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By email

Dear Director

SSAB EMEA and SSAB Swedish Steel Quenched and tempered steel plate continuation inquiry

A Introduction

We make this submission on behalf of our client Swedish Steel Pty Ltd (“SSAB AU”) and also its parent company SSAB EMEA AB (“SSAB EMEA”) of Sweden and its related company Rautaruukki Oyj (“Ruukki”) of Finland.

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This continuation inquiry was initiated by the Commission on the application of Bisalloy Steels Pty Ltd (“Bisalloy” or “the Applicant”) on 22 January 2019. The anti-dumping measures were originally imposed on 5 November 2014.¹

¹ See EPR 234, Doc 099.

The inquiry relates to the importation of quenched and tempered steel plate (“Q&T steel plate”) exported from Finland, Japan and Sweden and, importantly, its sale in Australia. We return to this theme - the singular importance of analysing the competitive behaviour in the Australian market, and of recognising the significance of what that analysis establishes – throughout this submission.

Section 269ZHF(2) of the *Customs Act 1901* (“the Act”) commands that the Commissioner *must not* recommend securing the continuation of the anti-dumping measures, unless:

...the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent. [underlining supplied]

We submit that the product evidence, the pricing evidence, and the sales behaviour evidence all point in the same direction. That evidence should lead the Commission to find that it cannot recommend that the measures be continued as and against SSAB AU's imports from Sweden and Finland, and to recommend to the Minister that the notice cease to apply to SSAB EMEA and Ruukki's exports, on the basis that the expiration of the duties against them would not lead to a continuation or recurrence of material injury.

As we will explain, there are no reasonable grounds to conclude that material injury, of the kind that the measures were intended to prevent, will continue or recur in the absence of these duties.

Any decision about the future must be based on the evidence of the present. Without such a grounding, an opinion about what may occur in the future is merely speculative. The probability standard for any continuation of anti-dumping measures – that it is probable that material injury would continue or would recur – must be based on facts and the conclusions that are most appropriate in light of those facts.

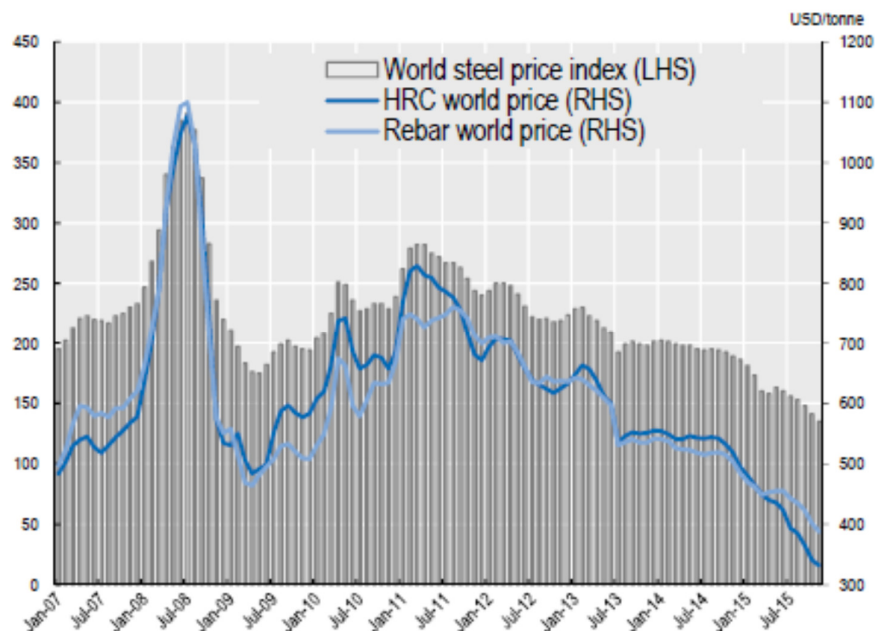
Material injury is not presently being caused and therefore will not continue, and material injury will not recur, because of the clear improvement in Bisalloy's financial condition, and because of the different products, markets, and sales behaviours of SSAB AU and Bisalloy.

B Overview

The circumstances of the market and of world steel prices of six years ago (the investigation period in the original investigation) and at the time the decision to impose dumping measures was made (November 2014) were dire – very different to the largely buoyant market picture we see today.

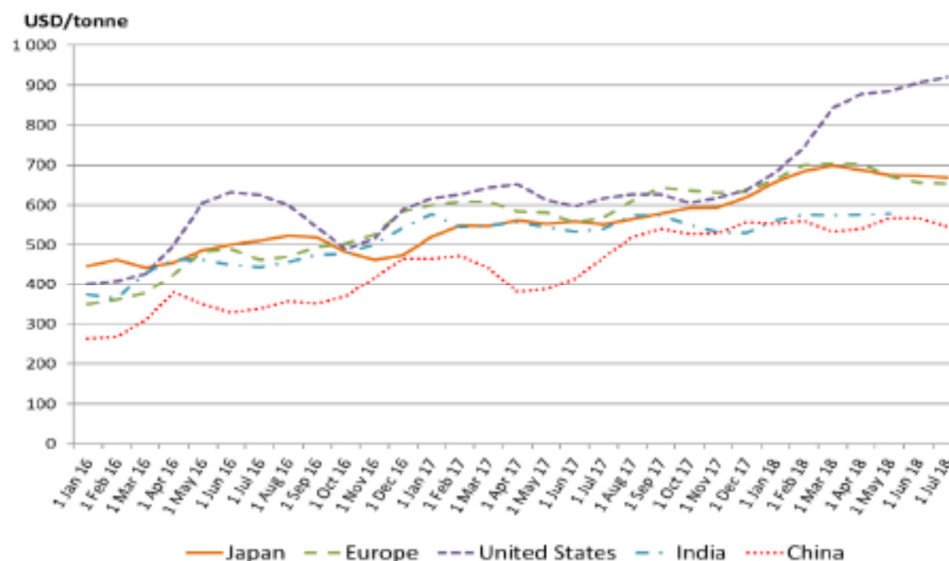
The situation then is best summed up by this OECD depiction:²

² See *Steel Market Developments Q4 2015*, OECD, Paris, page 15 at <https://www.oecd.org/sti/ind/Steel-market-developments-2015Q4.pdf>. Source quoted is *Platts Steel Business Briefing*.



World prices were low and decreasing rapidly, placing pressure on the bottom line of all companies in the steel industry. The responses of the sellers of quenched and tempered steel in the Australian market and of the respective manufacturers was to narrow price margins or undercut more deeply, in order to seek out and buy volume and thereby maintain throughput to “ride out the storm”. Although SSAB disagreed with the finding that it caused material injury at that time, it is conceded that the Commission had a different view.

Since then, however, conditions have changed in world steel markets. Again, citing OECD reportage, flat steel prices have been on a consistent upward trend for the past two years:³



³ See *Steel Market Developments Q4 2018*, OECD Paris, page 18 at <http://www.oecd.org/sti/ind/steel-market-developments-Q42018.pdf>. Source quoted is *Platts Steel Business Briefing*.

Steady, increasing prices, and less volatility, are conditions that have created much calmer market conditions. In the Australian market for specialised quenched and tempered steel this has allowed and encouraged changes in sales behaviour and different market dynamics to emerge. For its part, Bisalloy has adopted strategies more suited to the nature of its product offering and its position as an Australian processor of steel slab. SSAB has refocussed on what it is good at – which is to supply a technically superior structural and wear steel plate, to a separate premium market, at much higher price points. That is, SSAB AU today operates largely outside Bisalloy's competitive sphere, and prices its products on its own terms. SSAB AU will generally withdraw itself from the extreme price challenges that Bisalloy might introduce, because distributor level prices, especially to end-users, are not consistent with SSAB's business model and are unsustainable.

A new market segmentation has emerged. Whether these areas of operation are called separate markets, or sub-markets, or simply different products and customers, is not strictly relevant nor determinative. The key points are that over the past two years, and contemporarily:

- the interactions between SSAB AU and Bisalloy have not caused the latter volume injury; and
- as importantly, Bisalloy cannot realistically complain of price injury by reason of SSAB AU's products and prices.

As to the former, the published data bears this out, with Bisalloy's Australian sales volumes tracking significantly upwards over the past two years. As to the latter, SSAB AU has had much higher prices than Bisalloy in recent times, has progressively been increasing its prices, and has exhibited a strict and provable disinclination to compete with Bisalloy's lower prices or in its customer bracket.

Bisalloy has a volume-based sales strategy that leads it to sell its plate at low prices to steel distributors and other high volume accounts. SSAB AU has a premium-based sales strategy focussed on brand, quality and service to end-users.

Typifying this more pronounced "segmentation", since the original investigation Bisalloy has expanded its production and booked significant present and future sales of armoured Q&T steel plate. Our client believes Bisalloy has secured itself financially within that sub-market. For its part, SSAB AU has almost entirely removed itself from that sub-market, with no active customer accounts and with the one-off sales that have taken place being only in *de minimis* amounts. Accordingly there has been no possibility of competition between SSAB and Bisalloy products in that segment. Bisalloy also effectively "owns" the very significant Australian Government procurement market, an area in which SSAB AU has not tendered and therefore has not interacted with Bisalloy and its products at all.

In sum, the effect of the dumping duties has been to cause the respective companies – SSAB AU and Bisalloy – to focus on what they are good at doing. As a result of these market changes material injury caused by dumping does not exist and will not recur. The present market reality is that interactions between the two companies based on price are few and far between. Where those interactions may have arisen they are initiated by Bisalloy, and are not prosecuted by SSAB AU.

Bisalloy's present price concerns, and a looming problem for it in the future, is the entry of commodity level Q&T steel plate suppliers from countries not subject to the dumping measures, principally Belgium⁴ and China,⁵ and the return of commodity suppliers from Japan should the measures be

⁴ Reliably believed to be NLMK exports, see <http://www.eu.nlmk.com/en/plate/clabecq/>

⁵ Reliably believed to be Baosteel exports, see http://www.baosteel.com/group_en/contents/2911/40089.html

discontinued against those suppliers. The Commission must take into account the import prices of these suppliers and what that means in terms of price effects on Bisalloy. These new import sources compete directly with Bisalloy at the same point in the sales and distribution chain at which Bisalloy operates, at prices which fully undercut those of SSAB AU. We expressly ask the Commission to investigate this important aspect of the inquiry and to arrive at fact-based conclusions with respect thereto.

C The key issue is injurious dumping, not dumping *per se*

SSAB supplies all of its related party markets via a modern, sophisticated, fully tax-compliant production and supply chain. It has positioned, in each of those markets, a related party importer/distributor that handles the first independent resale of the product manufactured by SSAB EMEA.

SSAB EMEA, in its domestic market, supplies Q&T steel plate to independent end-users, some of which are major OEM customers, and to one related party distributor (the Tibnor companies), which itself then on-sells the steel plate to end-users.

In this way SSAB tightly and carefully controls its product and product delivery to all of its end-user customers. This extends all the way from the selection of the raw materials, the detailed manufacture and critical process control required to consistently produce a premium product, the logistics involved in getting the product to the end-user customers, and the educational, service and promotional efforts required to support SSAB's customers and to maintain brand reputation. This "go-to-market" model is a key factor in the success of SSAB globally.

This product and service control is the open secret to the standing and the success of SSAB's Q&T steel plate, and explains why it can command the highest prices in the market.

Because of the related party nature of SSAB's supply chains, it must adopt and does adopt internal sale price guidelines that are consistent with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations⁶ as well as domestic tax law. In very high level summary, these internal guidelines, as well as local legislation, require distributors to earn a reasonable margin locally. To ensure this is the case, prices and profitability are "worked back" from the price established by the market conditions at the point of the first independent resale.⁷

By adhering to the internal pricing principles, based on the OECD guidelines, SSAB ensures its compliance with the tax laws of SSAB's host countries, such as Australia, the objective of which is to ensure that cross-border prices are not so high as to "shift" profit, and therefore tax revenue, to the home jurisdiction of the multinational company concerned. Complying with these policies also causes there to be time lags between internal sales pricing and external market conditions. In times when prices are trending upwards in external markets, internal sales price increases can be slow to implement. Although justified by the fact that the profitability at the first independent resale is higher than OECD guidelines and local rules would allow, there can be a time lag once this has been identified.

⁶ See <https://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>

⁷ In this regard we refer the Commission officials who have the task of considering this submission to the explanations provided at the verification in Oxelösund and the materials that were handed over to the Commission officials who attended that verification. We incorporate and rely upon those submissions for the purposes of this injury rebuttal submission.

The application of anti-dumping principles requires there to be a border, and an export price at that border, for comparison purposes. However, for modern related-party supply chain businesses, the precise border points between countries are becoming less relevant for pricing purposes. A multinational group will be motivated to seek profitable sales in all jurisdictions in which it operates. Its ability to do so will be impacted by the market conditions that exist at the end-point of each of its supply chains.

Applying the accepted and lawful anti-dumping principles to SSAB's internal sales pricing will generate a dumping margin in the inquiry period. This is partly due to the traditional factors that can generate such a margin, namely high prices in the home market of the exporter, and the freight costs involved in supplying far-away markets. SSAB EMEA's sales in its domestic market are also made to end-users, whereas its internal sales are distributor level sales (to its related party importer/distributors, such as SSAB AU). With respect to Swedish prices, a great number of Swedes for historical reasons have a very strong belief in the industrial capability of Swedish technology and engineering, not least when it comes to steel manufacturing. This preference has a positive effect on domestic prices. It is hard to provide evidence of the influence of this factor, and it is obviously not an adjustment factor. Further, the Swedish market is accustomed to the SSAB sales model, meaning that the stratification between SSAB's higher prices and the lower prices of its competitors is quite pronounced.

The point of all this is to say that there is a certain artificiality to a margin finding involving a multinational company in SSAB's circumstances. To illustrate a "truer" reflection of SSAB's price behaviour, we submitted a presentation at the verification at the Oxelösund plant entitled *Australian AD internal sales and market price comparisons*, a copy of which is now provided.⁸

In summary, the presentation compares the three key grades of Q&T steel plate supplied to SSAB AU by SSAB EMEA, representing more than **[CONFIDENTIAL TEXT DELETED – number]**% of the net sales value. It shows:

- that internal sales prices have increased in the range of **[CONFIDENTIAL TEXT DELETED – number]**% to **[CONFIDENTIAL TEXT DELETED – number]**% in SEK terms, with the internal sales price of the highest volume grade showing a straight average increase of **[CONFIDENTIAL TEXT DELETED – number]**% each year on year;
- that the external sales enjoyed by SSAB AU covered the price of the goods sold and left a reasonable arm's length margin for SSAB AU to comply with Australian tax rules;
- that the external sales price that SSAB has received from the Australian market in SEK terms for its major-selling grade has increased by **[CONFIDENTIAL TEXT DELETED – number]**% since 2014 and by **[CONFIDENTIAL TEXT DELETED – number]**% over the past two years;
- that a straight comparison of SSAB EMEA's external prices with SSAB AU's external prices for its major selling grade shows that the SSAB AU's external prices have been much higher than those of SSAB EMEA; and
- that in the same comparison referred to in the previous point, SSAB EMEA's internal sales prices to SSAB AU have been consistently less than SSAB EMEA's external prices in Sweden.

⁸ See Attachment 1 – Australian AD internal sales and market price comparisons **[CONFIDENTIAL ATTACHMENT]**.

It is the latter fact – a comparison of SSAB EMEA's internal sales price to Australia with its external sales price in Sweden – that generates a dumping margin, despite the fact that SSAB AU's external sales price has always been higher than SSAB EMEA's external sales price. It is in fact reasonable and fully in line with transfer pricing rules and theory that the sales prices to a foreign *distributor* customers is lower than the prices towards external *end-user* customers, since the distributor incurs additional costs in its sales and marketing activities and these costs must be covered by the external sales price in addition to the cost of the goods.

It is acknowledged and accepted that this presentation does not follow the technical rules used to determine whether dumping has occurred. It is also acknowledged that the data underlying the presentation was not verified. But it was not presented for that purpose. It was presented for the purposes of showing how SSAB itself views the situation of its prices into the Swedish market on the one hand, and into the Australian market on the other. Thus, although the technical rules of dumping as applied to SSAB's situation will generate a dumping margin, at the commercial and ethical level SSAB feels that it is not discriminating in its pricing.

Indeed, the Commission itself appreciates the situation, having applied the lesser duty rule when it imposed the existing measures in the first place. In that way the "technical" dumping margin of 34% generated, in applying the dumping rules to the particular situation of SSAB EMEA in the original investigation, was not applied to SSAB's exports. Instead, it was rationalised that SSAB EMEA could export the goods to Australia with the imposition of a dumping duty of 9.6% and they would be "non-injurious" to the Australian industry, and that therefore this non-injurious amount was the degree of the corrective action that should be taken.

Furthermore, SSAB EMEA's order books have been full in recent times, another indicator that it has no interest in selling at lower prices only to get more volume. On the contrary, the stronger market has given SSAB the opportunity to further increase its prices, something which is not achieved in one large step but which the evidence shows SSAB has been doing gradually.

This case is therefore wholly and solely about the question of material injury, and whether or not that is continuing or would recur should the measures be allowed to expire. The calculation of a dumping margin is never dispositive in an inquiry such as this, because it is both future dumping *and* the likelihood of material injury caused thereby that must be established. The size of the dumping margin cannot influence the Commission's judgement as to whether material injury caused by dumping will recur. It can only satisfy the Commission that there could or will be dumping in the future.

The recurrence of dumping, whether in a technical or real sense, is a box that must be ticked in deciding whether the measures should be continued. Ultimately, the real question in this case, and the second box that must be ticked, is whether material injury will recur, a question to which we now return.

D Dumping-caused material injury is not continuing and unlikely to recur

Q&T steel plate itself is a specialty product. Its special nature is confirmed by the lack of dumping duties on this product globally, with the exception of Australia.⁹ This can be attributed to the fact that it is not typically a low-priced commodity product, such as hot-rolled coil, steel reinforcing bar and hollow structural sections, and that individual product characteristics and sales and marketing are influential market differentiators.

⁹ See EPR 506, Doc 001 page 4.

SSAB prides itself on manufacturing, and selling in Australia, a premium Q&T steel plate that performs better and lasts longer than other Q&T products, whether manufactured in Australia or imported.

The SSAB organisation and its products have a prominent reputation and standing within the Australian market. SSAB's branded Q&T steel plate products are world renowned, market-leading and high quality. Because of that, and most importantly for the Commission's considerations in this inquiry, SSAB aims to achieve and does achieve a corresponding price premium for its products.¹⁰ Further, SSAB's sub-markets are different to Bisalloy's in both the identity of customers and the product mix that each sells.

We wish to make clear that it is not the desire or intention of this submission to establish that Bisalloy's Q&T steel plate is in any way unfit for purpose. It is not unfit for purpose, and SSAB does not intend nor need to prove that it is. SSAB's submissions about the respective characteristics of the products and the regard in which they are held in the market is by way of comparison and not criticism. An appreciation of these differences is necessary to understand how the market is structured and why it is that SSAB has maintained its position in the Australian market while at the same time significantly increasing its prices.

1 SSAB's Q&T plate is a premium product

SSAB manufactures Q&T steel plate from the selection of raw materials, through the actual steel making itself, and in the critical process control involved in the quenching and tempering of the steel plate. The production process is fully integrated. The factory staff and technicians at SSAB EMEA's Oxelösund production facility have complete control over every step in the production process. The techniques used are based on a long history of science, research and development and practical observations, and a constant attenuation of the production variables involved to ensure that SSAB's Q&T steel plate consistently meets the exacting technical and performance specifications of hardness, wearability and weldability that are promoted by SSAB and for which it has become so well-regarded.

Bisalloy does not operate an integrated steel mill. It operates a single processing line at its Unanderra facility which quenches and tempers Q&T greenfeed that it has purchased either from the market or from a JV related party manufacturer in China, Bisalloy Jigang (Shandong) Steel Plate Co., Ltd.¹¹ In either case, the makeup of the steel substrate is not directly controlled by Bisalloy, simply by reason of the fact that it does not oversee and control the steel making involved.¹²

Greenfeed purchased in this way, by a party that then intends to transform it into a new product, is generally considered to result in lower grade and less dependable Q&T steel plate when compared to plate that is manufactured in a single facility which is dedicated, at all stages of production, to the high standard and dependability of the final product, such as is the case with SSAB's Q&T steel plate.

SSAB's complete focus on keeping its entire production process in-house means that SSAB's Q&T steel plate is different from Bisalloy's, in *actual* and in *attitudinal* terms. Not only does SSAB's Q&T plate have enhanced mechanical properties, such as weldability, bendability, hardness and toughness, but the markets and customers in which it engages believe that to be the case because of the differences in the way it is produced, including with respect to its dedicated in-house production, and because the benefits of that production are constantly being communicated to the market by SSAB. SSAB's Q&T

¹⁰ See EPR 506, Doc 012 page 3.

¹¹ See EPR 234, Doc 098 page 16.

¹² Ibid.

steel plate is highly durable, allowing it to operate to very high standards in extreme conditions. It delivers extreme strength and toughness but at the same time is much lighter than non-Q&T steel. Parts of vehicles and machinery that are made of SSAB's Q&T steel last longer and reduce weight. Owners do not need to replace the parts as frequently, their vehicles' load capacity is increased, and the stress on engines and other parts is reduced, allowing overall lower costs and higher revenues:¹³

Lightest steel tippers in the Australian market - Bruce Rock Engineering

Founded in 1980 in the wheatbelt region of Western Australia, Bruce Rock Engineering (BRE) offers innovative and leading-edge solutions Australia wide, across the transport, mining, construction and agricultural industries with light weight, high strength road transport equipment, design, manufacture and maintenance.



In 2006, BRE expanded its range to produce side-tipping trucks for the mining industry and have since engaged in lightweight body design using Hardox® 450 material grade— making them the lightest steel tippers in the market.

By adding value to its industrial and commercial equipment, BRE uses SSAB's high strength steel in everything from end tippers and road trains to dollies, drawbars and skel trailers. BRE is taking advantage of the My Inner Strenx and Hardox® In My Body certifications to emphasise its high quality builds from high performance steels.

These qualities also promote higher resale prices for machinery, another very attractive proposition for end-users:¹⁴

K-Tec Earthmovers gains a massive advantage with Hardox wear plate

If you want to improve payloads, get better fuel efficiency, and maximize product uptime and lifespan, demand Hardox wear plate in your heavy equipment. That's what K-Tec Earthmovers did. A pioneering Canadian manufacturer of earthmovers, the company gains massive

¹³ See <https://www.ssab.com/products/brands/hardox/customer-case-bruce-rock-engineering>

¹⁴ See <https://www.ssab.com/company/newsroom/media-archive/2018/06/07/09/11/k-tec-earthmovers-gains-a-massive-advantage-with-hardox-wear-plate>

advantages from using Hardox® wear plate and being a member of the Hardox® In My Body program.



In fact, K-Tec has built the 1263 ADT – the world's largest dirt-moving scraper – largely from Hardox® wear plate. The company has achieved a bigger market presence, too, in a highly competitive market by leveraging its long-standing collaboration with SSAB and its image as a premium brand thanks to its membership in the program.

Building innovations and a solid reputation with Hardox wear plate

With the help of Hardox® steel, K-Tec was able to refine the scraper's design. The result was a durable yet lightweight solution with a weight distribution system that enables the scraper to move massive amounts of dirt without the need for excessive horsepower and fuel.

Because of the enhanced strength characteristics of the steel and the machine design, the company is able to offer a 3-year structural warranty – something extremely valuable for any construction contractor. Additionally, the use of high-tensile Hardox® wear plate has enabled the company to build the lightest scraper per cubic-yard capacity on the market. This way, contractors can haul around less iron and more dirt, and enhance their profitability.

For brand strength as strong as steel

...

The Hardox® In My Body sign on a product verifies that it is manufactured using genuine Hardox® steel. It is also a sign of a premium product that delivers superior resistance to wear, dents and cracks even under the harshest conditions. Only leading manufacturers whose products meet SSAB's strict quality requirements for the welding, design and manufacturing processes are granted licenses to put this logo on their products.

...

Hardox steel helps improve resale value of used equipment

For those who buy or sell heavy equipment, especially in large quantities or for entire fleets, there's a lot at stake. It's a huge financial investment, and equipment owners need to get the best value and make their investments last well into the future. Selling equipment at top value that is no longer useful is important so that additional items can be acquired easily.

The condition of the equipment is a major factor that determines its final selling price. A high-quality vehicle with little wear and tear, together with strong brand recognition, will help it retain its value for years to come.

K-Tec has found that their pull scrapers made from Hardox® steel command the highest resale prices on the secondary market for pull scrapers. In fact, every K-Tec scraper ever manufactured is still in working condition to date.

Demand Hardox wear plate in your heavy equipment for these rock-solid benefits

- *Higher resale value due to the good condition of the equipment*
- *Optimized payloads*
- *Reduced operating and labor costs*
- *A more sustainable solution that uses less material*
- *Better fuel efficiency with stronger, lighter equipment*

End-users know about the qualities of SSAB's Q&T steel plate and are happy to come forward and say so. Public testimonials to this effect are readily available to the Commission. For example, Hyundai Motor Company issued a media release in January of this year, reported as follows: ¹⁵

Hyundai Sees Increase In Demand For Concrete Mixers After Switching From Regular Steel To SSAB's Hardox

Since introducing Hardox steel as a competitive feature two years ago, Hyundai claims to have increased its market share from 50% to 80%



Hyundai Motors reports that demand for its concrete mixer trucks has surged since the company switched from regular steel to SSAB's Hardox abrasion-resistant steel two years ago to produce the vehicles.

The result of adopting Hardox has been an increase in the abrasion and corrosion resistance of mixer drums, hoppers and chutes designed and manufactured by Hyundai. The company has also seen a decrease in the long-term costs of its customers as the concrete mixer's service life is doubled.

¹⁵ See <https://www.pmvmiddleeast.com/equipment/vehicles/72816-demand-for-hyundai-concrete-mixers-increase-after-switching-from-regular-steel-to-ssabs-hardox>.

Byung-cheol Kang, sales manager at Hyundai Motor, said: "Since we started to use drums made of Hardox, the sales have increased drastically. The reason for choosing Hardox is its durability. Compared to other mixer trucks, these last a great deal longer. They have a very long lifespan; therefore, the customer demand is high for mixers made out of Hardox steel."

Joo-suk Shim, engineer designer in the special designs team at the plant for commercial vehicles, Hyundai Motor, Jeonju, South Korea, explained: "Hardox steel was harder to work with, because it is so strong and there is less deformation than in conventional steel. SSAB was extremely helpful to us. First, when reviewing the blade design on the drum made of Hardox. Then, when analyzing the discharge rate and mixing effect of the concrete. We received valuable data which we have been able to include in the design. The hardest thing was shaping Hardox steel to fit the blade molds. SSAB was operational in getting this to work. Also, welding steel plates in straight lines did not work, so Hyundai made the drum in a slightly different way, using a spiral design. The switch to Hardox steel came mainly from customer demand. The market knew what it wanted and asked for it."

Hyundai listened to its customers and introduced Hardox steel as a competitive feature. Even though there was a cost increase for Hardox, the demand also increased.

"What differentiates us is that we always pay attention to our customers' opinions and focus on meeting their needs. We include their demands in our design. The service life is more than doubled from the earlier design. You can't tell from simply looking if a mixer is made out of a regular steel plate or if it is actually Hardox. However, when customers see the 'Hardox In My Body' sign they trust that they get quality design because they know the brand. We offer a lot better quality than our competitors, and we now have a market share of 80% compared to 50%, previously," said Byung-cheol Kang. [underlining supplied]

The same views have been expressed by multiple other customers. The quality and associated performance benefits of Hardox are repeated and reinforced time and time again by SSAB and its customers:¹⁶

Hardox In My Body – a sign says it all

Hardox In My Body is the hallmark of better performance. Read more about the Hardox quality guarantee. Products made by Hardox for construction machinery last longer and weigh less so that the payload is increased. Therefore, the sign "Hardox in My Body" stands for intelligence, performance and economy. Anyone can buy a branded product "Hardox In My Body" and benefit from it. Not everyone can manufacture such a product. Becoming an accredited manufacturer is reserved only for the best in the business.

And further:¹⁷

All of our hardox steel plate has its own qualification testing report and it is original from SSAB.

SSAB focus on product quality of hardox. All of steel plate from Hardox remark the product number in order to help buyer to track the manufacturer and product from SSAB. Want to check

¹⁶ See <https://zfe-gmbh.de/en/hardox-in-my-body/>.

¹⁷ See <http://www.zhiliwearparts.com/hardox.html>.

your machine or facilities original made from hardox plate, simply email "hardox In My Body" with your product number.

These are not only production and product differences that relate to a comparison of non-Q&T heavy grade steel and Q&T steel. These differences equally relate to a comparison of SSAB's Q&T steel plate and other Q&T steel plate, including in the case of the Australian market Bisalloy's Q&T steel plate.¹⁸ For example, the superior nature of SSAB's product amongst the product offered by other Q&T steel plate suppliers is recognised by end-user Metso Australia Ltd ("Metso") in its submission to this inquiry.¹⁹ SSAB supplies Q&T steel plate to Metso for use in its PolyMet and Megaliner mill liners.²⁰ Metso has itself tested Bisalloy's Q&T steel plates and found SSAB's to be of superior quality to them.²¹ The commercial importance of this quality difference is important to Metso. It can promote this to customers and assure them of the resultantly longer life of SSAB's product. Short life product *"means more frequent changes of liners, which increases downtime and site overheads, and reduces profitability"*.²² According to Metso, the risk of using *"Bisalloy Q&T steel plate was determined to be too great a risk to [Metso's] reputation as being a supplier of superior quality products"*.²³

SSAB's most well-known brand is Hardox. The Hardox range of Q&T steel plate, which includes the best-selling Hardox 450, is renowned for being more "workshop friendly". Its weldability allows it to be cut and reformed for a wide range of parts and therefore a wide range of uses. Its high wear resistance means that Hardox 450 parts and structures require less repair over time and do not need to be replaced as frequently. This quality is recognised by SSAB's loyal, repeat end-users who will consistently return to request this product specifically. This return business, and kind of customer, is happy to pay a premium price for SSAB's Q&T steel plate that is considerably higher than that of the products offered by other suppliers. The reputation of SSAB's Q&T steel plate and its higher price bracket – a bracket in which it has no competitors in the Australian market – places it in a sub-market, or segment, in which it does not competitively interact with Bisalloy products on price terms.

To reiterate the submissions in the overview in B above, the improving markets for steel generally, and the better economic conditions in the downstream user industries,²⁴ have allowed SSAB AU to increase its price gap and pricing independence over the rest of the market. Market conditions are very different to the depressed period in which the original investigation took place.²⁵

¹⁸ Bisalloy states, in its ADC Exporter Briefing with respect to SSAB EMEA (EPR 506, Doc 012), that *"[t]here has been no new technological advances that affords SSAB's product a commercial advantage over Bisalloy."* In relating this to the finding of like goods in the original investigation, and in using the word "new", Bisalloy seeks to mislead the Commission as to its task in this investigation. The question of whether or not the goods are "like goods" in the broad context in which that term can be applied is not the point. The point is whether the "like goods" cause or threaten the recurrence of material injury. For all of the reasons we outline in this submission, they do not.

¹⁹ See EPR 506 Doc 005.

²⁰ Ibid, page 3.

²¹ Ibid.

²² Ibid.

²³ Ibid, page 6.

²⁴ Sales strategy [CONFIDENTIAL TEXT DELETED – organisational information] also relevant, as to which see D3 below.

²⁵ "Market segmentation" is a real and well-recognised consideration in assessing competitive interactions and implications. It is regularly adverted to by the Australian Competition and Consumer Commission in its merger authorisation and reporting functions. For example:

The ACCC assumes that consumer preferences are segmented by levels of monthly expenditure. This assumption implies that price changes that occur in one market segment may not be relevant to consumers in other segments. For example, if price changes were observed in only one segment of the market (say,

2 SSAB sells its Q&T plate at a premium price

The SSAB organisation has a fundamentally different approach towards the selling of Q&T steel plate to that of Bisalloy. SSAB cares for its product and how it is used all the way to its end-users - the people who make things using SSAB's Q&T steel plate. This is a strategy that is accompanied by, and justifies, higher prices. By contrast, SSAB observes that Bisalloy operates a volume-based sales strategy, selling mainly to distributors. That is not to say that Bisalloy does not also sell to end-users, but these are commodity end-users buying high volumes that demand low prices.

Once SSAB AU sets its prices it sticks to those prices.²⁶ It is sometimes challenged by its customers or by non-customers, to meet a low-price offer from Bisalloy. This is not as frequent an occurrence as the Commission might assume, which SSAB would attribute to the fact that market conditions are more settled than before and because SSAB AU and Bisalloy customers are segmented by level of trade and product preference. Nonetheless, when facing such challenges SSAB AU does not agree to lower its prices to "meet or beat" the Bisalloy price offers that are reported to it. SSAB's focus is on maintaining market leadership – premium products sold at prices that reflect their premium nature and the branding and services that support them.

The evidence that SSAB AU does have available to it establishes that:

- Bisalloy's prices are lower than SSAB AU's prices in the Australian market by a wide margin.²⁷
- Bisalloy continually offers cheaper rates for their products.²⁸
- Bisalloy makes lower price offers directly to SSAB's higher price end-user customers.²⁹

These lower prices are directly reflected in Bisalloy's price lists to customers within the inquiry period. For example, a comparison of list prices of 450 grade Q&T steel plate offered to the market by SSAB and Bisalloy shows that **[CONFIDENTIAL TEXT DELETED – observations about pricing]**.

[CONFIDENTIAL CHART DELETED – price comparisons]

Figure 1

Pricing comparison - SSAB prices for **[CONFIDENTIAL TEXT DELETED – period of comparison]** and Bisalloy prices for **[CONFIDENTIAL TEXT DELETED – period of comparison]**³⁰

the higher priced, high download plans), then consumers who were not interested in those plans would not experience any price change.

See ACCC Communications Market Report 2017–18, page 68 at

<https://www.accc.gov.au/system/files/ACCC%20Communications%20Market%20Report%202017%E2%80%9318%E2%80%9319.pdf>.

²⁶ **[CONFIDENTIAL TEXT DELETED –type of SSAB AU contract/customer]**

²⁷ See for example Attachment 2 – Bisplate pricing example A **[CONFIDENTIAL ATTACHMENT]**. This is an email conversation **[CONFIDENTIAL TEXT DELETED – detailed information about price offer/s]**.

²⁸ See for example Attachment 3 – Bisplate pricing example B **[CONFIDENTIAL ATTACHMENT]**. This is an email conversation **[CONFIDENTIAL TEXT DELETED – detailed information about price offer/s]**.

²⁹ See for example Attachment 4 – Bisalloy pricing example C **[CONFIDENTIAL ATTACHMENT]**. This is an email **[CONFIDENTIAL TEXT DELETED – detailed information about price offer/s]**.

³⁰ This chart is an expanded comparison of the same data sets that are referred to in the previous footnote.

[CONFIDENTIAL CHART DELETED – price comparisons]

Figure 2

Pricing comparison - SSAB prices for [CONFIDENTIAL TEXT DELETED – period of comparison] and Bisalloy prices for [CONFIDENTIAL TEXT DELETED – period of comparison]³¹

[CONFIDENTIAL CHART DELETED – price comparisons]

Figure 3

Pricing comparison - Bisalloy and SSAB 8mm 450 grade Q&T plate in [CONFIDENTIAL TEXT DELETED – period of comparison]³²

The pricing comparisons for [CONFIDENTIAL TEXT DELETED – periods of comparisons], in Figures 1 and 2 respectively, demonstrate that Bisalloy prices its products at a much lower level than SSAB.

As seen in Figure 3, while SSAB AU has increased its prices, Bisalloy appears to have no incentive to do so (because it is volume-focussed and has armoured plate sales to rely on) or ability to do so (because it now has to deal with Belgian and Chinese import competition being offered to its customer). Furthermore, the price difference between SSAB AU and Bisalloy is given additional emphasis by the following observations:

- (a) Distributor margins – we refer to the line we have included in Figure 3 labelled “Bisalloy plus [CONFIDENTIAL TEXT DELETED – number] %”. This line maps the cost and margin a distributor would expect to obtain in its resale of Bisalloy steel plate. The [CONFIDENTIAL TEXT DELETED – number] % is based on a combination of:
 - selling, general and administrative expenses expected to be incurred by a distributor, in an amount of [CONFIDENTIAL TEXT DELETED – number] %;³³ and
 - profit expected to be incurred by a distributor, which according to the Australian Taxation Office is an amount between 2.1% and 5.3% (the higher percentage has been used).³⁴

The addition of [CONFIDENTIAL TEXT DELETED – number] % to the list prices of Bisalloy Q&T steel plate – even without taking account of rebates or “special deals” – [CONFIDENTIAL TEXT DELETED – observations about non-equivalence of pricing levels].

- (b) SSAB’s continued price increases – since the end of the inquiry period of 2018, SSAB AU has increased its prices [CONFIDENTIAL TEXT DELETED – expression of degree]. [CONFIDENTIAL TEXT DELETED – premium based sales strategy].³⁵ The Hardox 450 10mm to 40mm prices [CONFIDENTIAL TEXT DELETED – detailed information about prices]. These are increases of from [CONFIDENTIAL TEXT DELETED – number] % to [CONFIDENTIAL TEXT DELETED – number] %.

³¹ This chart is a comparison of Attachment 5 – Bisalloy pricing example D with [CONFIDENTIAL TEXT DELETED – detailed information about price offer/s].

³² This chart is a comparison of the 8mm 450 grade price examples for Bisalloy steel plate afforded by Attachments 2, 3, 4 and 5 with SSAB AU’s prices for the same product at the same time as shown in its price lists as have been provided to the Commission.

³³ See SSAB AU’s Part B spreadsheet, as submitted as part of its Importer Questionnaire response.

³⁴ See Australian Taxation Office Practical Compliance Guideline PCG 2019/1, para 71, at <https://www.ato.gov.au/law/view/document?DocID=COG/PCG20191/NAT/ATO/00001>.

³⁵ See Attachment 6 – SSAB AU price list May 2019 [CONFIDENTIAL ATTACHMENT].

In circumstances where Bisalloy:

- has increased its sales volume significantly over the past two years;
- sells at prices that are **[CONFIDENTIAL TEXT DELETED – observations about Bisalloy pricing based on confidential evidence]**;
- **[CONFIDENTIAL TEXT DELETED – observations about Bisalloy pricing based on confidential evidence]**;
- **[CONFIDENTIAL TEXT DELETED – observations about Bisalloy pricing based on confidential evidence]**;
- faces low-price competition from new commodity-based Q&T steel plate suppliers; and
- has moved solidly into the armoured plate and government procurement markets,

there can be no connection between SSAB AU's prices and Bisalloy's financial position. We submit that the sales behaviour evidence is clear and undeniable. Further, the future trends are also clear, **[CONFIDENTIAL TEXT DELETED – premium based sales strategy]**.

It appears to SSAB that Bisalloy's prices have not changed throughout 2018 and 2019. The "unit net revenue" chart in the *Visit Report – Australian industry* would appear to support this, although it is at a higher level than direct price comparisons, and Bisalloy's product mix has evidently changed such that it now encompasses important market segments in which SSAB AU does not participate.³⁶ In contrast, SSAB's prices have consistently trended upwards.

Returning to the issue at hand, this evidence should lead the Commission to conclude that it is not likely that the expiry of the measures as against SSAB would cause material injury to Bisalloy to recur. To put it another way, we are not aware of any evidentiary factor having to do with SSAB AU's prices and sales behaviour, over the past two years at least, that would cause the Commission to arrive at the contrary conclusion. Simply finding that SSAB "could" reduce its prices is not enough. Indeed it is more likely than not that SSAB AU would *not* reduce its prices, because no need to do so is demonstrated. Given **[CONFIDENTIAL TEXT DELETED – premium based sales strategy]** the different expectations the end-user market has with respect to its Q&T steel plate, **[CONFIDENTIAL TEXT DELETED – premium based sales strategy]**.

In summary, SSAB AU does not compete with Bisalloy on price. **[CONFIDENTIAL TEXT DELETED – observations about pricing]**. The lack of any meaningful connection between SSAB AU's prices and Bisalloy's prices, and the implications that are to be drawn from the other factors we have mentioned with respect to the sales behaviour of the respective companies, the different market segments and the nature of the respective customer groups, and the entry of new competitors into the market, mean that it cannot be found that SSAB AU's sales would cause there to be a recurrence of material injury, as a matter of probability, should the measures be allowed to expire. To the contrary, such an outcome is improbable.

³⁶

See EPR 506, Doc 013.

3 SSAB focuses on optimizing product value, and not on volume sales to distributors

SSAB AU's focus, indeed that of the whole SSAB organisation in the almost 100 countries in which it does business, is on selling Q&T steel plate to end-users and supporting them in their technical and commercial use of the product. SSAB's quality product and end-user focus is appreciated by its loyal customers. This value is reflected in SSAB's ability to **[CONFIDENTIAL TEXT DELETED – premium based sales strategy]** Bisalloy and of the exporters that have entered the market since the measures were imposed.

In contrast, Bisalloy operates a factory to distributor sales model, and has minimal contact with end-users. Bisalloy's focus is on volume and commodity-based sales.³⁷

Other efforts on the part of SSAB AU, each of which is unrelated to price, have also contributed to SSAB's sales:

- SSAB AU has strongly concentrated on upgrading end-users from hard steel to SSAB Q&T steel plate. SSAB sales staff have worked hard to educate existing customers and potential new customers, who have been using hard steel and not Q&T steel plate in their fabrication and repair work, about the performance benefits of Q&T steel to the ultimate customer (ie the end-user's customer, in the transport, mining or other relevant industry category). Those benefits – longevity, workability, weight reduction - have already been detailed at length in this submission. **[CONFIDENTIAL TEXT DELETED – premium based sales strategy]**.
- SSAB's "Wearparts" services are well-known, in Australia and internationally. This is a fairly simple but important contribution of branding and of some technical experience to customers. SSAB's branding is permitted to be used by the customer in its workshops and promotional materials, and assistance is given in answering any start-up questions the customer might have about the optimal use of the product (eg about bending, cutting or welding).

[CONFIDENTIAL TEXT DELETED – organisational information].³⁸ SSAB AU notes that Bisalloy's sales staff have approached SSAB's customers with low price offers for Bisalloy steel plate, in an attempt to secure them as customers of Bisalloy, with limited success. **[CONFIDENTIAL TEXT DELETED – observations about Bisalloy pricing based on confidential evidence]**, and Bisalloy's routinely lower prices in the market, is demonstrated in the emails and price lists we have provided with this submission.

E The state of the Australian industry has changed

When determining whether material injury will recur by reason of dumping of the countries and exporters subject to measures, the Commission must also consider the substantially improved financial condition in which Bisalloy now finds itself and the emergence of exports from countries and exporters not subject to measures.³⁹

Since the original investigation, Bisalloy appears to have increased its focus on the market for armoured plates within the Australian defence industry, and in the government procurement market more generally. Bisalloy has focused less on structural and wear plate, which is not to say that it does not still process and sell those products to its general customers.

³⁷ See EPR 503, Doc 013 page 12.

³⁸ **[CONFIDENTIAL TEXT DELETED – organisational information]**

³⁹ See Anti-Dumping Commission Dumping and Subsidy Manual at page 176.

This is a shift that has been recognised by Bisalloy multiple times in its own financial statements.⁴⁰ It was confirmed in its statements to the Commission on the occasion of the Australian industry verification visit:

In addition the visit team understands that Bisalloy's product mix has changed over time with the proportion of sales of armour, structural and wear products changing throughout the injury period. As a result of which reference to an average revenue and CTMS may mask product specific injury, in particular in wear and structural categories, given the higher cost and revenue associated with armour grade Q&T steel plate.⁴¹ [underlining added]

There is every indication that this focus on the production of armoured plates, and a lesser proportion of structural and wear plate sales, will continue. Bisalloy reported a 103% increase in its sales of armour grade Q&T plate in 2018.⁴² According to Bisalloy's CEO, this has resulted in its production capacity doubling in the period since the original investigation.⁴³

Bisalloy's defence contracts include:

- SEA 1000 Future Submarines Project - Bisalloy will provide more than 250 tonnes of specialised steel for the manufacture of the "Attack class" submarines as part of the AUD50 billion program that is scheduled to commence in 2022-2023,⁴⁴ with manufacture expected to continue until the 2040s⁴⁵ in order to fill the "looming gap in Australia's submarine capability".⁴⁶ The project overall is expected to generate 2,800 Australian jobs.⁴⁷
- Land 400 program - Bisalloy will provide a minimum of approximately 15 tonnes of armoured steel for the supply of 2,500 logistics trucks to the Australian Army,⁴⁸ with the project valued at approximately AUD10 to 15 billion,⁴⁹ making it the biggest single contract ever commissioned by the Australian Army.⁵⁰
- Bisalloy will supply steel as part of an AUD5 billion deal to buy 200 tanks.⁵¹

⁴⁰ See Attachment 7 – Bisalloy Half Year Financial Results ended 31 December 2018.

⁴¹ See EPR 506, Doc 013 page 14. We find the suggestion here being made by Bisalloy, that it is likely that it is being injured in the structural and wear markets because it is doing so well in the armoured plate market, to be disingenuous. A more valid conclusion is that it does not care about achieving increased prices in the structural and wear markets, given its newfound bonanza in defence contracting. Instead, it is more likely that Bisalloy will prefer to achieve optimal throughput in order to reduce its costs overall and support its definite and more profitable armoured plate sales.

⁴² See <https://www.asx.com.au/asxpdf/20190225/pdf/442xw0hf9rg8hq.pdf>.

⁴³ See Attachment 8 – Media Statement by Greg Albert and Malcolm Turnbull 22 March 2018.

⁴⁴ See <https://www.defenceconnect.com.au/maritime-antisub/2119-australian-steel-companies-sign-future-submarine-contracts>.

⁴⁵ See <https://www.bisalloy.com.au/aboutbisalloy/NewsandMedia/News/bisalloy-to-supply-first-trial-order-for-sea1000-future-sub.aspx>.

⁴⁶ See <https://www.abc.net.au/news/2018-12-13/future-naval-submarines-renamed-attack-class/10614876>.

⁴⁷ See <https://www.minister.defence.gov.au/minister/christopher-pyne/media-releases/future-submarine-trial-win-bisalloy-and-bluescope>.

⁴⁸ See <https://www.defenceconnect.com.au/land-amphibious/1879-australian-steel-industry-looks-to-win-big-under-land-400-phase-2-project>.

⁴⁹ See <https://www.asx.com.au/asxpdf/20190201/pdf/4429jsftxt5w5.pdf>.

⁵⁰ See Attachment 8.

⁵¹ See <https://stockhead.com.au/tech/bisalloy-gets-call-duty-deliver-200-tanks/>.

- Hawkei and BOXER Combat Reconnaissance Vehicle – Bisalloy will supply steel for the Army's new vehicles in a project that overall is worth AUD5.2 billion.⁵²
- Vehicle armour – Bisalloy is contracted to supply add-on armour for armoured fighting vehicles being built by Rafael Advanced Defence Systems for AUD900,000.⁵³

In the 2018 financial year Bisalloy enjoyed a 56% increase in armoured Q&T plate sales and a 54% increase in domestic Australian sales.⁵⁴

SSAB Australia does not compete in this market segment. As we have spelt out, at length, SSAB's sales focus, in Australia and internationally, is on establishing and enhancing its relationships with new and existing commercial end-user customers. And, even if it wanted to, SSAB is barred from this market, because of the Australian Government's commitment to using Australian steel in all future military projects.⁵⁵ SSAB's Q&T steel plate is not produced, manufactured, or finished in Australia.

In this regard there is every indication that Bisalloy's uncontested participation in the supply of Q&T steel plate to these and other government projects will continue indefinitely. The Government has asserted an increasing desire to fill the *"looming gap in Australia's submarine capability"*.⁵⁶ These assurances have been provided on multiple occasions by a government that is keen to ensure that Australian manufacturers receive the benefit of such contracts ahead of foreign suppliers. These policies and these projects assure Bisalloy of the benefit of the contracts already signed and of those that will be tendered into the future.

More generally, we note that Bisalloy's sales trends have been positive over the last three years,⁵⁷ and these positive trends have been reflected within statements made by the Applicant to the Commission where it *"advised that revenue has increased significantly in the 2018 calendar year."*⁵⁸

Bisalloy's ASX Media Release announcing its financial results for the half year ended 31 December 2018⁵⁹ speak for themselves:

- *Revenue of \$50.1m, up 25.4% on same period last year*
- *Profit After Tax of \$2.5m, up 70.2% on same period last year*
- *Increased sales of higher-margin armour grade steels, up 102.9% on same period last year*
- *Operating EBITDA of \$4.8m, up 17.7% on same period last year*
- *Increased Chinese domestic market sales, up 45.6% on same period last year*
- *Remain on track to meet FY19 Operating EBITDA guidance of \$9.5-\$10.5m*

Bisalloy emphasises this increasing profitability within its 2018 Annual Report which forecasts continued growth in 2019, and a continued focus on improving the already successful armour grade steel sales.⁶⁰ Moreover the Group's share price improved significantly in 2017 signalling investor confidence in Bisalloy's future, and its place within the Australian steel industry.⁶¹ Consequently, there are strong

⁵² See <https://www.defenceconnect.com.au/key-enablers/2795-steel-maker-sees-strong-export-growth>.

⁵³ See <https://www.defenceconnect.com.au/land-amphibious/1881-australian-steel-manufacturer-joins-global-supply-chain-of-major-defence-prime>.

⁵⁴ See <https://www.defenceconnect.com.au/key-enablers/2795-steel-maker-sees-strong-export-growth>.

⁵⁵ Ibid.

⁵⁶ See <https://www.abc.net.au/news/2018-12-13/future-naval-submarines-renamed-attack-class/10614876>.

⁵⁷ See EPR 503, Doc 013 page 13.

⁵⁸ Ibid, page 14.

⁵⁹ See Attachment 7.

⁶⁰ See Attachment 9 – Bisalloy Annual Report 2018, page 3.

⁶¹ Ibid, page 12.

counter-indications to the proposition that Bisalloy will suffer injury in the future - counter-indications that come directly from Bisalloy itself.

F Conclusion

We submit that there are no reasonable grounds to conclude that material injury will recur should the measures be allowed to expire. SSAB operates within the premium market for structural and wear plates in Australia. In that market segment **[CONFIDENTIAL TEXT DELETED – premium based sales strategy]** increasing its prices. SSAB AU does not compete “head-to-head” with Bisalloy (as claimed by Bisalloy) and does not reduce its price to meet Bisalloy’s price offers. SSAB has a loyal end-user customer base.

Bisalloy is no longer suffering material injury, whether alleged to be cause by dumping or otherwise. It has altered its production focus towards armoured plates, in a market segment that faces no competition from SSAB or indeed any imported Q&T steel plate. It maintains a structural and wear plate business which is focussed on lower priced sales to distributors. **[CONFIDENTIAL TEXT DELETED – premium based sales strategy]** Further, new export sources have entered the market, which we submit are of product that is ultimately sold in the Australian market, to customers that are typically supplied by Bisalloy, at prices that are competitive with Bisalloy’s but are far lower than SSAB’s.

Accordingly, we respectfully request that the Commission report to the Minister that the measures be allowed to expire as against SSAB EMEA and Ruukki,⁶² on the basis that the Commissioner is not satisfied, on the basis of the evidence presented, that dumping-caused material injury to the Australian industry by either SSAB EMEA or Ruukki would continue or would recur should the measures against their exports be allowed to expire.

Yours sincerely



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Attachments

⁶² Specifically with respect to Ruukki, we refer to the matters set out in our letter dated 5 April. As a member of the SSAB group of companies, Ruukki’s sales behaviour is dictated by the group. It is not involved in the trade of the relevant products to Australia. If Ruukki was to start to produce and export those brands to Australia, which is unlikely for the reasons already advised, those exports would not take place in a manner any different to that of the SSAB group overall. The considerations that would apply to them would be the same.