applicant's allegation of dumping misfires, is exaggerated and there is no dumping or, no causative material injury is being experienced by the applicant.

Our clients reserve the right to make further submissions in respect to any further matter relevant to injury, and intend to provide such further submissions in respect of:

- total export sale volumes to Australia, third countries and domestic sales over the 5 year period ending December 2013;
- Bisalloy's production capacity in the context of total demand in the Australian market.

2. A Précis of Law

2.1 The requirements of the *General Agreement on Tariffs and Trade 1994* (**GATT**) with respect to the imposition of anti-dumping duties are well known to the ADC. The GATT specifically establishes the guiding principle that anti-dumping duties can only be imposed on imported goods where those goods have been found to have been:

- (a) dumped; and,
- (b) as a result of that dumping have caused, or threaten to cause, material injury.

2.2 The GATT principle is replicated in sections 269TG(1) or (2) of the *Customs Act 1901* (Cth) (**Customs Act**). Those provisions establish that the publication of a dumping notice can only be made in instances in which the Minister is satisfied 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."

2.3 It is clear that Australian law and the GATT are consistent in so far as both demand that the investigating authority must, on consideration of the verified facts available to it, find that both

variables – dumping and a causal link to material injury – are sufficiently supported by probative evidence in order to publish an anti-dumping notice (**ADN**) with respect to the goods under consideration.

3. *Dumping*

- 3.1 The question as to whether dumping has occurred is a question of fact that can only be tested by investigation of factors relevant to the export and domestic trade (in very general terms – a comparison between export price and the ‘normal value’ of the goods sold for home consumption in the country of export). The investigative processes and consideration requirements that apply to the analysis of dumping are numerous. Discussion of the ADC’s analysis of dumping with respect to our clients will not be dealt with in this submission.

4. *Injury and causal link*

- 4.1 The investigation and analysis as to whether dumping has caused material injury (for the purposes of an anti-dumping investigation) demands the careful consideration of relevant facts. As the ADC is well aware, injury analysis is a composite process which requires two queries to be tested against the available, verifiable, facts namely:

- (a) whether the applicant has suffered material injury; and
- (b) whether the injury suffered can be attributed to dumped imports such that the injury can be said to have been caused by exportation of goods to Australia from the identified countries at prices deemed to be ‘dumped prices’.

- 4.2 To test these two elements with the requisite rigor and reliability, in order to make a positive determination under section 269TAE(1) that material injury to Australian industry has been or is being caused or, is threatened or, would or might have been caused, the analysis must be based upon positive evidence that is objectively verifiable and defensible.

- 4.3 This is set out under section 269TAE(2AA) of the Act, which clearly states that a determination with respect to injury pursuant to section 269TAE “*must be based on facts and not merely on allegations, conjecture or remote possibilities*”.

5. *Establishing the causal link*

- 5.1 The Act and the WTO anti-dumping Agreement (**AD Agreement**) prescribe the analysis for satisfaction of the causation test in the context of anti-dumping investigations.

- 5.2 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.

- 5.3 The requirement to identify ‘other injury factors’ and to ensure that these are not considered in the context of establishing the causal link between dumping and material injury is set out in section 269TAE(2A) of the Act, which states:

*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.”*

5.4 Consideration of the existence of ‘other factors’ is not only a requirement of the Act in all investigations but, we submit, is particularly relevant in the present investigation given the dynamics of the Australian market under consideration and the significant changes that have occurred in this market over the period under investigation for the purposes of injury analysis.

6. **Summary of the injury submission**

6.1 Our clients submit that:

- (a) The applicant’s claims regarding injury suffered by its business are unsubstantiated and unfounded. There is no positive evidence of the injury complained of by the applicant aside from assumption and assertion. Additionally, in many instances the claims of injury that have been made for the purposes of initiating the present investigation are at odds with publicly available information regarding the performance of the applicant. The applicant has placed itself in a position where the information it has supplied to two different fora (the ADC on the one hand, and its shareholders and potential investors on the other) is fundamentally inconsistent; and
- (b) The applicant’s claims regarding the causal link between injury and dumped imports lack credibility and are not supported by verifiable evidence. The applicant has relied upon assertion, assumption and questionable market intelligence to support its claim regarding market competitiveness and price-based injury. The applicant has also attempted to downplay the relevance of other market factors which have fundamentally impacted the Australian market generally, and the dynamics of trade by all participants in the market in recent years.

6.2 Our clients are concerned with the applicant’s wilful use of unreliable evidence in its submissions to the ADC. Our clients consider that the applicant has continued to be overtly selective in the presentation of data and information in its submissions to the ADC.

6.3 Our clients consider that the applicant has attempted to maintain a line of reasoning which is premised on a series of assumptions and negative assertions. To maintain this position in circumstances where the applicant has simultaneously avoided consideration of market factors which are well known to the major market participants and for the applicant to then make allegations regarding its commercial performance which are fundamentally at odds with performance data it has provided to the market, is inexcusable.

- 6.4 The applicant's ability to conduct itself in such a manner in relation to an investigation of this nature raises significant concerns regarding the veracity of the applicant's claims and the bona fide nature of the application.

7. **The current market for Quench and Tempered Steel in Australia**

- 7.1 Our clients submit that it is critically important for the ADC to understand and appreciate the characteristics of current Q and T markets - globally and domestically - before turning its mind to questions of material injury and the factors which may have caused injury suffered to the applicant.
- 7.2 Our clients submit that the global and domestic markets for Q and T steel have undergone seismic changes during the period in which the applicant is claiming to have suffered material injury. The market has been fundamentally changed by declines in the major traditional sectors of demand such that, globally, the size of the market and the dynamics of supply and demand within them have changed.
- 7.3 As the ADC will be well aware at this stage of its investigation, Q and T steel plate is primarily used in the manufacture of heavy machinery requiring high strength steel plate with very high yield strength (common uses include the manufacture of buckets, truck bodies and transport/digging equipment in mining and resource related projects).
- 7.4 Due to the end-use specifications for which Q and T steel is produced, the global market is underpinned by demand from the resources sector. The applicant itself has publicly stated that demand for its Q and T steel plate is driven by the resources industry. The Applicant's own estimate is that around 70% of its Q&T steel plate is used in resources-related activities. (Bisalloy Steel Group Limited AGM Presentations, Chairman's Address, 21 November 2012)
- 7.5 All entities involved in the production and sale of Q and T steel will agree that the performance of the Q and T market is inextricably linked to the performance of the resources sector. Furthermore, it is commonly appreciated by participants at all levels of the Q and T market that significant contractions of demand from the resources sector of major global markets (including Australia) have fundamentally affected the market for Q and T.
- 7.6 Growth in the resources sector globally declined dramatically from 2008 onwards in the aftermath of the Global Financial Crisis (**GFC**) and continued economic volatility in traditional growth markets such as Europe and the USA.
- 7.7 The Australian market for Q and T steel weathered the GFC and the ongoing economic sensitivities that followed relatively well compared to overseas markets - supported by stable growth in the Australian resources sector driven by continued demand in Asia.
- 7.8 Declines in the Australian resources sector over the past 2 years have significantly changed these dynamics, however.
- 7.9 The Australian Bureau of Resources and Energy Economics (**BREE**), in a report published in April 2013, assessed the state of the market across 2012. The BREE report indicates, inter alia, that:

*The decline in the number of projects at the Committed Stage is indicative of the emerging trend of project proponents delaying or cancelling high value resources and energy projects in Australia. In the past twelve months around **\$150 billion** of*

projects have either been delayed, cancelled or have had re-assessed development plans in the past twelve months¹.

- 7.10 The decline has had a significant ripple effect in relation to a number of ancillary service markets. The original equipment manufacturing segment of the market has declined considerably as demand for new equipment has dried up.
- 7.11 The result of these developments in relation to the Q and T market is that primary demand for Q and T plate is now driven by maintenance/repair requirements with respect to operational machinery and infrastructure being utilised in ongoing projects.
- 7.12 The impact on Q and T producers
- 7.13 Many industries which have existed as providers of raw material consumed by the resources sector have had to re-adjust to the changes in global and domestic dynamics.
- 7.14 Changes in the source of demand from consumption for new projects to maintenance and repair have fundamentally impacted business models and operational activities - declining demand, and increased competition for a smaller pool of potential sales has forced manufacturers to adjust their demand and production forecasts.
- 7.15 Efficiency and effectiveness are now primary concerns for manufacturers globally who must seek to drive internal efficiencies to counteract cost increases associated with declining through-put and reduced sales volumes. This is true also for all entities along the supply chain for steel products including, but not limited to, Q and T steel.

The current market and its prognosis

- 7.16 The BREE report provides a useful forward projection regarding the state of the resources market in Australia as follows:

*Based on an assessment of internal project and external market factors, BREE has developed two scenarios that project the future stocks of committed investment in resources and energy projects in Australia. In the 'Likely Scenario', which includes all existing projects at the Committed Stage and projects assessed as likely to progress to the Committed Stage in the next five years, committed investment is projected to moderate to **\$256 billion at the end of 2013 and then decrease to around \$70 billion in 2017.** (emphasis added)*

- 7.17 The BREE report indicates that the downturn in the Australian resources market in 2012 reflects a fundamental change in market dynamics in Australia, and that this downward trend will continue well into 2017.
- 7.18 The projections of BREE are echoed by a range of other reputable commentators in the sector, including:

- (a) PPB advisory - see <http://www.ppbadvisory.com/uploads/a395-00484INS-Investment-peaks-for-resources-and-energy-projects-Insight-May-2013.pdf>;

¹http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCgQFjAA&url=http%3A%2F%2Fwww.bree.gov.au%2Fsites%2Fdefault%2Ffiles%2Ffiles%2F%2Fpublications%2Frempp%2Frempp-2013-04.docx&ei=4jRDU-qaHMTIkqXMhYHYBA&usg=AFQjCNGoM2vfvN5U9OHjFxm_-AUN2Kwxlg&bvm=bv.64367178,d.dGI

- (b) the Property Observer, which forecast investment to drop by 17.4% by the end of 2015. The cause of the trend is attributed to "a sharp decline in the mining industry" investment in which, in the 2014-15 financial year, is anticipated to fall by 25.2%.²
- (c) UBS Chief Economist, Scott Haslem, who says that:

"The mining story is showing a clear flattening out but we're not yet seeing any improvement in the investment intentions across our manufacturing or other sectors, which means there's no real offset to the loss of growth from the mining investment."³

- 7.19 It is clear that the Australian resources 'boom', as it has been referred to, has commenced a sharp decline from peak levels in terms of committed investment and new developments.
- 7.20 The direct link between the dynamics of the resources market and the Q and T steel market must be appreciated by the ADC in defining the state of the Australian market.
- 7.21 Our client's submit that the Australian Q and T steel market should be defined with an appreciation of its current parameters - the market's primary demand is for repair and maintenance; a segment of the wider Q and T market during the years of the growth of the resources sector.
- 7.22 Our clients submit that the Q and T steel market remains healthy in Australia given the fact that there remain a number of ongoing resources projects with ongoing maintenance requirements. However, the market is now characterized by fewer end users, reduced demand in both overall volumes and per-order requirements and greater competition between suppliers. This is something that **must** be considered when assessing whether the applicant has suffered injury caused by imports, dumped or otherwise.
- 7.23 Obviously all participants in the Q and T steel market, at all levels of the supply chain, lament the changing dynamics of demand and the impact that this has had upon operational activity. Our clients understand the applicant's concerns regarding the changes in the market.
- 7.24 However, our clients submit that it is inappropriate for the applicant to apply performance metrics that applied when the market was booming to assess its performance over the injury analysis period, and to rely upon a comparison of current performance with past performance to demonstrate material injury.
- 7.25 Our clients wish to re-iterate that the issues of operational performance highlighted by the applicant as 'injury factors' cannot be appropriately seen to be signs of injury but simply reflect the current performance paradigms dictated by the Australian market.

² Carmody, B, "Investment set to slump amid mining decline, but some industries are looking up", 28 February 2014, <http://www.propertyobserver.com.au/forward-planning/investment-strategy/economy-and-demographics/29141-investment-set-to-slump-amid-mining-decline-but-some-industries-are-looking-up.html>

³ "Business spending lifts but economists warn mining sector set to drop off", 29 August 2013: <http://www.abc.net.au/news/2013-08-29/building-boost-lifts-business-investment/4921620>

Level of Trade

- 7.26 In determining whether injury has occurred, the ADC must examine the price of the goods sold at the relevant level of trade.
- 7.27 The ADC's May 2014 Visit Report provides details on Bisalloy's pricing and sales system. Prior to December 2013, the Visit Report indicates that Bisalloy used a system whereby it commenced with a "starting point". The Visit Report indicates that Bisalloy charges or classifies customers in accordance with a tier system. Bisalloy charges a premium and gives discounts based on the tier in which the customer falls. It is logical to infer that, pre-December 2013, Bisalloy determined sale price by reference to the size of the customer which in turn dictated the discount to apply.
- 7.28 Bisalloy sells 80% of its Q and T steel to the Australian market through both affiliated and unaffiliated distributors (the balance of 20% being sold directly to customers without the intervention of a distributor)⁴. My clients sell Q and T steel to the Australian market almost exclusively through distributors, including Total Steel of Australia Pty Ltd, ASM Corporation Pty Ltd and CMC Australia. Self-evidently, the price of Bisalloy's Q and T steel in the market will vary according to:
- (a) the tier of the particular customer;
 - (b) the distributor engaged, namely whether it is affiliated or unaffiliated.
- 7.29 In determining whether or not injury has occurred, the ADC must undertake an analysis of the price of Q and T steel sold by comparing like with like. That is, it must compare the price of our clients' Q and T steel to the price of Bisalloy's Q and T steel at the correct level of trade. In my clients' submission, the correct level of trade is the market for Bisalloy's unaffiliated distributors.
- 7.30 We submit that, when the applicant's activities are assessed in the context of the contemporary market (rather than assessed against past (mineral boom) performance) it is clear that:
- (a) The applicant has performed well in a competitive market;
 - (b) The aspects of operational performance which are asserted to be signs of injury are the result of external market forces, and cannot be reasonably attributed to competition with imported goods, dumped or otherwise;
 - (c) In determining injury, the ADC must undertake an analysis of price at the correct level of trade.
8. **The applicant's claims of injury**
- 8.1 Our clients submit that the applicant's claims made to the ADC in relation to the injury it says it has suffered as a result of (alleged) dumping must be critically evaluated in the context of the nature of the market within which they operate during the period in which injury is claimed to have occurred.

⁴ ADC Visit Report - Bisalloy Steels Pty Ltd at 3.3.2 and 4.3.1.

- 8.2 The investigation covers the period of 2013, which aligns with the applicant's views that it suffered material injury caused by dumping during the twelve month period ending September 2013.
- 8.3 As discussed above, our clients consider the applicant's characterization of operational performance issues during this period to be 'injury' factors is misleading given the nature of the market at the time.
- 8.4 Furthermore, and not detracting from the above, our clients are concerned by the fact that the applicant's public pronouncements to the market during this period regarding the performance of its business directly contradict the claims of 'injury'.
- 8.5 According to the Applicant, its performance during the period of investigation was better than its performance in preceding years.
- 8.6 The FY 2013 Annual Report of the Bisalloy Steel Group, states that:
- Bisalloy *"maintained its market share for FY2013"*;
 - Bisalloy reduced its debts and its gearing has fallen from 34% to 29%⁵;
 - *"the Group's financial position strengthened over the year"*.
- 8.7 The above contradicts the contention that Bisalloy suffered from reductions in profits, profitability, return on investment and revenues.
- 8.8 As stated earlier, the contradiction between these statements and the claims made by the applicant to the ADC for the purposes of its application is concerning.
- 8.9 The businesses' performance during this period was referred to in an ASX/Media Release published by the Bisalloy Steel Group on 21 August 2013. The heading to that release is notable *"Bisalloy Delivers Profit and Reintroduces Dividend in Challenging Market"*.
- 8.10 It is also notable that Bisalloy did not distribute dividends from 2008 to 2012. However on 25 November 2013 - during the period that the Applicant alleges that dumping caused it material injury - it was able to return capital to its shareholders and pay a dividend.
- 8.11 The lack of injury is further supported by the publicly available data regarding the profitability of the Bisalloy Steel Group, for FY 2010, 2011 and 2012. The EBITDA figures for these periods reflect:
- Its EBITDA at the commencement of the injury investigation period in FY 2010 was **\$5.3 million**;
 - Its EBITDA rose to \$7.8 million in FY 2011 and then to \$12.4 million in FY 2012;
 - In FY 2013 its EBITDA was **\$8.4 million**.

⁵ The Applicant's gearing in FY2010 was 60% and fell every subsequent financial year to 29% in FY 2013.

8.12 The above reflects that the applicant achieved a **42%** increase over the period FY 2010 to FY 2013. The proposition that a company can achieve such a remarkable increase in its performance whilst suffering material injury is implausible.

8.13 Our clients draw attention to the ASX/Media Release which addressed the company's performance and its market share over FY 2013:

*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 (our emphasis).*

8.14 Our clients consider that the above information presents a picture of a business performing well in tight market conditions despite declining demand. Indeed this is the image that Bisalloy itself has consistently delivered to the market.

9. **Injury and causation - other injurious factors**

9.1 Further and without detracting from our client's prime claim, our clients also submit that the applicant has not adequately engaged with the real issue which is that, performance issues deemed by the applicant to indicate 'material injury' have been caused by factors other than dumped imports.

9.2 The principle of non-attribution, and its relevance to the consideration of causation, is well known to the ADC. In simple terms, in considering whether a causal link can be established between injury suffered by the Australian industry (which is denied) and dumped imports from the identified countries, the ADC must consider other factors which have contributed to the injury factors complained of.

9.3 These 'other factors' must not be taken into account in the context of establishing whether a causal link exists between the injury and dumped imports.

9.4 As discussed above, our clients consider that the performance indicators complained of by the applicant have been inappropriately characterised as factors of 'injury' throughout the investigation.

9.5 An understanding of the current Q and T steel market in Australia, and the performance of all participants in the market during the previous 2 fiscal years, will indicate that depressed performance across these indicators is a symptom of market forces which have changed the reasonable performance expectations in relation to the manufacture and sale of Q and T steel in the Australian market.

9.6 Specifically, we submit that the performance issues complained of by the applicant have been caused by:

a) changing dynamics of demand in the Australian market driven by a unprecedented downturn in the energy and resources sector;

b) imports of the goods from third countries and imports of partially finished and finished products; and

c) the applicant's business model and service offering.

A) Changes in the Q and T market

- 9.7 The downturn in the Australian resources market and its impact on the dynamics of the Australian Q and T steel market has been discussed above.
- 9.8 The fundamental changes that have occurred within the Q and T market over the past 2 years are well known to participants in the market and have been raised with the ADC by our clients and other producers and end users of Q and T during the course of the investigation. Indeed, submissions from those with intimate knowledge of the market, such as ASM Corporation, spell out the demand factors and the current market conditions for Q and T steel in Australia. ASM Corporation's conclusion is that demand peaked in 2011 and 2012 due to heightened activity in the energy and resources sector and, what is now being experienced is market readjustment.
- 9.9 Our clients note that the applicant is the only producer of Q and T steel in Australia and, consequently, it makes up the 'Australian industry' with respect to the GUC. The applicant operates a vertically integrated operational model - selling the goods to unaffiliated distributors and to the downstream end-user market through its own network of affiliated distributors. As such, it is uniquely placed within the Australian market to appreciate the challenges faced at both the upstream and downstream levels of trade in the market and the impact that declining demand from end-users has had across the supply chain. Indeed, the applicant has consistently referred to the challenges caused by declining domestic demand in its publications to its shareholders.
- 9.10 Our clients were surprised to read the view put to the Commission in the applicant's submission dated 5 March 2014, 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"*.
- 9.11 The applicant's attempts to downplay the significance of market forces in relation to operational performance in the Q and T steel market not only contradict general commercial knowledge of the dynamics of doing business in this market but, more relevantly (if not curiously), are in direct contradiction of their own commercial analysis.
- 9.12 Everyone in the market, including the applicant, is well aware that the dynamics have shifted and that the nature of the market has changed. The approach to the market has had to adapt in response to this change driven by a focus on increasing efficiency and adapting production to suit form and volume of demand from the market.
- 9.13 These are themes that are echoed in the applicants annual reports as discussed above. These reports have shown (or alleged) that the company has adapted to the changing dynamics and has made progress to innovate its business to return to profitability in the new market landscape.
- 9.14 The FY2013 Annual Report, describes the market as *"challenging and volatile"* and specifically refers to the *"rapidly declining demand in the Australian domestic market"*. Furthermore, it analyses the dynamics of trade within the market in the following terms

*...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*

- 9.15 Our clients submit that the applicant's selective interpretation of the relevance of market forces in relation to business performance presented to the ADC raises significant concerns regarding the veracity of the claims made by the applicant with respect to injury and causation. The fundamental inconsistency between its claims made for the purposes of initiating the present investigation, and in relation to the ADC's ongoing enquiries, and its internal performance analysis released to the market, is troubling.
- 9.16 The ADC will appreciate that the opposing views expressed by the applicant cannot be reconciled. Given the mutual agreement in the market globally regarding the impact that the decline in committed investment and new project development in the resources sector, it would appear that applicant's public announcements to the market provide a more accurate understanding of the applicant's analysis of the factors impacting the performance of its business.

The applicant's rationale

- 9.17 The applicant's rationale for its claims that market contraction is not a significant causative factor is that notwithstanding demand contractions the industry was still of sufficient size for the applicant to compete and maintain profitable operations, if it were not for the alleged dumping. That is, but for competition with dumped imports, its position in the Australian market would be more favourable.
- 9.18 This view is yet another example of the applicant's failure to engage in a logical analysis of the Australian market and its performance within this market. Furthermore, this view cannot be reconciled with the ADC's preliminary considerations in CON 234. Specifically, Figures 1 and 2 of CON 234 clearly illustrate the ADC was satisfied that there was sufficient evidence to indicate:
- That there has been a significant decrease in the size of the Australian market (by sales volume) during the period of investigation; and
 - Notwithstanding the contraction in demand and resultant decline in sales overall, the applicant was able to maintain its market share in 2012 relative to 2011 levels.
- 9.19 If the applicant's 'loss' of sales volume was caused by competition with dumped imports, the outcomes spelt out above could not have occurred due to winning sales that would otherwise have gone to the applicant or other import sources. That is, it would be expected that a shift in market share in favour of imported goods would occur. That has not happened. It belies the applicant's claims of injury. Indeed CON 234 confirms this. Whilst the applicants own sales volumes were down in the 12 month period ended September 2013 relative to the same period in 2012, its sales volumes were constant relative to the size of the market generally due to the fact that the market overall has contracted.
- 9.20 The data presented in CON 234, which is supported by our clients experiences in the market, reflects that the dramatic contraction in demand has caused sales volumes to decrease, both individually and overall. Simply put, the demand required to satisfy previous sales benchmarks no longer exists in the Australian market.
- 9.21 In short, the loss of sales suffered by the Applicant was caused solely by the contraction in demand.

Performance issues in a contracting market

- 9.22 The ADC will appreciate that declining demand in a traditionally buoyant market has a number of consequential impacts on operational activities and the commercial performance of those activities. Our clients submit that the decline in demand (reflected in both the reduction in future opportunities and the cancellation of current supply demands) leads to:
- Reduced revenues - due to relative decrease of goods sold.
 - Increased holding inventory in storage - as production and supply outstrips demand.
 - Reduced capacity utilization -as production forecasts are re-adjusted in line with demand.
 - Increased costs - as lower throughput in production increases the operating CTMS allocated on a per unit basis.
 - Reduced profits profitability - as unit costs and expenses increase at a rate that cannot be matched by increases in price and income.

Price-based effects

- 9.23 Additionally, our clients submit that a contracted market characterized by limited volume of demand inhibits the increase of prices such that the benchmark price points of goods will appear 'suppressed' - where price suppression is defined by the inability to increase prices to meet rising costs.
- 9.24 Our clients suggest that this contraction of the achievable ratio of sales price to cost is symptomatic of changing market forces and is not caused by import competition.
- 9.25 Our client's suggest that price depression is a symptom of competition in a contracting market and, more specifically, sales strategies and pricing policies implemented by market participants.
- 9.26 Our clients re-iterate that price competition in the market and, specifically, price undercutting must be assessed by looking at the Australian applicant's business model and strategies and its aggressive price strategy dealt with in the section that follows.

B) Third country imports

- 9.27 Our clients refute the allegations made by the applicant that, because of the global downturn in demand for Q and T, overseas exporters have resorted to selling the goods below cost and at dumped prices in order to move inventory stockpiles.
- 9.28 Our clients submit that this is a baseless claim. Japanese mills wish to maintain their presence (as they have for decades) in the Australian market as a competitive source of supply in a fair-market.
- 9.29 As the applicant will be aware, longevity in any market (particularly a sensitive market such as Q and T steel) requires the maintenance of certain standards of quality, supply stability, sales terms and price-point.

- 9.30 As the ADC will appreciate, the contracted global market for Q and T has contributed to heightened price sensitivities. Our client's submit that global Q and T prices influence prices in the domestic market and that market price benchmarking occurs fluidly in response to trends in price offerings from certain sources of supply.
- 9.31 Our clients submit that price competition in the Australian market is driven by end-users who are aware of the reduction in demand and the global oversupply. Domestic prices will be influenced by global market prices and benchmarked price offerings in the Australian market.
- 9.32 Our clients submit that downward price pressures in the market are driven by the lowest price offerings in the market. The ADC must carefully consider the relevant impact that imported Q and T from countries **other than** Japan, Finland and Sweden have had in relation to the dynamics of price.
- 9.33 If it is found that the lowest price point in the market is being led by benchmark prices from imports from other countries, the only conclusion that can be drawn is that it is those imports which are driving the alleged conditions of price competition in the market.
- 9.34 Furthermore, as the ADC is aware, the ADC must not attribute any injury caused by them to the imports that the Applicant has alleged are dumped.
10. **Business model**
- 10.1 Our clients submit that, based on market intelligence (and indeed submissions on the public file) regarding the applicant's operational model and behaviour in the Australian Q and T market, it has contributed to developing the dynamics of price competition which, allegedly, have caused it injury.

Vertical integration

- 10.2 Our clients understand [REDACTED] that the applicant operates a partially vertically integrated business model - that is, it sells into the downstream market through unaffiliated distributors and its own network of affiliated distributors.
- 10.3 Our client understands that, due to this model, the applicant effectively stimulates direct competition in relation to sources of supply of its own 'Bisplate' product.
- 10.4 This creates an unfavourable split supply chain for the bisplate product and puts the applicant at risk of undercutting the price point of its own product in the market and lowering the benchmark for the 'bisplate' brand amongst end-users.
- 10.5 Our clients submit that this behaviour, alongside the quality and utility/variety concerns regarding the suite of Bisplate product relative to other offerings in the market, has caused the applicant's product to be viewed as a lower-tier brand in the market.
- 10.6 The applicant has suppressed its ability to raise its prices above the price point which it has created for itself, and continues to erode through its aggressive pricing behaviours.

Debt

- 10.7 Our Clients submit that the ADC should carefully consider the extent to which the applicants operational performance has been caused by its financial situation. We specifically note that the applicant has struggled to reign in large business debts that it has had on its books for a number of years (four years ago its net debt totalled more than \$36.5 million) - the applicant's

annual reports indicate the reduction of debt has been a business priority which has only just been managed in FY 2013.

Reactive pricing

- 10.8 Our clients understand that buyers (both at the distributor level and end-user level) in the Australian market have considerable influence on price negotiations in the current market - price offers of other producers and the prevailing global market price of Q and T will be used as bargaining tools to drive the price down.
- 10.9 This is particularly the case with original equipment manufacturers who use the prevailing global price as a benchmark in claiming the price that they are prepared to pay for Q and T in Australia.
- 10.10 Our clients are aware [REDACTED] that increased inventory and competitive pressures in the Australian market have led to some sellers (including the applicant) to be 'reactive' in their pricing strategies in order to retain sales volumes and move inventory.
- 10.11 Our Client's submit that this is supported by the application submitted to the ADC and the applicant's reliance upon 'market intelligence' to assert the average price of imported product in the Australian market for the purposes of undercutting analysis.
- 10.12 Our clients consider the applicant's reliance upon price quotations supplied to it by Australian customers in the course of negotiations to support the view in the market that the applicant has either induced a price drop or been 'reactive' to price offerings to Australian market.
- 10.13 Our client submits that the information that the applicant has reacted to in setting prices is inherently unreliable and provided by parties for the specific purpose of driving down the price. We submit that the ADC should carefully consider:
- the veracity of the information relied upon by the applicant when determining its pricing strategies; and
 - the extent to which the applicant has effectively undercut its price point by adopting a reactive pricing strategy.

Other relevant factors

11. Market offering

- 11.1 The market is changing. Demand has contracted across the board. Everyone is competing for a smaller customer base. The applicant has done well to maintain market share in a contracting market.
- 11.2 The applicant's claim of injury in terms of sale volume and market share is premised on the assertion that, but for the imports being sold at dumped prices, customers who have procured imported product would have purchased the Australian product. This is a subjective hypothesis which is incapable of being tested to any degree of reasonable satisfaction. What underlies the assertion is the applicant's overestimation of the value offering of its product to the market and the avoidance of a consideration of the factors other than price which differentiate products offered in the Australian market.

- 11.3 Submissions from those in the downstream market at both the distributor and end-user level have indicated that, as demand contracts, competitive pressures have increased as margins for all entities along the supply chain contract – the simple fact being that the slowdown at the end user level has resulted in slimmer margins for all up-stream suppliers.
- 11.4 In such an environment, price has become an influential factor in supply negotiation. However, it has never been, and still isn't, the decisive factor in the Australian Q and T market. Due to the specific end-use requirements for which Q and T steel is procured, other factors influence procurement decisions such as:
- availability and stability of supply
 - reliability and assurance of product quality
 - terms of supply and supply relationship
- 11.5 Downstream market participants such as [REDACTED] at the distributor level and [REDACTED] at the end-user level have both shared similar sentiments that the supply relationship with Japanese exporters, including the reliability of their product, and the consistent quality of the offering justifies the price point at which the goods are introduced to the Australian market.
- 11.6 Furthermore, they suggest that this price point is not the cheapest in the Australian market. However, the other factors surrounding the supply of the goods add value to the service offering from Japanese mills and make the product the more suitable option for their purposes and those of their clients.
- 11.7 This is a consideration that the applicant has either failed to address in its engagements with the ADC or has sought to avoid. The applicant would have the ADC believe that the Q and T steel offered to the Australian market is homogenous and generally substitutable, such that customers will switch from source of supply according to the price point at which the goods are offered. It is this view of the Australian market which supports the applicant's assertions that price competition is being driven by the downstream market.
- 11.8 The applicant asserts that this customer led market, has led to competition between imported product and between imported product and the applicants goods such that prices are depressed and suppressed. This view of the market supports the applicant's claims regarding injury. However, this view is wrong and does not correctly reflect the commercial realities of the market.
- 11.9 As stated by SSAB in its submission, and supported by our clients, the Q and T steel market in Australia is, and has always been, a sophisticated market due to the specific end use requirements for the goods. Customers look to a variety of variables when making supply choices including the physical and technical requirements, logistical supply concerns and other factors such as commercial relationship and history of supply.
- 11.10 Our clients support the views put forward by SSAB that overseas mills introduce product on the basis of service offering, not just price. Our clients share SSAB's views that the lower price-points in the Australian market are being serviced by imported product from countries other than those identified in this investigation – namely China and Korea.
- 11.11 Any downward pressure placed on prices in the Q and T market, if it does indeed exist, would be driven largely by imports from these countries with the catalyst being Australian customers who do not have the discerning supply requirements of the majority of customers in the Australian market.

12. No competition

12.1 Our clients imports of Q and T Steel is responsive to the specific requirements of its clientele. Our clients manufactured product meets the specific needs of its Australian customers, as is evident from:

- (a) a letter from Drake Trailers Pty Ltd (**Drake**) to the ADC dated 1 April 2014. Drake indicates that it has a long standing relationship with [REDACTED] and "regularly re-examine[s] the feasibility of sourcing [Bis-80] as an alternative" to our client's Q and T steel product. However, it has declined to purchase Bis-80 due to the "shortcomings" in Bisalloy's capability of supplying a product fit for Drake's specific purposes. More specifically, those shortcomings are identified as "a critical disconnect between [Bis-80's] tolerances...and the technical plate specifications required by [Drake] to meet its current production and customer needs";
- (b) a letter from Metso Minerals (Australia) Limited (**Metso**) in respect of its relationship with our client, JFE. Metso, a company which operates globally, indicates that JFE's Q and T steel is "proven to be the most suitable selection in terms of wear performance, product range, price, availability and service". Although not the cheapest product on the market, Metso considers that JFE's Q and T steel is its "primary choice" for its Polymet Liners.

12.2 The above indicates that:

- (a) Bisalloy's product is not fit for purpose for our clients' customers. It follows that there could be no dumping in respect of product meeting that description;
- (b) Australian purchasers choose between Bisalloy and other products in the market based on quality of produce. The differential in demand for our clients' product and Bisalloy's product could not, in those circumstances, be attributed to dumping.

13. Different production process

13.1 Our clients are integrated steel manufacturers who are able to control quality throughout their production process from raw materials, iron making, steel making, rolling, heat treatment, inspection and shipment. A component of production for certain exported products is the "Thermo Mechanical Control Process" (**TMCP**) by which it utilises heat in the rolling process and omits the re-heating process from the manufacturing process. The omission of the re-heating process reduces the production costs for our clients, which costs saving our clients can pass on to their clients by selling at a lower price.

13.2 In contrast, Bisalloy does not use TMCP and controls only a portion of heat treatment used to manufacture its Q and T steel. This results in a higher production cost for Bisalloy and reduced price competitiveness, accordingly.

14. Value added supply chain

14.1 Our clients engage a distribution process for their Q and T steel which differs to that of the applicant.

14.2 The applicant sells 80% of its Q and T steel plate in Australia through a network of distributors as "full plate". That product has not undergone any form of processing. The remaining 20% is sold directly (ie without the service of a distributor) to its larger end user customers and includes services for repairs and maintenance.

- 14.3 Our clients do not compete with 80% of the applicant's market. In relation to the other 20%, our clients' main customers are service centres which provide essential services to the mining sector including stockist, processor and machine shop functions, which services the applicant does not provide. Additionally, a significant proportion of our clients' sales in the relevant competing market are of Q and T steel which has undergone a form of processing, such as cutting, drilling and bevelling.
- 14.4 The distinction between the services provided by our clients to the services provided by the applicant in the relevant market is a further factor which differentiates our clients' product from the applicant's, and must be taken into account when determining any injury.
15. **Other imports – completed/partially completed products**
- 15.1 Global reductions in the price of Q and T have resulted in increased cost efficiencies of overseas original equipment manufacturers and the directly related increase of importation of pre-fabricated products from overseas, which would typically have been manufactured in Australia by original equipment manufacturers, using Q and T Steel.
- 15.2 This trend can be supported by Customs data related to the importation of for example, finished products such as buckets for earth moving machinery, truck bodies etc.
- 15.3 This has led to a further decrease in demand from Australian original equipment manufacturers who cannot compete with imported pre-fabricated product.
- 15.4 Our clients understand that much of this pre-fabricated product comes in from Indonesia (including from a free trade zone).
16. Conclusion
- 16.1 As the ADC is well aware, if no material injury has been suffered during the period of investigation:
- there can be no positive finding of any injurious dumping; and
 - In the absence of such a finding, dumping notices cannot be published.
- 16.2 Our clients consider, on the basis of the above, that the claim that it has suffered material injury during the period in question are baseless. The claims made rely upon the wilful misinterpretation of market statistics regarding the numerous extraneous variables which have impacted the structure or the market within which they operate, and the performance of their business in the current commercial landscape in Australia.
- 16.3 Without detracting from the above, our clients consider that, even if the applicant's classification of market performance issues to be indicia of 'material injury' the ADC must carefully examine the link between such injury and the specific conditions of the Q and T market in Australia during the period in question.
- 16.4 Our clients submit that the changing paradigms of performance about which the applicant has complained, were caused by factors in the market which are not associated with dumped imported product.
- 16.5 Further, to the extent to which the applicant's present commercial condition can be linked with the dynamics of competition in the Australian market, our client urges the ADC to carefully consider the impact that the applicant's own commercial behaviour and sales structure has

had upon its position within the Australian market. Similarly, the ADC ought to give careful consideration to the effect that imports from countries not named in the present investigation have had upon the dynamics of competition in the market and the environment of aggressive price competition complained of by the applicant.

Yours sincerely

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