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20 July 2021

Mr Roman Maevsky  
Assistant Director  
Anti-Dumping Commission  
Level 6, 215 Spring Street  
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Victoria 3000

By email

Dear Roman

## **SSAB - quenched and tempered steel plate from USA Evidence does not establish injury to the Australia industry**

We act for SSAB Alabama Inc. ("SSAB US") and SSAB Swedish Steel Pty Ltd ("SSAB AU") (and, collectively, "SSAB"). We are instructed to make this submission with respect to Investigation 578.

<b>A</b>	<b>Commission may initiate, but must terminate</b>	<b>1</b>
<b>B</b>	<b>Information in the application itself contradicts injury claim</b>	<b>2</b>
<b>C</b>	<b>Additional information contradicts Bisalloy's injury claim</b>	<b>3</b>
<b>D</b>	<b>Market observations</b>	<b>7</b>
<b>E</b>	<b>Concluding remarks</b>	<b>8</b>

### **A Commission may initiate, but must terminate**

We refer to the "*Application for the publication of dumping duty notice*" lodged with the Commission by Bisalloy Steels Pty Ltd ("Bisalloy's application").<sup>1</sup> Bisalloy's application claims that the Australian industry producing like goods suffered material injury from dumped goods in the investigation period defined as calendar 2020.

Whether or not Bisalloy's application provided the appearance of "reasonable grounds" for the publication of a dumping duty notice in respect of the goods the subject of the application is a moot

<sup>1</sup> *Application for Dumping Investigation* by Bisalloy dated March 2021. See EPR 578, Doc 001.

point, given that the investigation has been initiated. That said, we believe that Bisalloy's application does not provide a clear or proper basis for such an investigation, and that the decision to investigate was likely based on a measure of curiosity rather than merit. Bisalloy's own industry data contradicts the claim that it was injured by SSAB's exports, whether from the United States or from the SSAB locations presently subject to measures. In this respect we would say that Bisalloy's application is the least compelling application for an investigation of this sort that we have come across in our long experience of this area of law and practice. It has no substance or merit.

SSAB protests against Bisalloy's continued utilisation of these anti-dumping procedures in the quenched and tempered steel plate market.<sup>2</sup> These actions not only adversely affect the legitimate business interests of SSAB, but also they adversely affect the interests of SSAB's customers and those of the Australian industries they service, in terms of higher transaction costs, disruption to normal market operations, and legal risk which is over-compensated in the form of ever-higher prices.

The criticism that we have for Bisalloy's application and its intentions is not intended to cast any aspersions on the Commission or on its decision to investigate. The Commission has taken the view that things have been said in Bisalloy's application that, on a *prima facie* and unresearched basis, are open to be investigated, so as to establish their veracity and weight, and has initiated the investigation accordingly. Equally, however, if the Commission forms the view, once the investigation is underway, that no or negligible injury was caused to Bisalloy, it is empowered and directed by the legislation to terminate the investigation. If the facts that lead to that conclusion (with respect to alleged injury) are so clearly apparent that the Commissioner can be satisfied of that conclusion, then no other facts (such as with respect to dumping) would need to be acquired.

That said, the SSAB companies remain fully cooperative with the Commission's inquiries, as they have always been.

## **B Information in the application itself contradicts injury claim**

- 1 Moving sequentially through Bisalloy's application, the following information contradicts the claim that Bisalloy has suffered injury:
  - (a) its sales quantity has increased 23.8% since 2017, being the first year of the injury investigation period;
  - (b) its sales quantity increased in 2020 as compared to 2019;
  - (c) its sales were higher-priced in 2020 as compared to 2019;
  - (d) its sales revenue increased by 7.75% in 2020 as compared to 2019;

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<sup>2</sup> We refer to Anti-Dumping Notice No 2015/140, which announced the termination of an anti-circumvention inquiry initiated against SSAB's exports from Sweden at the instigation of Bisalloy because "*there did not appear to be reasonable grounds for asserting that circumvention activity under subsection 269ZDBB(5A) of the Act had occurred*" for the reason that SSAB's application for dumping duty refunds had not been determined. See EPR 306, Doc 7, page 2. We also refer to Report 506, in which the Commission recorded the fact that "*SSAB provided sales data with its submission to demonstrate price increase above [Bisalloy's unsuppressed selling price] in the first half of 2019*". See EPR 506, Doc 064, page 52. SSAB has thereby demonstrated its responsible approach in observing the protective regime afforded to Bisalloy by the Commission. However, Bisalloy keeps complaining.

- (e) its profit per tonne improved in 2020 as compared to 2019;
  - (f) its profitability increased by 19.2% in 2020 as compared to 2019;<sup>3</sup> and
  - (g) its return on investment increased by 348% in 2020 as compared to 2019.<sup>4</sup>
- 2 Bisalloy claims that it “*did not benefit from any of the market growth that was evident in 2020*” despite providing data that shows a directly contrary fact, which is that it did increase its sales in 2020 as compared to 2019. Whether that increase is considered by Bisalloy to be “marginal” or “stagnant” is not to the point. Bisalloy cannot baldly say it has lost sales volume when its own data says otherwise.<sup>5</sup>
- 3 Bisalloy’s application claims that “*Bisalloy’s revenues have increased to reflect higher raw material steel plate prices over the four year period.*” This is patently wrong with respect to the period at issue – the delta between 2019 and 2020 – where Bisalloy’s costs went down but its unit selling price went up. Clearly, Bisalloy’s revenues in 2020 were not merely a reflection of costs in 2020, given that they went in opposite directions.<sup>6</sup>
- 4 The picture presented by all of this data, and the truth of the changes in Bisalloy’s position between 2019 and the investigation period, is made up of these realities:
- (a) Bisalloy has increased its prices and revenue significantly;
  - (b) Bisalloy has maintained sales volumes; and
  - (c) Bisalloy has enjoyed a massive increase in profit and profitability.

## C Additional information contradicts Bisalloy’s injury claim

- 1 The Application is at its least compelling when it makes this claim:<sup>7</sup>

*The Australian industry has experienced material injury in 2020 in the form of flat domestic sales volumes, reduced market share and an inability to secure increased sales volumes in a rapidly expanding Q&T steel plate market. The market share decline has contributed to profits forgone that would have been achievable in the absence of the dumped Q&T steel plate imports from the USA in 2020.*

<sup>3</sup> The only grade reported by Bisalloy to have been less profitable in the investigation period is armour grade, **[CONFIDENTIAL TEXT DELETED – sales information]**. See EPR 578, Doc 001, page 25.

<sup>4</sup> Indeed, a former Prime Minister sees no reason why he should not maintain and increase his shareholding in Bisalloy – see *Form 604 Notice of change of interests of substantial holder* of Malcolm Bligh Turnbull dated 16 June 2021 (Attachment 1). Presumably, this is not because Mr Turnbull thinks that Bisalloy is being “materially injured” by imports at this point in its history.

<sup>5</sup> An applicant for an anti-dumping investigation must attest that “*the information contained in [the] application... is complete and correct*”. The table at A-4.6 shows Bisalloy enjoyed a 23.8% increase in sales from 2017 to 2020, and a 0.32% increase in sales in the delta between 2019 and 2020. Thus, Bisalloy’s statement that it “*did not benefit from any of the market growth that was evident in 2020*” is not correct.

<sup>6</sup> Please refer to *Consideration Report No 578*, Figure 4. See EPR 578, Doc 002, page 20.

<sup>7</sup> *Application for Dumping Investigation* by Bisalloy dated March 2021. See EPR 578, Doc 001, page 24.

2 The first counterpoint to this is that Bisalloy's profits were highest in the period of investigation compared to any time since 2017.<sup>8</sup> In its 2021 half year Financial Report, Bisalloy stated: "[p]rofit before tax was \$4,539k, up 55.3% from prior corresponding period."<sup>9</sup> This performance entirely contradicts the proposition that Bisalloy suffered material injury in the investigation period. It could only not be so if Bisalloy was to suggest that:

- (a) there should be no competition in the Australian market;
- (b) that it should be enabled to sell its steel plate at whatever price it wants through Australian Government action:
  - (i) that prevents the importation of any and all steel plate, whether injuriously priced or not; and
  - (ii) that prevents new investment in production facilities in Australia; and
  - (iii) that prevents the importation of any and all parts made from steel plate.

3 Bisalloy states:

*The imports of Q&T steel plate from the USA have displaced import supply from Finland and Sweden in a very short twelve month period.*

Bisalloy may wish to check the legislation in this regard, given that it refers to a requirement for injury to be caused "to an Australian industry producing like goods".<sup>10</sup> The displacement of SSAB AU's sales of imports from Finland and Sweden with SSAB AU's sales of imports from the United States does not amount to volume injury to anyone.

4 In this regard we draw particular attention to the "Indexed table of sales quantities" in the Bisalloy application, in which Bisalloy claims that the "Total Market" increased by 14% from 2019 to 2020.<sup>11</sup> For the record - SSAB AU did not increase its sales volume of the goods under consideration from 2019 to 2020 - as shown by the following graph. This is a critically important fact. In a volume sense, exports from the US were only by way of import substitution that took place entirely within SSAB AU's own existing sales volume:

**[CONFIDENTIAL CHART DELETED – SSAB AU's sales of the GUC 2018-2021]**

5 This simple fact quashes the claim that SSAB AU "took" sales from Bisalloy. SSAB AU categorically rejects that notion. SSAB AU's own sales records prove that it lost sales itself, and therefore cannot have prevented Bisalloy from achieving additional volume which became available in an expanded market in 2020.

6 Having shown that SSAB AU's sales of imports from the US cannot have been injurious in a volume sense, we now turn to the question of whether those sales could be considered to be

<sup>8</sup> Please refer to *Consideration Report No. 578*, Figure 5. See EPR 578, Doc 002, page 20.

<sup>9</sup> Bisalloy, *Appendix 4D – Half Yearly Financial Report Six months ended 31 December 2020 ("HY21")*. Director's Report – Financial Results, page 5, at <https://www.bisalloy.com.au/wp-content/uploads/2021/03/Appendix-4D-31-December-2020-Final.pdf>.

<sup>10</sup> Customs Act, Sections 269TG(1) and (2), amongst other references.

<sup>11</sup> *Application for Dumping Investigation* by Bisalloy dated March 2021. See EPR 578, Doc 001, page 17.

injurious in a price sense. We find that to be impossible as well. That SSAB AU's prices cannot have been injurious in a price sense either is categorically established by the evidence.

- 7 The impossibility of considering the “displacement” and “replacement” of sales within SSAB AU's own sales cohort as injurious to Bisalloy is underlined by the these facts:
- (a) **[CONFIDENTIAL TEXT DELETED – sales information]**; and
  - (b) throughout 2020 SSAB AU's per MT price exceeded the per MT price that Bisalloy has agreed with the Commission to be its unsuppressed selling price (“USP”), carried forward to 2020 as explained in the next paragraph.
- 8 We now compare Bisalloy's USP with SSAB AU's price guides in a manner relevant to the point to be made. The first thing to note is **[CONFIDENTIAL TEXT DELETED – sales information]**. The second thing to note is the calculation of Bisalloy's USP. As signalled by Bisalloy in Report 506, its claimed USP in 2018 was AUD2,015.93.<sup>12</sup> Bisalloy claims in its application that its costs in 2020 were 5.89% higher than in 2018.<sup>13</sup> Simply increasing its USP from 2018 by 5.89% overstates the 2020 USP because it is added to the full 2018 USP, which includes profit, but we have adopted that number as the USP in any case.<sup>14</sup> On that basis the resultant USP for 2020 is AUD2,134.62.
- 9 The graphs that follow compare this USP with the development of SSAB AU's price guides for the biggest selling wear grade and structural grade products in the Australian market over the past 18 months, which were **[CONFIDENTIAL TEXT DELETED – product information]**.<sup>15</sup>

**[CONFIDENTIAL CHART DELETED – price information]**

- 10 The following graph tracks SSAB AU's sales of the goods under consideration against the 2020 USP.<sup>16</sup> The sales dataset used in this case is that of actual invoices for sales that comprised US-sourced material, either wholly or partly.

**[CONFIDENTIAL CHART DELETED – price information]**

- 11 Thus:
- (a) SSAB AU did not cause volume injury to Bisalloy because:
    - (i) Bisalloy's sales of the goods under consideration *increased* between 2019 and 2020;

<sup>12</sup> Final Report REP 506. See EPR 506, Doc 064, page 72.

<sup>13</sup> This has been calculated using the “*Index of cost variations*” provided by Bisalloy (*Application for Dumping Investigation* by Bisalloy dated March 2021. See EPR 578, Doc 001, page 25.) It is to be noted that this increase is non-weighted, and that the increase in costs for “Armour” grade, which SSAB AU does not sell in Australia, far exceeds the simple average of all grades (10.43% v 5.89%).

<sup>14</sup> We are not aware of the cost/profit ratio embedded in the USP assumption.

<sup>15</sup> See Attachments 2 and 3 **[CONFIDENTIAL ATTACHMENTS]**.

<sup>16</sup> As provided to the Commission in SSAB AU's Importer Questionnaire response, Part C – Sales.

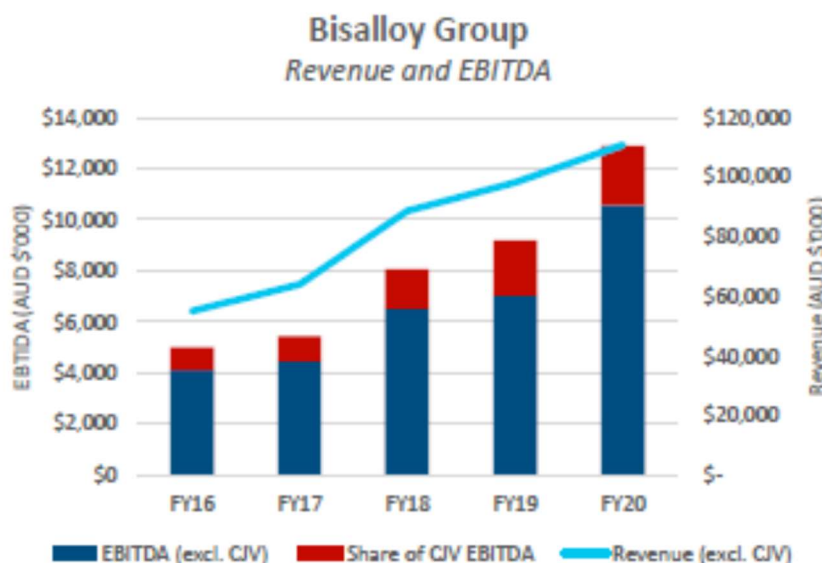
- (ii) SSAB AU's sales of the goods under consideration *decreased* **[CONFIDENTIAL TEXT DELETED – number]**% between 2019 and 2020;
    - (iii) the Australian market *increased* in volume terms in the investigation period.
  - (b) SSAB AU did not cause price injury to Bisalloy because:
    - (i) **[CONFIDENTIAL TEXT DELETED – price information]**; and
    - (ii) **[CONFIDENTIAL TEXT DELETED – price information]**.
- 12 SSAB did not increase its market share, and did not attempt to do so. The elevated pricing levels that SSAB AU must achieve in order to ensure it is not continually accused of injurious pricing, and which it was able to achieve because of that factor and the accompanying buoyant market conditions, were profit enough during calendar 2020. Due to the lower prices of Bisalloy and increased competition from other competitors that have either been in the market or are new to the market, SSAB did not achieve additional sales volume in the Australian market.<sup>17</sup>
- 13 Still, the facts that SSAB has not caused injury to Bisalloy, and that other exporters have entered the market, does not mean that Bisalloy has suffered material injury from the activities of those other exporters. To return to our earlier observations about Bisalloy's application, this is because there is nothing about Bisalloy's application which suggests that it has suffered material injury at all, full stop. For example, in the media, where it promotes the value of its shares, Bisalloy was ebullient about its FY2020 performance:
- Market share growth resulted in domestic Australian sales volumes increasing by 30% in FY20. Operational efficiency and product cost improvements were achieved along with a greater presence in the mining, quarrying and heavy construction industries.*<sup>18</sup>
- 14 Further, the following graph and explanatory text appears in a Bisalloy investor presentation of August 2020:

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<sup>17</sup> Clearly, Bisalloy's actions in seeking higher prices in the Australian market through government intervention has invited and encouraged exporters that are not subject to dumping duties to participate in the Australian market either more actively or as new entrants.

<sup>18</sup> Bisalloy, *2020 Financial Report*, page 6, at [https://www.bisalloy.com.au/wp-content/uploads/2020/10/Bisalloy\\_AR\\_2020\\_Final.pdf](https://www.bisalloy.com.au/wp-content/uploads/2020/10/Bisalloy_AR_2020_Final.pdf)





*Profit growth in FY20 driven by Australian market. This resulted from increased pricing and market share growth.<sup>19</sup>*

- 15 Yet in the anti-dumping forum, where it seeks to increase its levels of protection from imports, Bisalloy bleats that its sales have been stagnant, claims that it has not gained any increased market share in an expanding market, and treats its massively improved profitability as if it were nought.<sup>20</sup>

## D Market observations

- 1 **[CONFIDENTIAL TEXT DELETED – production and sales strategy]**. The Consideration Report clearly shows that imports from the USA have been a feature of the Australian market since at least that time. This means that Bisalloy has successfully and significantly grown its market share since the start of the injury investigation period despite the participation of SSAB's imports from the US in the market over that whole period.
- 2 It is important to understand the dynamics in the industry in the second half of 2020. SSAB AU has been gradually, consistently and strongly increasing its pricing since 2018. This trend continued in 2020. **[CONFIDENTIAL TEXT DELETED – price information]**.<sup>21</sup> The reality is that SSAB AU's prices, and prices generally, have increased over the past three years at rates not seen in the preceding 15 years.

<sup>19</sup> See Bisalloy Investor Presentation, August 2020, page 12 [<https://www.bisalloy.com.au/wp-content/uploads/2020/08/Bisalloy-Company-Presentation-August-2020.pdf>]

<sup>20</sup> Indeed, these contradictory positions deserve close scrutiny by the Commission, and by the Australian Securities and Investments Commission. Has Bisalloy failed to account for Chinese imports of finished quenched and tempered steel plate from Bisalloy Shangang (Shandong) Steel Plate Co. Ltd, whether imported by Bisalloy itself, or via agents, or by way of arrangements for direct importation to its Australian customers?

<sup>21</sup> SSAB initiated a program of successive duty assessment applications following Continuation Inquiry 506. It did so in order to monitor its anti-dumping compliance; to ensure it was refunded the interim dumping duties due to it; and to protect itself from an adverse ascertained export price in any variable factor review.

- 3 At the same time that anti-dumping protection has been in place, prices in the market have been boosted by an increase in demand for steel plate. Demand for steel has picked up strongly since the early, uncertain period of the COVID-19 pandemic. Since then it has reached a highest-ever point, due to booming economic conditions fuelled by loose monetary and fiscal policy, and not only in Australia.<sup>22</sup> These conditions have not been exclusively experienced by the mining and construction industries that are the main areas for sales of steel plate. Ocean freight movement during the pandemic has not been as easy to arrange or as timely as it was before the pandemic, and therefore has become more expensive. These factors have created a premium market for steel plate in Australia.
- 4 Bisalloy's argument appears to rest on two limbs – first, that it suffered material injury by reason of injurious pricing in the investigation period and, second, that it will suffer material injury because its rate of increase in sales will decline after the investigation period. With respect to the first characterisation, we again submit that material injury in the investigation period is simply not evident on the basis of the statistics presented by Bisalloy in its own application, and as it has publicly declared, and that the facts we have presented in this submission render the claim that SSAB AU is responsible for any injury even more untenable. With respect to the second characterisation, it must be recognised that the market and market prices are not forever expandable. Prices must be approaching a tipping point. Once a certain level of pricing is reached, customers seek out new options to satisfy their demand for the goods. Those options include importing partly fabricated steel plate, or fully fabricated steel plate parts, or simply by importing steel plate from other countries.

## E Concluding remarks

- 1 Bisalloy, not having faced injurious pricing from SSAB, whether SSAB AU's sales were from Sweden, Finland or the US, and not having lost volume, cannot have been “injured” by US exports which were substitutes for SSAB AU's other imports. Indeed, based on any reasonable consideration of its financial results in the investigation period, Bisalloy was not “injured” by any factor.
- 2 Rather, the evidence indicates that Bisalloy prospered in a competitive market environment, and had the full opportunity to do so, at the level of the USP that the Commission has previously endorsed as being appropriate to the condition of the Australian quenched and tempered steel plate industry unaffected by injurious dumping.
- 3 Indeed, Bisalloy openly says, in its application:

*Bisalloy has improved its profit per tonne between 2017 and 2020. The profit achieved in 2020 has reflected Bisalloy's commitment to hold prices consistent with the industry unsuppressed selling price. This, however, has resulted in missed opportunities including participation in the 15 per cent industry growth that was apparent in 2020.*<sup>23</sup>

We ask the Commission to read this quite carefully. The USP is a profitable price unaffected by dumping, which has been determined by the Commission and agreed to by Bisalloy. Bisalloy's stated commitment is to price at levels that are non-injurious to itself. **[CONFIDENTIAL TEXT]**

<sup>22</sup> Bloomberg, *Record Steel Prices Inject Life Into Long-Suffering Industry*, 18 July 2021 (Attachment 4) and at <https://www.bloomberg.com/news/articles/2021-07-18/record-steel-prices-inject-life-into-long-suffering-industry>

<sup>23</sup> *Application for Dumping Investigation* by Bisalloy dated March 2021. See EPR 578, Doc 001, page 25.



**DELETED – price information]**. Thus, the “missed opportunities” that Bisalloy complains about were not “missed” because of SSAB AU’s sales of quenched and tempered steel plate exported from the US.

- 4 Bisalloy states that in the six months ending 30 December 2020, its profits from higher margins on like goods were partially offset by a reduction in market share.<sup>24</sup> It also states that it held its prices consistent with the industry USP. Thus, our understanding is that Bisalloy complains that it made more sales, and earned ever higher margins, by pricing at the agreed USP, but that it earned less profit than it wanted to, because it did not:

- (a) make even more sales; and
- (b) increase its prices to the even higher level of SSAB AU’s prices.

If that is a correct statement of Bisalloy’s case, then it does not resemble any formulation of the “causation of material injury” test for a finding to impose dumping duties against SSAB AU’s imports from the US of which we are aware.

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We respectfully request that this investigation be terminated in accordance with Section 269TDA(13) of the *Customs Act 1901* as soon as the Commissioner reaches the state of satisfaction referred to in that Section.

Yours sincerely



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<sup>24</sup> Bisalloy, *Appendix 4D – Half Yearly Financial Report Six months ended 31 December 2020 (“HY21”)*. Director’s Report – Business Performance, page 4, at <https://www.bisalloy.com.au/wp-content/uploads/2021/03/Appendix-4D-31-December-2020-Final.pdf>.