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Ms Thuy Lee
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Dear Ms Lee

Public File

Investigation No. 578 – Q&T steel plate exported from USA – SSAB Swedish Steel Pty Ltd Importer Verification Report & SSAB Alabama Inc Exporter Verification Report

I. Introduction

We refer to the recently published SSAB Swedish Steel Pty Ltd ("SSAB AU") Importer Verification Report (EPR Document No. 024) and SSAB Alabama Inc. ("SSAB Alabama") Exporter Verification Report (EPR Document No. 025).

Bisalloy Steels Pty Ltd ("Bisalloy") takes this opportunity to strongly refute the Anti-Dumping Commission's ("the Commission") conclusions arising from both reports including:

(a) The determination of like goods and the subsequent exclusion of some Quenched and Tempered ("Q&T") steel plate as non-subject goods due to the export of the goods to a third country for alleged further processing;

(b) The acceptance by the Commission that due to the "*examination of the role of the parties, their functions and responsibilities, the verification team does not consider the goods imported from the third country facility concerned to have been imported from the USA*".

(c) The re-assessment of Model Control Codes for the importer and exporter (i.e. the goods the subject of the investigation) without prior consultation with the Australian industry (i.e. Bisalloy).

It is Bisalloy's firm view that the Commission has erred in each of the above matters culminating in the incorrect determination of normal values, export prices and dumping margins for the exporter, SSAB Alabama.

Bisalloy is seeking the Commission to carefully consider the relevant considerations concerning all of the Q&T steel plate manufactured by SSAB Alabama – including their respective supply channels to Australia – and rescind the preliminary dumping margin determination contained in the SSAB Alabama Exporter Verification Report.

II. Like Goods

Bisalloy acknowledges the Commission's assessment that the goods sold domestically by SSAB Alabama have characteristics closely resembling those exported to Australia (including those exported directly and indirectly via a third country) that are "like goods" in accordance with section 269TAC(1).

III. Excluded goods

The Commission has excluded from its export price assessment for SSAB Alabama some volumes of Q&T steel plate manufactured by SSAB Alabama and exported to a third country where minor modifications occur prior to the goods being exported to Australia.

The Commission states (Footnote 3, SSAB Swedish Steel Pty Ltd Importer Verification report at P. 12):

> *"The verification team has investigated consignments identified by SSAB as having been exported from a SSAB facility in a third country. Based on the information and evidence provided, SSAB Alabama and the other SSAB facility agree to the terms of sale of certain quenched and tempered steel plate. These goods undergo further work at that facility (a process involving these goods being cut, blasted and primed). That SSAB company then agrees terms of sale of these further worked goods with parties in Australia and other countries. There is no evidence to indicate that SSAB Alabama was involved in the transactions to the final customer, nor evidence to indicate that they had knowledge of the final customer or the final destination for these goods."*

Bisalloy highlights with the Commission the following relevant consideration concerning the above statements:

(a) The manufacturer of the goods (SSAB Alabama), the third country SSAB entity, and the Australian entity (SSAB Swedish Pty Ltd) are all related parties with the one ultimate owner (i.e. SSAB AB);

(b) The claimed "sale" between SSAB Alabama and the third country SSAB entity is merely a price transfer arrangement between the related parties involved in the manufacture and sale of the Q&T steel plate. There are no independent, third party companies involved in the transaction(s);

(c) It is novel for the Commission to accept that the related parties in the transactions involving the production and sales of goods to Australia do not have knowledge of the final destination of the goods;

(d) The alleged "further work" undertaken by the third country SSAB entity are regular activities associated with the shipping and transportation of the goods by sea (refer to SSAB brochures HARDOX® GUARANTEES at P. 16 and STRENX® GUARANTEES at P. 15) and are part of guarantees provided by SSAB entities to protect the plate during transit. **The activities do not involve the substantial transformation of the goods and cannot be considered material;**

(e) The further work activities cannot be considered processes that involve the substantial transformation of the Q&T steel plate as manufactured by SSAB Alabama as they are merely necessary steps undertaken to protect the goods in transit by sea transportation; and

(f) The assertions by SSAB Alabama concerning the absence of Alabama's involvement in the transactions due to not being "involved" or, no "evidence to indicate" of a particular party's involvement, are not decisive factors that can be relied upon as it is not within SSAB Alabama or its related parties interest to disclose such information.

Bisalloy notes the guidance in the Dumping and Subsidy Manual ("the Manual") concerning an intermediary party being considered as the exporter of the goods (and not the original manufacturer), namely[1]:

> *"Depending on the facts, the Commission consider that only in* ***rare circumstances*** *would an intermediary be found to be the exporter of the goods. Typically, this will only occur where the intermediary has purchased the goods from the manufacturer; the manufacturer has no knowledge at all that the goods are destined for export to any country; and the essential role of the intermediary is that of a distributor rather than a trade and because it is acting more like a distributor the intermediary would usually have its own inventory for all export sales."* (emphasis added).

The "rare circumstances" referred to in the above extract from the Manual cannot be considered to apply where all parties through the manufacture-intermediary-import function are related parties and the manufacturer also exports to its related importer other goods that are alike in all respects to the goods sold via the affiliated intermediary.

It is further noted by Bisalloy that the Manual further references the sale of the goods and export price determination *"will be determined under subsection 269TAB(1)(a) where the goods have exported otherwise than by the importer and purchased by the importer from the exporter in an arms length transaction"*. The SSAB Alabama Exporter Verification Report has confirmed that the export price for the sales by SSAB Alabama to SSAB AU *"cannot be determined under section 269TAB(1)(a)"* as *"the verification team considers that the purchases of the goods by the importer were* ***not arms length transactions****."* (emphasis added)

How then, can sales of like goods that are manufactured by SSAB Alabama and sold to a related-third party for supply to Australia, and sold to the same customers in Australia as the goods exported to Australia direct by SSAB Alabama (ie with all parties being related within the SSAG AB Group), be set aside and not included in SSAB Alabama's export price determination?

The Commission's assessment, to exclude the Q&T steel plate diverted via an SSAB entity in a third country where it is cut, blasted and primed (activities that are equally undertaken by SSAB Alabama) to prevent corrosion is incorrect. All of the goods exported by SSAB Alabama whether exported directly to SSAB AU or via a third country are the subject goods and must all be included within the export price determination for SSAB Alabama.

IV. Role of the parties

The Commission has stated in the SSAB AU Importer Verification Report that it examined "the role of the parties, their functions and responsibilities" in the transactions involving the goods exported to a related SSAB entity in a third country in deciding to exclude these volumes from SSAB Alabama's export price determination.

It must be recalled that all export sales by SSAB AB to SSAB AU in earlier investigations 234 and 506 were determined as "non arms length" for Q&T steel plate exported to Australia from both Finland and Sweden. The Commission further determined in Continuation Investigation No. 506 that SSAB AB continued to export at dumped prices into the Australia market even though anti-dumping measures were in place (most notably, with dumping margins of 129 per cent).

With this precedent, it is inconceivable that the Commission has accepted SSAB AU's assertions that certain claimed "sales" that are merely transfers between members of the SSAB Group of companies including goods that were manufactured by SSAB Alabama that are exported via an SSAB entity in a third country, that are sold to the same affiliated Australian importer (SSAB AU), have been determined by the Commission as **not** the subject goods. It would be naïve to accept that SSAB

[1] Dumping and Subsidy Manual at 6.2, P. 30.

Alabama as the manufacturer of the goods is not informed of the end-use Australian customer of the goods. SSAB AU's explanations are simply not plausible.

Bisalloy requests the Commission to re-assess the assessment of export price for all goods manufactured by SSAB Alabama and include those goods that were exported to Australia via a third country as goods subject of the investigation.

The minor modifications undertaken in the third country cannot be considered to materially transform the goods in any way such they do not have a different heading classification as the goods exported by SSAB Alabama to the third country (i.e. there is no significant value-add processing undertaken that elaborately transforms the Q&T steel plate in such a way for it to not to be considered alike to the goods the subject of the investigation).

V. Blasting and priming

SSAB AU contends that the Q&T steel plate manufactured by SSAB Alabama and exported to a third country where an SSAB entity "further works" the goods before they are exported to SSAB AU in Australia. The further working involves the cutting, blasting and priming of the Q&T steel plate so that it is cut-to-length to the customer's specifications and blasted and primed for sea transportation.

SSAB's brochures HARDOX® GUARANTEES (at P. 16) and STRENX® GUARANTEES at (P. 15) confirm that the cutting to length, blasting and priming are all part of the SSAB service to meet the customer's needs for the supply of the contracted goods. The STRENX® GUARANTEES brochure confirms[2]:

> "*Unprotected steel plate will corrode. SSAB can therefore provide the plate with effective anti-corrosion treatment known as shop primer. This protects the product while it is in transit.*"

The brochure further confirms that the steel plate is shot-blasted before priming as an anti-corrosion treatment.

The SSAB activities that are claimed as "further work" processes that can be considered to assist in an assessment to exclude the goods as goods produced and exported to Australia by SSAB Alabama is disingenuous and misleading.

Bisalloy submits that the further work activities of SSAB affiliates (whether in the third country or in the country of export) are merely blasting and priming activities that assist in the surface protection of the Q&T steel plate. This must be considered **a cost for transportation not product transformation.** As such, all of the Q&T steel plate exported to SSAB AU – whether directly or indirectly – are to be considered in the export price calculations of SSAB Alabama in the SSAB Alabama Exporter Verification Report ("SSAB Alabama Report").

VI. Model Control Codes

The Commission has included a new sub-category within the Model Control Codes ("MCC") in the SSAB Alabama Report. This new sub-category is "blasted and primed". It is further noted that the Commission has "disregarded the MCC categories of width and length" in its assessment of MCCs for the SSAB Alabama exported goods. The failure to take account of width and length parameters in the MCC category's is flawed as both are key cost and price determinations for the subject goods and cannot be disregarded.

Bisalloy was not notified by the Commission that it was considering alterations to the MCCs for Q&T steel plate prior to the conduct of the SSAB Alabama verification. If Bisalloy had been contacted it would have advised the commission that the previously agreed MCCs categories of width and length were integral attributes impacting cost and price are relevant considerations to be reflected in the MCCs.

[2] Refer STRENX® GUARANTEES Brochure at Non-Confidential Attachment 2.

The categories for MCCs that include width (Category 5) and length (category 6) were confirmed in the SSAB AU importer verification report. Further, the goods description as reflected in the ADN 2021/031 nominate the widths and lengths of the subject goods (that vary within the specified ranges) and that the goods are either primed or unprimed. There has been no consultation with Bisalloy as to whether adjustments to the MCCs in the current investigation are warranted.

It should be recalled that Q&T steel plate has several key product attributes. Many of these are fixed in the primary production process (steelmaking, rolling and heat treatment) and should be considered the core product attributes that describe Q&T steel. Only two attributes can be modified after primary production that are contested by SSAB AU. They are final plate size (length and width) and surface finish. The ADC has correctly described Q&T steel plate within the Anti-Dumping Notice No. 2021/31 ("ADC notice"), under the first paragraph of the section titled "Goods". The referenced activities of cutting, blasting and priming **do not** alter the fundamental characteristics of the Q&T steel plate.

(a) Size

Plates are often rolled to a parent plate size, heat treated and then held as inventory. Alternatively, they can be produced to a specific customer order but for reasons of mill efficiency still produced in a parent plate size. The decision to perform final cutting to a customer specific size, is a minor secondary process that costs less than 1% of the sale price and does not change the nature of the goods or where the manufacturing process has occurred. Cutting the goods does not involve any elaborate transformation of the goods.

(b) Surface finish

The Commission ADN 2021/31 also describes the goods presented in a variety of surface finishes. It is common for goods that are to be transported and sold domestically, to be offered in a shot blasted condition to pass on a minor cost reduction to the customer. For product sold to export markets the predominant surface finish offered is primed, which acts as a preservation coating to inhibit product corrosion. Bisalloy follows these practices for export customers and even for some domestic customer where requested. Bisalloy supply product shotblast **but unprimed** to the majority of our domestic customers. The value of priming as a % of the total material cost varies dependant on the plate thickness since the cost is proportional to the surface area and again is minimal (as a proportion of the sales price). Based on Bisalloy's understanding of the product mix supplied by SSAB AU to Australia, Bisalloy contends that the cost of surface priming is minor and an insignificant amount when contrasted with the total cost of the finished steel sold. Primed and unprimed products are "like goods" and are sold interchangeably in the domestic market.

The decision on where the post-production processes (i.e. cutting, blasting and priming) are conducted is based on market demand and utilization of SSAB's production facilities. SSAB has the capability of performing these secondary processes in its primary processing facilities. An example of this is included on SSAB's website (e.g. Borlänge, Sweden). These minor finishing activities cannot be considered a change to the core product attributes that describe Q&T steel plate.

Bisalloy has evidenced that the key attributes of Q&T steel plate length and width are important factors influencing cost and price of the finished goods. Further, the blasting and priming of the Q&T steel plate is for corrosion-resistance whilst transported by sea.

Bisalloy disagrees with the exclusion of width and length parameters which affect cost and price from the MCCs categories. Further, Bisalloy does not consider that the inclusion of "blasted and primed" as a ***new*** MCC category is correct as this influences the comparison of domestic and export sales (including the inability to determine normal values on the domestic market due to the absence of sales for blasted and primed products).

VII. <u>SSAB Alabama Exporter Verification Report</u>

The SSAB Alabama Exporter Report has been prepared by the Commission on the basis that not all of the goods produced and exported to Australia by SSAB Alabama have been incorporated into the Commission's export price calculations. Further, the MMCs used by the Commission have varied to earlier investigations and were implemented by the SSAB Alabama verification team without consultation with the applicant industry.

The Commission's decision to exclude certain products that were exported to Australia via a third country means that the volumes and export prices as assessed in the SSAB Alabama Report are not accurate.

Bisalloy has provided unequivocal reasons not to exclude certain third country export sales from the SSAB Alabama export price assessments. Bisalloy requests the Commission to re-assess export costs and prices for SSAB Alabama with all SSAB Alabama manufactured Q&T product exported to Australia (whether directly or indirectly) included in the assessment.

VIII. Conclusion

Bisalloy **rejects** the Commission's assessment that the Q&T steel plate manufactured by SSAB Alabama and exported to Australia via a third country related party (where minor activities associated with cutting, blasting and priming occur) have been excluded from SSAB Alabama's export price determination.

The Commission's assessment involving an examination of the roles, functions and responsibilities of the SSAB related parties in the "sale" of the excluded goods is contrary to the s. 269TAB(1) provisions – particularly for related parties where sales are **not arms-length**.

Bisalloy is further opposed to the Commission's re-determination of MCCs for goods exported to Australia by SSAB Alabama as the exclusion of width and length categories replaced by a new "blasted and primed" category is **intended to misrepresent** normal values based upon like domestic sales for SSAB Alabama (there being an absence of sales for blasted and primed domestic sales).

Bisalloy urgently requests the Commission to re-assess all export sales to Australia (direct and indirect) and to revert to the original MCCs as confirmed in earlier investigations and in ADN 2021/031, as this issue of dumping "like goods" has and continues to have a considerable effect on our business and Australian Industry.

If you have any questions concerning this submission, please do not hesitate to contact me on 0409 995 867 or Bisalloy's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely

Rowan Melrose

Rowan Melrose
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