Canberra
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
ACT 2609 Australia
+61 2 6163 1000

Brisbane
Level 4, Kings Row Four
235 Coronation Drive
Milton, Brisbane
QLD 4064 Australia
+61 7 3367 6900

Melbourne
Level 50
120 Collins Street
Melbourne
VIC 3000 Australia
+61 3 8459 2100

moulislegal

commercial + international

8 January 2024

The Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra
Australian Capital Territory 2601

By email

Dear Director

SSAB - quenched and tempered steel plate from Finland and Sweden Identification and correction of application deficiencies

We refer to initiation of continuation inquiry 638 on 4 December 2023.

SSAB believes that reasonable justification for initiation of this inquiry was not demonstrated by the applicant, Bisalloy Steel Pty Limited, in its application. Further, SSAB is concerned that legal standards of transparency have not been complied with by the applicant. SSAB seeks the Commission's intervention so that information that has been wrongly claimed by the applicant as being "confidential", or has otherwise been withheld from publication, is disclosed on the public record of the inquiry.[1]

1 The applicant's frame of reference is misguided

The central premise of Bisalloy's application is that *"the current measures do not reflect the higher steel selling prices that are evident following recent global increases"*.

The question the Commissioner must answer in a continuation inquiry is whether the expiration of the measures would lead to or would be likely to lead to a continuation or a recurrence of the dumping and the material injury that the anti-dumping measure is intended to prevent. Whether or not the current measures reflect any higher or lower steel selling prices in any other place on the planet is irrelevant. Anti-dumping measures are not intended to ensure that the prices at which products are exported to or sold in Australia reflect the highest prices achievable *"globally"*. Rather, they are imposed and

[1] Please note that the attachments said to be non-confidential have not been placed on the public record either (see heading 2 below).

maintained only in order to respond to price behaviour that causes material injury to a domestic industry by reason of dumping, as those terms and concepts are defined by the legislation.

In any case, so far as can be discerned from the face of the application, it does not appear that any evidence of these higher prices was provided to the Commission. If there is information about these *"recent global [price] increases"* in the application, for example in an attachment for which confidentiality has been claimed, it should be provided to interested parties.

In opposition to the applicant's strange concern that steel prices have recently increased, the application presents a large amount of information intended to establish the contrary proposition. According to the application, global steel industry developments have been such that excess capacity that leads to *"low prices for the subject goods"* is *"one of the biggest challenges facing steel producers and exporters"*.

Thus, the application is incoherent as to whether global prices have increased or decreased, and on which of these phenomena the applicant claims to rely, and on the relevance of that reliance to the statutory test.

Importantly, we remind that the likelihood of a recurrence of the material injury that the anti-dumping measure is intended to prevent is to be answered in respect of SSAB as the relevant exporter and quenched and tempered ("Q&T") steel plate as the relevant product. Broad observations about increases in world steelmaking capacity are way down the list of relevant considerations that could be taken into account by the Commission in this inquiry relating to *this* exporter and *this* product. The subject product is highly specialised. The dumping measures over the past 10 years have served their market-altering purpose to the benefit of the Australian industry. SSAB's understanding and observance of the measures and what they have been intended to achieve has been exemplary.

We also draw attention to the applicant's concession that of the 17 anti-dumping or countervailing measures imposed by WTO Members *"on Q&T steel plate, as classified to the six digit tariff subheading for 7225.40"*, none apply to exports from Finland or Sweden.

Further, citing measures *"as classified"* to products of *"7225.40"* further evidences the non-specific nature of the claims the applicant has advanced to the Commission in its application.[2] Q&T steel plate, being the product to which the measures currently apply, is a specialised product. In the case that is mentioned in the application, measures were imposed against no less than 25 six-digit items to which the products investigated were classified. Clearly, different factors were in play in that case from the perspective of domestic steel industry injury. Our own inquiries do not demonstrate any measures in effect anywhere else in the world applicable only to Q&T steel plate, as is the position in Australia.

Indeed, at no point in its application does the applicant claim that the measures must not be allowed to expire to prevent a *continuation of injury*. The applicant's claim is that it is a *recurrence of material injury* if the measures are allowed to expire that it is concerned about. This admits that it is not suffering material injury at present, a fact that has been made abundantly clear in its recent pronouncements.

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2 The measure referred to by the applicant is the USDOC's affirmative final determinations in the antidumping duty investigations of imports of certain carbon and alloy steel cut-to-length plate (CTL plate) from Austria, Belgium, France, Germany, Italy, Japan, Korea, and Taiwan.

There can be no better example of this than the applicant's 2023 AGM presentation on 6 October 2023, which evidences its positive financial position and bears out its opinion that it has not suffered material injury by reason of dumped imports. In that presentation the Chairman and Managing Director advised shareholders of *"a strong financial result"*, a *"healthy dividend"*, *"strong sales volume"*, *"revenue growth"*, *"great value and service… based on our offer of high-quality products at competitive prices"*, *"optimis[m] to deliver another strong year"*, *"a strong year for your company"*, *"a year on year improvement in sales volume"*, a growing *"customer base"*, the *"deliver[y of] some very strong numbers"*, *"more growth opportunities"*, *"strong financial results and performance"*, *"significant sales orders from new customers"*, *"maint[enance of] our existing customer base"*, and *"improved… market share"*.[3]

As well as global prices being either higher or lower, we are not sure which, the applicant advanced two other grounds for initiation of this inquiry.

The first is that SSAB has maintained distribution links to and in Australia. We do not see how this can support the likelihood of a recurrence of injury. It supports the proposition that SSAB, as an established participant in the Australian Q&T steel plate market, will continue to be a participant. It does not inform the question of whether its future sales behaviour would suddenly change because of the expiry of the measures.

The Commission must ask what incentive there would be for SSAB to reduce prices in a market where the two dominant participants, being the applicant and SSAB, are already operating profitably. Why SSAB Australia, as the highest priced participant in the Australian Q&T steel plate market, with a well-established market share, and good profitability, would make a deliberate decision to reduce its prices and undercut the applicant, when there is absolutely no commercial reason for it to do so, and where doing so would put SSAB Australia's imports right back into the anti-dumping net, and cause it to incur all of the compliance costs and red tape that it has suffered over the past 10 years, is not apparent. The application does not make that apparent either.

The other ground advanced by the application is the applicant's statement that the applicable measures are not reflective of contemporary Q&T steel plate prices when home market European plate prices are considered. This is a nonsensical justification for the initiation of a continuation inquiry where the applicable measure has at all times been based on a non-injurious export price. The injury that the measure has been intended to prevent is dumping to the extent that it causes material injury to the Australian industry. In only expressing its concern about the *recurrence* of material injury, rather than its *continuation*, the applicant admits that it has not been suffering material injury by reason of exports from Finland and Sweden.[4] This means that some factor or factors other than the evidence of SSAB's prices in the past must be brought forward in order to compel a conclusion that SSAB would materially injure the Australian industry on a price basis in the future. SSAB's price behaviour in the Australian market

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3 Please refer to Attachment 1 to this letter.

4 We note that at no time in the period the measures have been in effect, a period that is now closing-in on a decade, has the Australian industry applied for a review of the non-injurious price levels. This implies that the measure in place, and the implications SSAB would face in not complying with the measure, have encouraged and have maintained a market equilibrium within which the applicant has operated profitably and to its benefit. The application does not identify evidence that SSAB's behaviour as a Q&T steel plate manufacturer would probably change if the measure was allowed to expire. Although "excess global steel industry capacity" in a general sense does not in SSAB's opinion translate to "excess global capacity" in the specialised and branded Q&T steel sense, it is pertinent to note that how others might behave in any relevant "overcapacity" scenario would be as much a problem for SSAB's Australian profitability as it would be for the applicant's profitability.

supports allowing the measure to expire. Home market European plate prices have nothing to do with the injury that the measure has been intended to prevent.

In summary, even if the Commission was to accept the miscellaneous and generalised claims put forward by Bisalloy for continuation of the measures, without more, it would necessarily have to recommend to the Minister that the measures be allowed to expire. The application suggests nothing more than "business as usual", with "usual" being a situation in which SSAB is not causing material injury to the applicant.

This is a "good news" story for the Australian industry. The measures imposed by the Commission in previous proceedings can be seen to have had their intended effect in the market. The sales behaviour of the leading players, Bisalloy and SSAB, has settled into a pattern that is non-injurious of Bisalloy, and there are no grounds of any probability related to SSAB itself to establish that this will change.

2 Failure to disclose information relied upon by the applicant

Section 269ZJ of the *Customs Act 1901*, with respect to the maintenance of the public record, is clear:

- If a person gives information to the Commissioner and claims it to be confidential, or to be information that would adversely affect any person's business or commercial interests, a non-confidential summary of the information containing sufficient detail to allow a reasonable understanding of the substance of the information must be given to the Commissioner for inclusion in the public record.

- A person does not have to give the Commissioner a non-confidential summary if the Commissioner is satisfied that there is no way that a summary can be given to allow a reasonable understanding of the substance of the information.

- If the Commissioner is not satisfied as to a claim of confidentiality for any information given to him or her, or as to a claim of adverse business or commercial affect, and the person giving the information will not agree to its publication on the public record directly or in summary form, the Commissioner must disregard the information unless it is demonstrated that the information is correct.

These requirements specifically apply to continuation inquiries, including to an application for a continuation inquiry. The application form itself states:

> *The non-confidential application should enable a reasonable understanding of the substance of the information submitted in confidence. If you cannot provide a non-confidential version, contact the Commission's client support section for advice.*

As far as we can piece together, given the absence of any indexing or table of contents in the application, and the fact that none of the attachments/appendices referred to in the application or in the *"statement setting out reasons for seeking continuation of the antidumping measure"*[5] appear on the public record at all, the attachments/appendices lodged with the Commission were as follows:

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5 Referred to as "Non-Confidential Attachment A".

Attachment/appendix designation and no.	Description of attachment/appendix as mentioned in the application (including two "charts" and one "table")
Confidential Appendix A-2	Estimate of import volumes and consequent export prices and references to the published financial statements of SAB AU [sic].
Confidential Appendix A-2 [also]	Australian market for Q&T steel plate using Bisalloy's domestic sales and available import statistics data
Confidential Appendix A-6.1	Confidential Chart 4: Q&T steel plate CTMS & Revenue indices
Confidential Appendix A-6.1 [also]	Confidential Chart 5: Q&T steel plate Profit & Profitability indices
Confidential Appendix A-7	Performance of the local industry (profits, price trends, investment and employment)
Non-Confidential Attachment 1	WTO Integrated Trade Intelligence Portal; Galvanised steel trade remedies against China, Korea, and Taiwan
Non-Confidential Attachment 2	Commerce Finds Dumping of Imports of Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, Germany, Italy, Japan, Republic of Korea (Korea), and Taiwan and Subsidization of Imports from Korea
Confidential Attachment 3	SSAB Swedish Steel Pty Ltd – Financial Report Year Ended 31 December 2022
Confidential Table 3	SSAB AU Related Party Country Sourcing
Confidential Attachment 4	Import statistics
Non-Confidential Attachment 5	OECD Latest Development in Steel Making Capacity, 2021. p. 5
Non-Confidential Attachment 6	OECD Latest Development in Steel Making Capacity, 2023. p. 19
Attachment 7	Unknown or non-existent
Confidential Attachment 8	Competitive market price offers
Confidential Attachment 9	2022/23 quarterly home market selling prices, export price estimates and consequent prime facie dumping margins

The level of disclosure of the applicant's case in its application has been minimal in the extreme.[6]

In that regard, we make the following submissions on behalf of our client:

(a) What is it about *"[e]stimate[s] of import volumes and consequent export prices and references to the published financial statements of SAB AU [sic]"* that is confidential? Presumably, the applicant has made some conclusions about these matters based on SSAB AU information that is openly available from the ASIC website. The applicant's conclusions based on our client's financial data are confidential. Rather, they are its opinions and its arguments. However, they are not disclosed. SSAB requests that they be disclosed on the public record.

(b) What is it about the *"import statistics"* data presented by the applicant that renders it confidential? Having to pay to receive downloads of Australian Border Force information from the Australian Bureau of Statistics does not transform publicly available information into confidential information. SSAB requests that the import statistics submitted by the applicant be disclosed on the public record.

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6 For example, the applicant claims that the name of its Chief Executive Officer and Managing Director is confidential even though an internet search identifies that person to be a Mr Rowan Melrose. Confidentiality is also claimed for the name of its Chief Financial Officer, when the name of that person, a Mr Carl Bowdler, is easily discovered in an ASX Media Release dated 19 October 2021.

(c) Market size estimates, sales volumes, market share estimates, price and cost comparisons, profit and profitability – even if sometimes only on the basis of trends and indices – are routinely provided in response to application forms for anti-dumping investigations. Indeed, the Commission stipulates that they must be provided, and must be disclosed in some form or another. Further, the Commission's consideration report for the purposes of an initiation of an investigation will publish such information to demonstrate both the sufficiency of the application and to explain the decision to initiate. The applicant in this case has presented the Commission with information of this nature but has claimed some kind of "free pass" from the due process requirements of the Customs Act. SSAB requests that this information be disclosed, whether directly as provided to the Commission, or in the customary table format with anonymous "x" and "y" axes.

(d) If the applicant has opinions about *"SSAB AU Related Party Country Sourcing"* and draws somehow relevant conclusions from same, why are they confidential? That the applicant could be wrong, or that it simply does not wish the allegations to be tested, is not a reason to claim confidentiality. The point of Section 269ZJ of the Act, and of natural justice in an administrative procedure such as this, is to allow an interested party to defend itself against allegations that affect its interests. SSAB asks that this information be disclosed, or that a non-confidential summary be provided by the applicant to enable a reasonable understanding of what has been presented to the Commission.

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This continuation inquiry is of great importance to SSAB. We ask the Commission to insist that the applicant treat it in the same way.[7]

Yours sincerely

Daniel Moulis
Partner Director
+61 414 221 224

[7] As well as the substantive and informational concerns we have about the application, as explained in this letter, we find the application to be deficient in a number of factual respects. The applicant refers to an "undertaking" it has given under the Act that we are not aware of and that we presume does not exist. Nippon Steel and Sumitomo Metal Corporation is not an exporter of the goods, having been renamed Nippon Steel Corporation in 2019. Swedish Steel Pty Ltd is an Australian company and is not an exporter of Q&T steel plate from Sweden. Australian companies with the names ASM Corporation and Commercial Metals, which the application claims to be importers of the subject goods from Japan, were deregistered on 21 June 2012 and 17 September 2023 respectively. Indeed, these details are the same as were included in the application for the previous continuation inquiry five years ago, causing us to question the amount of current-day research that the applicant carried out in order to express the belief that the information in the application was complete and correct. The description of Non-Confidential Attachment 1 as *"WTO Integrated Trade Intelligence Portal; Galvanised steel trade remedies against China, Korea, and Taiwan (extract made 25/09/2023)"* would appear to be wrong. And in its "Summary" the application strangely states that the dumping measures are applicable to galvanised steel exports.