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

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

Melbourne
Level 39
385 Bourke Street
Melbourne
VIC 3000 Australia
+61 3 8459 2276

moulislegal
commercial + international

21 March 2022

Ms Thuy Lee
Case Manager
Investigations 4
Anti-Dumping Commission
Level 6, 215 Spring Street
Melbourne
Victoria 3000

By email

Dear Ms Lee

SSAB – quenched and tempered steel plate from USA
Bisalloy submission concerning SSAB verification reports

We refer to a submission placed on the public record of this investigation on 11 March 2022.

To assist Bisalloy to have a better understanding of the matters about which it complains, we offer the following observations.

1 "Excluded goods" - the third country referred to is the country of export of the goods that Bisalloy refers to as the "excluded goods". We submit that the proposition that the third country is the country of export of those goods for anti-dumping purposes is unarguable.

The production processes that take place there are the last processes applied to the exported goods, are industrial processes, and are significant. Evidence has been provided to the Commission about the nature of the processes, their invasiveness with respect to the transformation of the goods, their significant industrial nature and cost, the modern supply chain implications of those processes; and all the commercial factors associated therewith.

We note that Bisalloy describes its own "Bisplate process" chart at page 13 of its application as *"incorporat[ing] a highly automated approach to each stage of production"*. Activities such as "shot blasting", "thickness check", "auto grinding", "hardness test", "hardness reading", "leveller", "test cut", "hardness test", "stencil", "bar coding" and "packing" are listed in that chart as stages of "Bisplate" production. These production stages, or the overall production stage made up of those processes viewed cumulatively, are admitted by Bisalloy to be stages

of production. Moreover, those processes do not include the full extent of important industrial processes that are undertaken by SSAB's affiliate in the third country, being processes that are more extreme in nature than those listed.

The Commission has clear evidence that SSAB Alabama did not export the unfinished goods to the third country with knowledge of their final destination; that the unfinished goods were subjected to a costly and substantial industrial transformation in the third country; that third country domestic transportation and warehousing took place within the control and purview of the third party affiliate; and that the export of the goods to Australia took place pursuant to separate commercial arrangements between SSAB AU and the third party affiliate, and not with SSAB Alabama.

The Commission has correctly concluded this matter for the purposes of an anti-dumping investigation under Part XVB of the *Customs Act 1901*. The "excluded goods" are not exports from the US, and there can be no suggestion whatsoever that they only passed "in transit" through that third country.

We submit that nothing that has been put forward by Bisalloy in its latest submission to overcome that conclusion.

2 "Role of the parties" – we have nothing to add to what we have stated above. Bisalloy seems to think that arm's length principles, relating to establishing export price, have something to do with the determination of the country of export of goods. We remind that anti-dumping rules have not abolished geographical borders and economic markets. Indeed, it is those boundaries that give anti-dumping rules their meaning.

3 "Blasting and priming" – again, we have little more to add. "Blasting and priming" is itself an industrial process. Further, blasting and priming is not the full extent of the processing and commercial activities that take place in SSAB's affiliated facility in the third country location. To use an expression that Bisalloy has directed against SSAB in its latest submission, it is *"disingenuous"* of Bisalloy to suggest that the processes of SSAB's affiliate are *"merely"* blasting and priming. And in any event, only a company that fails to understand the importance customers place on the quality of the product supplied to them, by failing to prime its products before sale as a matter of course, would hold the view that blasting and priming costs are *"a cost for transportation not product transformation"*.

4 "Model Control Codes" – the Commission's carefully considered approach towards the MCCs is fully described in the verification reports that are on the public record. For our part, we have never really understood why MCCs would be considered unchangeable, from the time they are first put forward by the Commission, to the end of an investigation. They are suggested by the Australian industry at a time before the exporter data that enables their accuracy and utility to be tested has been received by the Commission. The Commission recognises this, stating in its Dumping and Subsidy Manual that:

> *Modifications to the MCC structure may be considered based on the facts and evidence pertaining to a particular exporter.*[1]

[1] Dumping and Subsidy Manual, December 2021, page 48.

The public record provides Bisalloy with procedural fairness with respect to the MCCs proposed by the Commission. It is open to Bisalloy to present its own point of view. Arguing that the Commission is somehow precluded from arriving at a decision *after* it has received and verified information that it necessary for it to make that decision, simply because the decision is different to one it made *before* it had received and verified that information, does not make sense.

****

Lastly, we note Bisalloy's accusation that the Commission *"intend[s] to misrepresent normal values based upon like domestic sales for SSAB Alabama"*. We consider this to be a very serious accusation to level against any party in an administrative process, let alone the government agency conducting the process. Similar to Bisalloy's unwarranted criticisms of the integrity of end-users who have participated in this investigation, to which we have drawn attention in prior correspondence, this reflects badly on the Australian industry.

In light of the dumping margin finding foreshadowed by the exporter verification report, the Commission should arrive at a preliminary determination in its upcoming Statement of Essential Facts ("SEF") that the investigation be terminated.

This is not to downplay the importance of the evidence we have provided going to the question of the financial condition of the Australian industry, and whether it was caused "material injury" by SSAB Alabama's exports to Australia. We hope that the SEF will engage on those issues as well.

First and foremost, SSAB submits that Bisalloy's publicly documented financial performance in the investigation period and since then defies the proposition that it has suffered material injury at all.

Further, SSAB insists that if Bisalloy has been "injured" in any respect, then a proper consideration of the comparatively high prices of SSAB quenched and tempered steel plate in the Australian market in the investigation period; Bisalloy's selling practices; the entry of lower priced imports into the Australian market; and the significant product differences between SSAB's quenched and tempered steel plate and Bisalloy's products will show that the reason for the "injury" is not to be found in the prices of SSAB Alabama's exports to Australia.

Yours sincerely

Daniel Moulis
Partner Director
+61 414 221 224

NON-CONFIDENTIAL