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

10 June 2014

Attn: Mr Matthew Williams

Dear Sir

Quenched and Tempered Steel Plate Investigation - issues arising from the Visit Report - Australian Industry - Bisalloy Steels Pty Ltd

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

We refer to the May 2014 Visit Report - Australian Industry (**Visit Report**) in respect of Bisalloy Steels Pty Ltd (**Bisalloy**).

The purpose of this letter is to comment on and address issues arising from the Visit Report with a view to ensuring that the Anti-Dumping Commission's (**Commission**) assessment of matters relevant to the Statement of Essential Facts represents a complete and accurate analysis of the material facts affecting this investigation.

For ease of reference we adopt numbering used in the Visit Report.

3.1 Corporate, organisational and ownership structure

The Visit Report specifies that Bisalloy's parent company, Bisalloy Steel Group Limited (**Bisalloy Steel Group**), has distribution operations in Thailand and Indonesia and also has a 33% equity stake in Bisalloy Jigang (Shandong) Steel Plate Co., Ltd (**Bisalloy Jigang**). It is stated that Bisalloy Jigang is a manufacturer of Q&T steel plate in China.

The Visit Report does not provide details of the exports by Bisalloy Jigang of Q&T steel plate into Australia during the investigation period. This information may have a material bearing on the ADC's investigation.

Please investigate or provide:

(a) details of the exports by Bisalloy Jigang of Q&T steel plate into Australia during the investigation period;

(b) the quantity of imports by Bisalloy sourced from its joint venture *partner,* Shandong Iron and Steel.

3.3 Relationship with suppliers and customers

At 3.3.2, it is stated that Bisalloy sells Q&T steel plate on both the domestic and export markets. Relevant to the question of injury is the volume of Bisalloy's products which are exported. We respectfully suggest that the ADC ascertain:

(a) the quantity of Bisalloy's exports of Q&T steel plate during the investigation period to:

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(i) Thailand;

(ii) Indonesia;

(iii) countries other than Thailand and Indonesia.

(b) the price at which Bisalloy's exports of Q&T steel plate, during the investigation period, was sold to:

(i) Thailand;

(ii) Indonesia;

(iii) countries other than Thailand and Indonesia.

(c) the quantity of imports by Bisalloy from its joint venture *partner* (Shandong Iron and Steel) or its joint venture company (Bisalloy Jigang).

4.3 Marketing and distribution

The Visit Report records an admission by Bisalloy that its customers were willing to pay a premium of unidentified quantum. The Visit Report also records Bisalloy's observation that, in the last 12 months, its customers are more willing to negotiate on price.

It is salient to observe that the charging of a premium is antithetical to competitive pricing models and shows a disassociation with a *costs to make and sell* model. The charging of a premium in an overheated market (as it was in 2011 and 2012) was achievable. It was not so in 2013 given the reduction in demand by the key driver for Q&T Steel plate, the mining industry. It is natural therefore that Bisalloy's customers are now negotiating price given the contraction of the market and thus demand. Further, the fact that Bisalloy could charge a premium on its domestic Q&T steel plate sales suggests that Bisalloy is the market leader with a consequential ability to set price.

The greatest defect however in Bisalloy's observation is that there is no *link* between the Bisalloy's observation that customers are more willing to negotiate in 2013 to any alleged dumping. Inference and speculation do not constitute proof. There is however irrefutable evidence of market contraction for Q&T steel plate in 2013. The only logical conclusion therefore is that Bisalloy's apparent inability to now charge a premium (or a premium of the size previously charged) is reflective of current market conditions.

As to distribution issues, our clients have previously made clear that Bisalloy's distribution arrangements promotes self-competition - that is Bisalloy's direct sales channel competes with its own distributors. This issue is not addressed in the Visit Report despite it having been identified in submissions by interested parties. It ought to occupy the mind of the ADC and is worthy of analysis by the ADC.

4.5 Demand

Bisalloy attributes a decline in demand over *the past 12 months*[1] to a contemporaneous decline in capital expenditure in the mining industry. Bisalloy considers that the market has shifted focus to refurbishment and repair of mining equipment and infrastructure.

[1] See 7th dash point on page 19 of Visit Report

The contraction of the market is consistent with our clients' submission dated 17 February 2014 (at paragraph 4.3) (**Japanese Mills First Submission**) and more recent injury submission dated 30 May 2014 (**Japanese Mills Injury Submission)**.

4.6 Market size

The Visit Report (figure 2, page 20) charts Bisalloy's estimate of the size of Australian market for 2010, 2011, 2012 and 2013 years. The chart illustrates the proportion of sales of Q&T steel plate in the Australian market by Bisalloy, the countries the subject of the ADC investigation, including Japan (**subject countries**), and 'other imports' being countries other than the subject countries.

An analysis of Bisalloy's chart, by reference to the relative ratio of sales for each of the three categories of sales according to each of the four bars, indicates that in the four calendar years starting 2010:

- Bisalloy's market share was between approximately 32% and 40%;
- imports from the subject countries fluctuates between 50% and 60%;
- other imports have remained relatively steady at between 7.5 and 8%.

Critically, in the investigation period, Bisalloy's market share appears to have fallen by 3.0% (from approximately 40% in 2012 to 37% in 2013) whereas and in contrast there was a 4% fall in market share for the subject countries (from about 55% to 51%).

As to the Japanese Mills sales to Australia, their greatest sales volumes occurred in 2011. Their sales volumes then declined year on year by 8% in 2012 and 33% in 2013. This data was previously set out in the Japanese Mills First Submission at paragraph 4.5.

The above analysis leads to the conclusion that:

(a) even in a declining market, the subject countries' market share has decreased at a greater rate than the rate of decrease for Bisalloy and the other imports (the latter countries sales volumes remained steady throughout).

(b) Japanese imports of Q&T steel plate could not be the source of injury given the reduction of volume by 33% in 2013.

(c) there is a mismatch in terms of when the applicant says it sustained its injury (the investigation period being the calendar year 2013) and the years in which the Japanese Mills had greatest market share or sales volumes (namely 2011).

The above highlights an issue critical to the investigation, the cause of any injury. The Japanese Mills suggest that the fall in Bisalloy's sales is not attributable to the alleged dumping but rather to a generalised fall in the market and a return to the *new normal* or *normal operating conditions*.

5 Sales and Pricing

The Visit Report provides an overview of the sales system employed by Bisalloy.

At 5.3 of the Visit Report, reference is made to a change in the pricing system introduced by Bisalloy in December 2013. Prior to December 2013, Bisalloy used a system whereby its pricing policy had a "starting point". Having regard to information appearing earlier in the Visit Report that Bisalloy charges a premium, and the fact that Bisalloy 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.

The above information provided in the Visit Report however does not accord with Bisalloy's claim that it sought to *match (and reduce)* its price to compete with imports in 2013.[2] We are unable to explain the disparity and inconsistency but the ADC may wish to explore this further. In any case, any reduction in price was a re-adjustment to meet market conditions. Otherwise, the pricing system implemented in mid-December 2013 by Bisalloy is irrelevant.

7 Economic condition of the industry

Bisalloy's general proposition is that it suffered material injury from dumped Q&T steel from the subject countries for "***a number of years**, with an increased impact on its profit and profitability for the 12 months ending September 2013*" (emphasis added).

On the basis of data appearing in section 7 of the Visit Report, the ADC concludes (at 7.4) that Bisalloy *appears* to have suffered from the following *major injury* factors:

- lost sales volumes;
- price depression;
- price suppression; and
- reduced profits and profitability.

In my clients' submission, Bisalloy's propositions and the ADC's preliminary conclusion is unfounded. To exemplify:

- figure 3 on page 33 of the Visit Report (**Figure 3**) illustrates that Bisalloy's domestic sales volume increased every year from 2010 to 2012. This data does not reconcile with Bisalloy's claim to have suffered material injury by reason of dumping for "*a number of years*";
- in respect of the 2013 year, relevantly to the investigation period, Figure 3 shows that Bisalloy's annual sales volume for that year is equal to its 2010 sales volume. For the reasons stated at paragraph 4.3 of the Japanese Mills First Submission, this statistic suggests that the 2013 sales are settling following the 2012 peak of the mining boom, which is now on the downward trend. It is not supportive of a causal link with the alleged dumping;
- in relation to figures 5 and 6 at page 34 of the Visit Report, the data shows that annual unit CTMS has ***decreased*** at every interval since 2010 and rose marginally in 2012. From 2012, CTMS has reduced and as at the last quarter of 2013, CTMS and revenue had equalised with a resultant zero profit. The 2013 figures do not support Bisalloy's claim to have suffered material injury from dumping. Rather, the Japanese Mills consider that the data is attributable to efficiency and throughput issues. The higher the utilisation and amount being produced, the lower the unit CTMS. Given the 2013 market decline, it is natural that a throughput decrease had a concomitant effect on CTMS;
- in relation to figures 6 and 7 on page 35 of the Visit Report, they are consistent with the market contraction referred to above following the end of the mining boom.

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[2] See page 28 of Bisalloy's application filed with the ADC.

As to the ***other injury factors*** cited, they are not relevant to an assessment of injury as a result of dumping. They ought to be accorded no weight. The Japanese Mills make the following observations:

(a) (**Share Price**) there is no apparent or necessary connection between a decline in share price and injury caused by dumping. Share price is driven by many factors including rumourtrage, market sentiment, inside information, sector buoyancy or perceived prospects of the company. There are a myriad of other reasons. In short, share price is not an injury factor. One fact which seems to have eluded Bisalloy is that its share price was highest in 2012 - which was the year of the mining boom and its greatest production;

(b) (**Return on Investment**) the publicly available information contradicts the blanket claim of a decline of return on investment or equity. In its investor presentation for its 2013 full year results[3] at page 5, Bisalloy noted that its return on equity was 22% in FY2011, 36.9% in FY2012 and 16% in FY2013. As will be evident from those figures, the decline occurred in 2013 with each preceding year having been a positive growth figure in terms of return on investment. In short, the statement at 7.5.2 of the Visit Report should be approached with a degree of circumspection because what is being measured is the 2013 year - a year which has seen a very significant market contraction.

(c) (**Revenue/utilisation/stock levels**) the cited figures of a reduction in revenue by 26%, capacity utilisation reduction of 23% and a closing stock level increase by 114% using 2010 as the base year for 2013, are indicative of a contracting market and less throughput.

Significantly though, other important indicators have been ignored by the ADC. By way of example:

(i) costs/revenue ratio i.e ratio of costs of sales as proportion of the value of the sale of goods was 79% in FY2013 which was the same in FY2012;[4]

(ii) gross profitability ratio i.e ratio of gross profit as a proportion of the value of the sale of goods is 20.9% in FY2013 which is more than the 20.2% achieved in FY2012;[5]

(iii) the total current and non-current liabilities of Bisalloy decreased in FY2013 by 43% and 9% respectively over the FY2012;[6]

(iv) In note 4 to Bisalloy's 2013 annual accounts it is recorded that, other than the 3 distributors who make up its *major customers*, the next most significant client account is end users. There is one end user who is described as a major customer who accounted for 1% of total external revenue in 2013 but who accounted for 10% of total external revenue in

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[3] http://member.afraccess.com/media?id=CMN://2A755198&filename=20130911/BIS_01442908.pdf

[4] See Bisalloy's 2013 Annual report at page 17.

[5] ibid.

[6] ibid at page 18

2012. This suggests that the end user in 2012 purchased approximately $6.6M of Bisalloy product but in FY2013 that same end user reduced its purchase to about $870,000. It is clear that the reduced purchases by this end user had a significant affect on the fortunes of Bisalloy;

(v) inventory levels have not increased as recorded by the ADC in its Visit Report but have decreased - in the Managing Directors financial report for the half year ended 31 December 2013, Mr Terpening, Bisalloy's managing director, said:

> "*Inventory levels have fallen by $5.5m in the six months to December 2013, however minimum inventory levels are required to be maintained to meet any opportunities for spot sales*".

(d) (**Reduced wages**) the reduction in wages is said to be attributable to the absence of overtime rather than a reduction in staff by reason of retrenchment. Again, this is an indicia of a contracting market (which Bisalloy admits). It is also notable that during the relevant period many Australian companies had a wage freezes including Holden and Qantas. In truth this factor plays no part in any assessment of injury.

8 Causal link

Causal link is still to be determined. Our clients insist that a proper and full evaluation of injury take place with a strict adherence to the dictates of section 269TAE(2A) of the *Customs Act 1901* (Cth) (**Act**) and article 3.5 of the Anti-Dumping Agreement.

In any event, in section 8.1, Bisalloy claims a demonstrable causal link between the alleged dumping and claimed material injury to the Australian industry by reason of the following:

- a belief that free-on-board (**FOB**) prices for Q&T steel plate declared and captured by the Australian Bureau of Statistics are much higher than actual selling prices for product imported from the subject countries. The belief is said to be based on an *estimate* of importation costs and importer prices. Bisalloy's claims do not have any solid, probative basis;

- the declared prices of exports of Q&T steel plate to Australia from Finland and Sweden are not reflective of selling prices because they have been reduced to compete with Japanese imports. No evidence is cited in support of that claim;

- its own management reports and written quotes in relation to the alleged price undercutting. Those figures are yet to be verified and should be treated with caution, accordingly, unless and until such verification occurs.

For the reasons set out above, the ADC should approach Bisalloy's claims with extreme circumspection and caution. It should require positive evidence not hearsay accounts gathered by Bisalloy's employees and operatives.

In relation to section 8.2, my clients note Bisalloy's admission of a decline in the market commensurate with a downturn in mining activity. That admission stands to Bisalloy's credit and is consistent with my clients' previous submissions. Bisalloy claims that it determined to reduce its prices in an attempt to maintain sales volumes and market share. That was its own decision. Bisalloy has not proven any price undercutting. In the absence of absolute proof, Bisalloy's submission is supportive of the Japanese Mills position that any injury suffered by Bisalloy is not due to dumping but, rather, competition and natural market forces.

Finally, in relation to manufacturing process (thermo mechanical control process) and costs structures, the submission made by Bisalloy is wrong. In particular, there are costs advantages that accrue to integrated steel mills that Bisalloy (as a non-integrated manufacturer) does not enjoy. Secondly, the linkage that Bisalloy seeks to draw between excess supply resulting from high capacity utilisation because of the need for blast furnaces to always be operable is also wrong. Integrated steel mills can modulate the production process and the intensity of use of the furnace. By way of example it is possible for integrated steel mills to reduce production by reducing (i) the pig iron tapping ratio (the tapped quantity of pig iron per day per m^3 of inner volume of the blast furnace) and (ii) the scrap ratio (the ratio of scrap quantity inputted into the basic oxygen furnace).

Conclusion

We consider that the ADC ought to further explore numerous issues as identified in this letter and our client's previous submissions. We consider that there is a genuine deficiency of evidence in respect of injury factors. The consideration of the injury factors in the Visit Report is, with respect, superficial and unbundled. We urge the ADC to fully consider and address each of the prescribed matters in section 269TAE(2A) of the Act in a more complete way.

Yours sincerely

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