



Australian Government
**Department of Industry, Science,
Energy and Resources**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 578

**ALLEGED DUMPING OF QUENCHED AND TEMPERED
STEEL PLATE**

EXPORTED FROM THE UNITED STATES OF AMERICA

22 April 2022

SEF 578 - Quenched and tempered steel plate - USA

CONTENTS

CONTENTS	2
ABBREVIATIONS	3
1 SUMMARY AND RECOMMENDATIONS	4
1.1 INTRODUCTION	4
1.2 PRELIMINARY FINDINGS	4
1.3 AUTHORITY TO MAKE DECISION	4
1.4 RESPONDING TO THIS SEF	6
1.5 FINDINGS AND CONCLUSIONS.....	7
2 BACKGROUND	9
2.1 INITIATION	9
2.2 PREVIOUS CASES	9
2.3 NOTIFICATION AND PARTICIPATION IN THIS INVESTIGATION	9
2.4 SUBMISSIONS RECEIVED FROM INTERESTED PARTIES	11
2.5 PRELIMINARY AFFIRMATIVE DETERMINATION	11
3 THE GOODS AND LIKE GOODS	13
3.1 PRELIMINARY FINDING.....	13
3.2 LEGISLATIVE FRAMEWORK	13
3.3 THE GOODS.....	13
3.4 TARIFF CLASSIFICATION	15
3.5 MODEL CONTROL CODES.....	15
3.6 LIKE GOODS.....	18
4 THE AUSTRALIAN INDUSTRY	20
4.1 PRELIMINARY FINDINGS	20
4.2 LEGISLATIVE FRAMEWORK	20
4.3 AUSTRALIAN INDUSTRY	20
4.4 AUSTRALIAN PRODUCTION	20
4.5 PRELIMINARY ASSESSMENT.....	21
5 DUMPING INVESTIGATION	22
5.1 PRELIMINARY FINDING.....	22
5.2 LEGISLATIVE AND POLICY FRAMEWORK.....	22
5.3 EXPORTERS	23
5.4 DUMPING ASSESSMENT – SSAB ALABAMA	25
5.5 ALL OTHER EXPORTERS DUMPING MARGIN.....	34
5.6 SUMMARY OF DUMPING MARGINS.....	35
5.7 VOLUME OF DUMPED IMPORTS	35
5.8 LEVEL OF DUMPING.....	35
6 PROPOSAL TO TERMINATE THE INVESTIGATION.....	37
7 ATTACHMENTS	38

ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901</i>
Bisalloy	Bisalloy Steels Pty Ltd
China	the People's Republic of China
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
the Customs Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
EPR	electronic public record
Finland	the Republic of Finland
FOB	Free On Board
the goods	the goods under consideration
the Manual	the Dumping and Subsidy Manual
MCC	model control code
the Minister	the Minister for Industry, Energy and Emissions Reduction
OCOT	ordinary course of trade
OECD	Organisation for Economic Co-operation and Development
PAD	Preliminary Affirmative Determination
the PAD Direction	Customs (Preliminary Affirmative Determinations) Direction 2015
Q&T steel plate	quenched and tempered steel plate
REP 234	<i>Anti-Dumping Commission Report No. 234</i>
REP 506	<i>Anti-Dumping Commission Report No. 506</i>
REQ	response to the exporter questionnaire
SEF	statement of essential facts
SSAB Alabama	SSAB Alabama Inc.
SSAB AU	SSAB Swedish Steel Pty Ltd
Sweden	the Kingdom of Sweden
USA	the United States of America

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

The Anti-Dumping Commission (commission) has prepared this SEF in response to an application from Bisalloy Steels Pty Ltd (Bisalloy) seeking the publication of a dumping duty notice in respect of quenched and tempered steel plate (Q&T steel plate or 'the goods') exported to Australia from the USA.¹ The Commissioner of the Anti-Dumping Commission (the Commissioner) initiated the investigation on 15 March 2021.²

This SEF sets out the findings and conclusions on which the Commissioner proposes to base recommendations to the Minister for Industry, Energy and Emissions Reduction (the Minister), unless the Commissioner terminates the investigation.

As set out in chapter 1.2 below, the Commissioner proposes to terminate the investigation as the dumping margin for the exporter of the goods in the USA, SSAB Alabama Inc. (SSAB Alabama) and all other exporters was negligible.³

The Anti-Dumping Commission (the commission) is assisting the Commissioner conduct the investigation, pursuant to the commission's function specified in section 269SMD.

1.2 Preliminary findings

The Commissioner has found that goods exported from the USA in the investigation period from cooperating exporter SSAB Alabama, and all other exporters, have dumping margins less than 2 per cent and are, therefore, negligible.

Based on the preliminary findings outlined in this report and, subject to any further submissions received in response to the publication of this SEF, the Commissioner proposes to terminate the investigation in respect of all exports of the goods from the USA under section 269TDA(1) of the *Customs Act 1901* (the Act).⁴

1.3 Authority to make decision

Division 2 of Part XVB describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner when conducting investigations in relation to the goods covered by an application under section 269TB(1).

¹ EPR No. 578, item no. 01

² Electronic public record (EPR) No. 578, item no. 03

³ Under section 269TDA(1) of the *Customs Act 1901*

⁴ All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

1.3.1 Application

On 8 February 2021, Bisalloy lodged an application for the publication of a dumping duty notice for Q&T steel plate exported from the USA.⁵ Bisalloy alleged that the goods exported to Australia from the USA at dumped prices were causing material injury to the Australian industry.

Having considered the application, the Commissioner decided to not reject the application. On 15 March 2021, the Commissioner initiated the present investigation. Anti-Dumping Notice (ADN) No. 2021/031 and *Consideration Report No. 578* provide further details on the initiation of the investigation.⁶

A public record is available for this investigation on the commission website at www.adcommission.gov.au. A non-confidential version of the application, ADN No. 2021/031, verification reports and all subsequent submissions by interested parties are available on the commission's electronic public record (EPR) at case page 578.

1.3.2 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows under section 269ZHI(3),⁷ place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.⁸

In formulating the SEF, the Commissioner must have regard to the application, and any submissions concerning publication of the notice that the commission receives within 37 days after the date of initiation of the investigation.⁹ The Commissioner may also have regard to any other matters considered relevant.¹⁰

The Commissioner was originally due to place the SEF on the public record by 3 July 2021. The Commissioner granted extensions of time to the initial date due outlined in the initiation notice.¹¹ As advised in ADN No. 2022/030, the Commissioner approved an extension of time for the publication of the SEF until 22 April 2022.

1.3.3 Report to the Minister

The initiation notice advised that the Commissioner would provide a report to the Minister on or before 17 August 2021. The Commissioner has granted extensions of time for this due date.¹² The due date for the Commissioner to provide a report to the

⁵ EPR No. 578, item no. 01.

⁶ EPR No. 578, items no. 02 and 03.

⁷ The Minister's powers under section 269ZHI(3) have been delegated to the Commissioner (ADN No. 2017/010).

⁸ Section 269TDAA(1).

⁹ Section 269TDAA(2)(a).

¹⁰ Section 269TDAA(2)(b).

¹¹ EPR No. 578, items no. 06, 14, 21 and 28 (ADN No. 2021/085, ADN No. 2021/139, ADN No. 2022/010 and ADN No. 2022/30).

¹² Ibid.

Minister is now 16 June 2022, unless the Commissioner terminates the investigation earlier or makes a further extension.

1.4 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister.

This SEF is an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF. However, the SEF does not necessarily represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making its final report to the Minister. The report will recommend whether or not a dumping duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **12 May 2022**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister

The Commissioner must report to the Minister by 16 June 2022, unless the Commissioner terminates the investigation earlier or makes a further extension.

Submissions should be emailed to Investigations4@adcommission.gov.au.

Alternatively, they may be posted to:

Director, Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available at the commission's web site www.adcommission.gov.au.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the commission's visit reports and other publicly available documents.

Documents on the Public Record should be read in conjunction with this SEF.

1.5 Findings and conclusions

The Commissioner's preliminary findings and conclusions in this SEF follow an assessment of the available information at this stage of the investigation. A summary of these preliminary findings is below and outlined in this SEF.

1.5.1 The goods and like goods and the Australian industry (chapters 3 and 4)

The Commissioner is satisfied that the Australian industry produces Q&T steel plate that is 'like' to the goods the subject of the application.

1.5.2 The Australian market

The Commissioner does not consider it necessary to assess the Australian market, as he proposes to terminate the entire investigation pursuant to section 269TDA(1) (Chapter 6 refers).

1.5.3 Dumping margins (chapter 5)

The commission's assessment of dumping margins is set out in the table below.

Country	Exporter	Dumping margin (%)
USA	SSAB Alabama	1.7
USA	All other exporters	1.7

Table 1 - Dumping margins

1.5.4 Economic condition of the Australian industry

The Commissioner does not consider it necessary to assess the economic condition of the Australian industry, as he proposes to terminate the entire investigation pursuant to section 269TDA(1) (Chapter 6 refers).

1.5.5 Material injury caused by dumped goods

The Commissioner does not consider it necessary to determine whether Q&T steel plate exported from the USA has caused material injury to the Australian industry as he proposes to terminate the entire investigation (Chapter 6 refers).

1.5.6 Non-injurious price

The Commissioner is not recommending that the Minister publish a notice under sections 269TG(1) or (2) because it is proposed to terminate the entire investigation. As such, the Commissioner has not made a preliminary recommendation regarding whether the Minister should consider the desirability of fixing a lesser amount of duty for the purposes of removing injury, pursuant to the *Customs Tariff (Anti-Dumping) Act 1975*.

1.5.7 Proposal to terminate the investigation (chapter 6)

Section 269TDA provides for when the Commissioner must terminate an investigation.

PUBLIC RECORD

The commission preliminarily finds that the level of dumping in relation to the whole volume of the goods exported from the USA is less than 2 per cent.

Subject to any submissions received in response to this SEF, the Commissioner proposes to terminate the dumping investigation pursuant to section 269TDA(1) in relation to exports from SSAB Alabama and the category of 'all other exporters' from the USA.

2 BACKGROUND

2.1 Initiation

On 8 February 2021, Bisalloy, representing the Australian industry manufacturing like goods, lodged an application for the publication of dumping notices for Q&T steel plate exported from the USA.¹³ Bisalloy alleged that the imports of the goods exported to Australia from the USA at dumped prices were causing material injury to the Australian industry.

On 15 March 2021, having considered the application, the Commissioner decided not to reject the application and initiated the present investigation.

Consideration Report No. 578 and ADN No. 2021/031 provide further details relating to the initiation of the investigation. These documents are accessible on the EPR.¹⁴

2.2 Previous cases

2.2.1 Investigation 234

On 8 January 2014, following an application from Bisalloy, the then Commissioner initiated an investigation into the alleged dumping of Q&T steel plate exported to Australia from the Republic of Finland (Finland), Japan and the Kingdom of Sweden (Sweden). On 5 November 2014, the then Parliamentary Secretary to the then Minister for Industry accepted the recommendations of *Anti-Dumping Commission Report No. 234* (REP 234) and imposed anti-dumping measures on Q&T steel plate exported to Australia from Finland, Japan and Sweden.

2.2.2 Continuation inquiry 506

On 11 February 2019, following an application from Bisalloy, the then Commissioner initiated an inquiry into whether the measures applying to Q&T steel plate exported from Finland, Japan and Sweden should be continued. On 2 October 2019, the then Minister for Industry, Science and Technology decided to continue the measures for five years on Q&T steel plate exported to Australian from Finland, Japan and Sweden, having accepted the recommendations of *Anti-Dumping Commission Report No. 506* (REP 506).

2.3 Notification and participation in this investigation

2.3.1 Australian industry

The Commissioner is satisfied that Bisalloy represents the Australian industry producing like goods to the goods subject of this investigation.

¹³ EPR No. 578, item no. 01.

¹⁴ EPR No. 578, items no. 02 and 03.

Bisalloy supplied the requisite cost and sales and injury data with its application. The commission has verified this data and a verification report relating to Bisalloy is available on the public record.¹⁵

2.3.2 Importers

The commission reviewed the Australian Border Force (ABF) import database and identified one major importer, SSAB Swedish Steel Pty Ltd (SSAB AU) who imported the goods from the USA to Australia during the investigation period.

The commission forwarded a copy of the importer questionnaire to SSAB AU and placed a copy of the importer questionnaire on the commission's website for other importers to complete.

The commission received SSAB AU's response to the importer questionnaire on 11 May 2021. The commission has verified SSAB AU's response to the importer questionnaire, including cost and sales data pertaining to the investigation period. The verification report relating to SSAB AU is on the public record.¹⁶

2.3.3 Exporters

The commission identified one major exporter, SSAB Alabama Inc. (SSAB Alabama), in the ABF import database that exported the goods from USA to Australia during the investigation period.

The commission forwarded a copy of the exporter questionnaire to SSAB Alabama and placed a copy of the exporter questionnaire on the commission's website for other exporters to complete.

The commission received SSAB Alabama's response to the exporter questionnaire on 17 May 2021. The verification report relating to SSAB Alabama is available on the public record.¹⁷

The commission's examination of consignments imported under the tariff subheading relevant to the investigation revealed that goods imported by parties other than SSAB Alabama were unlikely to be relevant to the investigation (section 5.3.2 refers). The Commissioner considers that SSAB Alabama was the only exporter of the goods. Since SSAB Alabama has cooperated with the investigation, the Commissioner does not consider there are any parties to define as uncooperative exporters.¹⁸

¹⁵ EPR No. 578, item no. 23.

¹⁶ EPR No. 578, item no. 24.

¹⁷ EPR No. 578, item no. 25.

¹⁸ Section 269T(1).

2.4 Submissions received from interested parties

The commission received the following submissions from interested parties during the course of this investigation. The Commissioner considered these submissions in reaching his preliminary conclusions contained within this SEF.

Public Record Item No.	Interested party	Date received
007	SSAB Alabama Inc. – Evidence does not establish injury to the Australian industry	20/07/2021
008	Bisalloy Steels Pty Ltd – Exporter verification	27/07/2021
009	SSAB Alabama Inc. – Bisalloy relationship and behaviours	03/08/2021
010	Bisalloy Steels Pty Ltd – Response to SSAB Alabama submission	24/08/2021
011	Bisalloy Steels Pty Ltd - Response to SSAB Alabama submission regarding shareholdings	25/08/2021
012	SSAB Swedish Steel Pty Ltd – Bisalloy sales and financial performance	06/10/2021
013	Bisalloy Steels Pty Ltd – Response to SSAB Swedish Steel Pty Ltd submission on injury	27/10/2021
019	Bisalloy Steels Pty Ltd – Response to Australian Market Questionnaire responses from end users	17/11/2021
020	Joint submission from SSAB Alabama Inc. and SSAB Swedish Steel Pty Ltd – Unsuppressed selling price and end users opinion	15/12/2021
022	Bisalloy Steels Pty Ltd – Injury sustained	04/02/2022
026	Bisalloy Steels Pty Ltd – Response to exporter and importer verification report	10/03/2022
027	Joint submission from SSAB Alabama Inc. and SSAB Swedish Steel Pty Ltd – Response to Bisalloy submission	21/03/2022

Table 2 - Submissions considered in this report

2.5 Preliminary affirmative determination

The Commissioner may make a preliminary affirmative determination (PAD) for the taking of securities at any time from day 60 onwards of the investigation, if he is satisfied that the requirements of section 269TD(1) are met. If the Commissioner has not made a PAD by day 60 he is, in accordance with *Customs (Preliminary*

PUBLIC RECORD

Affirmative Determinations) Direction 2015 (the PAD Direction) required to publish a Day 60 Status Report outlining his reasons for not publishing a PAD.¹⁹

On 14 May 2021, the Commissioner published a Day 60 Status Report stating that information available to the Commission at day 60 of the investigation was insufficient to warrant the publication of a PAD and noted that the investigation had been delayed by specific circumstances arising from the COVID-19 pandemic.

The PAD Direction requires the Commissioner to reconsider whether or not to make a PAD at least once prior the publication of the SEF. The Commissioner has, in accordance with 269TD(2), reconsidered the relevant facts during the course of the investigation and decided not to make a PAD.

¹⁹ EPR No. 578, item no. 04 (ADN No. 2021/063).

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The commission considers that the Q&T steel plate locally produced are 'like goods' to the goods and subject of the application under consideration.

3.2 Legislative framework

Section 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are like to the imported goods. Section 269T(1) defines like goods as:

...goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are like to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness
- ii. commercial likeness
- iii. functional likeness
- iv. production likeness.

3.3 The goods

The goods are:

Flat rolled products of alloyed steel plate commonly referred to as Quenched and Tempered ("Q&T") steel plate (although some Q&T grades may not be tempered), not in coils, not further worked than hot rolled, of widths from 600 mm up to and including 3,200 mm, thickness between 4.5 – 110 mm (inclusive), and length up to and including 14 metres, presented in any surface condition including but not limited to mill finished, shot blasted, primed (painted) or un-primed (unpainted), lacquered, also presented in any edge condition including but not limited to mill edge, sheared or profiled cut (i.e. by Oxy, Plasma, Laser, etc.), with or without any other minor processing (e.g. drilling).

Goods of stainless steel, silicon-electrical steel and high-speed, are excluded from the goods covered.

Q&T steel plate comprises the following typical mechanical properties:

Physical properties:

- High Hardness/Abrasion resistant Q&T steel plate, commonly referred to as 'Wear' Grade Q&T steel plate, of Brinell hardness (HBW – 10/3000) range 320-640 or equivalent Rockwell C hardness range 34 - 59 or equivalent Vickers hardness range 230 – 670;
- High Strength Q&T steel plate, commonly referred to as 'Structural/High Tensile' Grade Q&T steel plate, of 0.2% Proof Stress of 475 – 890 MPa (min); and
- High Hardness/Impact resistant Armour Grades, commonly referred to as 'Armour' Grade Q&T steel plate, of hardness up to 640 Brinell (HBW – 10/3000).

Clarifying Description:

- Carbon – maximum of 0.5%
- Manganese – maximum of 2.5%
- Silicon – maximum of 0.65%
- Sulphur – maximum of 0.04%
- Phosphorous – maximum of 0.04%
- Nickel – maximum of 3.0%
- Chromium – maximum of 3.0%
- Molybdenum – maximum of 2.0%
- Vanadium – maximum of 0.2%
- Boron – maximum of 0.01%
- Aluminium – maximum of 0.1%
- Titanium – maximum of 0.1%
- Copper – maximum of 0.5%
- Niobium – maximum of 0.1%.

The percentage of the above individual alloying elements may vary with each manufacturer's grade specifications and not all elements may be utilised in all Q&T steel plate grades.

3.4 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings and statistical codes in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff classification (Schedule 3 of the <i>Customs Tariff Act 1995</i>)		
Tariff Subheading	Statistical Code	Description
7225		FLAT-ROLLED PRODUCTS OF OTHER ALLOY STEEL, OF A WIDTH OF 600 mm OR MORE:
7225.1		- Of silicon-electrical steel:
7225.40.00		- Other, not further worked than hot-rolled, not in coils, high alloy:
	21	.Quenched and tempered
	22	.Other
		- Other, not further worked than hot-rolled, not in coils, other:
	23	.Quenched and tempered
	24	.Other
7225.9		- Other:
7225.99.00	39	-- Other

Table 3 - The goods and general tariff classification for the goods

These tariff classifications and statistical codes may include goods that are both subject and not subject to this investigation. The listing of these tariff classifications and statistical codes are for reference only and do not form part of the goods description set out above. Please refer to the goods description earlier in this chapter for detail regarding the particulars of the goods the subject of this investigation.

3.5 Model Control Codes

The commission's MCC structure identifies characteristics that are used to match models of the goods exported to Australia and like goods sold domestically in the country of export.

Table 4 below outlines the MCC structure for Q&T steel plate proposed in the initiation notice for the inquiry.

Item	Category	Sub-category	Identifier	Sales Data	Cost data	Key category
1	Grade	Structural	S	Mandatory	Mandatory	Yes
		Wear	W			
		Amour	A			
2	Tensile Strength (this category is only required for 'structural' grade Q&T steel plate)	Under 700 Mpa	A	Mandatory	Mandatory	Yes
		700-799 Mpa	B			

PUBLIC RECORD

Item	Category	Sub-category	Identifier	Sales Data	Cost data	Key category
		800-899 Mpa	C			
		900-999	D			
		Above 1000 Mpa	E			
3	Brinell Hardness (this category is only required for 'wear' or 'amour' grade Q&T steel plate)	Under 275	A	Mandatory	Mandatory	Yes
		275-324	B			
		325-374	C			
		375-424	D			
		425-474	E			
		475-524	F			
		525-574	G			
		Above 575	H			
4	Thickness	Under 8mm	1	Optional	Optional	No
		8-50mm	2			
		Above 50mm	3			
5	Width	Under 2000mm	A	Optional	Optional	No
		2000mm-3000mm	B			
		Above 3000mm	C			
6	Length	Under 6.5m	1	Optional	Optional	No
		6.5-8.49m	2			
		8.5-10.5m	3			
		Above 10.5m	4			

Table 4 - MCC for Q&T steel plate

3.5.1 Amendments to the MCC structure

Following the verification of SSAB Alabama's cost and sales data, the commission found it appropriate to amend the MCC structure used to match SSAB Alabama's domestic and export sales data. Specifically, the commission did not have regard to the categories of width and length as these categories did not affect cost and price at unit level (measured as USD per tonne).

In addition, the commission found it appropriate to add an additional MCC category for goods that were 'blasted and primed' as the data analysis indicated that blasted and primed goods were sold at a price premium.

3.5.2 Submission received in relation to MCC structure

Submission on the amended MCC structure

Bisalloy's submission of 10 March 2022 contends that the commission erred in its decision to amend the MCC structure in relation to SSAB Alabama. Bisalloy also highlighted that the amendments were made without consulting the Australian industry.

In relation to the commission's decision to remove the categories relating to width and length, Bisalloy states that these are integral attributes driving cost and price and as such should be included in the MCC structure.

In relation to the commission's additional MCC category 'blasted and primed', Bisalloy explain that blasting and priming of the goods is a process performed for export sales only to prevent corrosion of the goods during sea journeys. Bisalloy states that the blasting and priming of the goods will not change the specifications or properties of the goods and should therefore not be included in the MCC structure.²⁰

The commission's assessment

The commission has considered Bisalloy's submission and notes that the *Anti-Dumping Commission Dumping and Subsidy Manual December 2021* (the Manual) states that the purpose of the MCC structure is:

[T]o identify key characteristics that will be used to match models of the goods exported to Australia and like goods sold domestically in the country of export. In determining the MCC structure, the Commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price.

The MCC structure in relation to any goods is not static. The commission may consider modifications to the MCC structure proposed at the outset of an investigation or set out in subsequent reviews and continuations, where justified. The application of an MCC structure may also vary according to the particular circumstances relevant to an interested party. The Manual states that:

[S]uch modification may be considered, for example, where certain models sold by the exporter do not align within the proposed MCC structure, such as models specific to the exporter; unanticipated factors that the Commission did not have regard to in determining the MCC; or new information on the characteristics that is put before the Commission.

During the verification of the cost and sales data pertaining to SSAB Alabama, the commission found such new information and subsequently made corresponding changes to the MCC structure to ensure that the model matching be based on relevant criteria that reflect price comparability.

The following discussion outlines the commission's findings in relation to the modifications made to the MCC structure relevant to SSAB Alabama.

Consideration of width and length

The commission performed detailed analysis of SSAB Alabama's sales data to ascertain whether the categories of width and length affect price. The commission

²⁰ EPR No. 578, item no. 26, pages 4-6.

found no material variations in prices or clear trends that linked pricing to variations in width or length.

The commission also reviewed purchase orders, invoices and price lists to establish that physical characteristics for width and length were not a factor in pricing.²¹

The commission was therefore satisfied that the length and width of the goods did not affect price.

Consideration of blasting and priming

The commission observed that goods exported to Australia by SSAB Alabama during the investigation period were of the blasted and primed specification. SSAB Alabama also sold like goods on its domestic market during the investigation that were of the blasted and primed specification and like goods that were not blasted and primed, referred to as mill finish.

The commission analysis of SSAB Alabama's domestic sales data focussed on the sales to unrelated customers to ascertain whether the selling price of blasted and primed specification like goods was at a premium, compared with those that were not. The analysis demonstrated that there was a clear price premium payable for goods that were blasted and primed.²²

3.6 Like goods

Like goods are defined under section 269T(1) as:

goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

The following outlines the commission's assessment of whether the locally produced Q&T steel plate are identical to, or closely resemble, the goods under consideration and whether they are, therefore, 'like goods'.

3.6.1 Physical likeness

The commission found that locally produced Q&T steel plate possesses similar physical characteristics to the goods exported from the USA in terms of shape, dimensions, appearance, strength, hardness and weight. The products also have similar chemical compositions.

3.6.2 Production likeness

The commission found the process for manufacturing locally produced and imported Q&T steel plate is similar.

²¹ EPR 578, item no. 25. See its confidential attachment 1, pages 17, 30 and 31 and confidential attachments GP02.B, GP02.C and GP02.D.

²² EPR 578, item no. 25. See its confidential attachment 1, pages 18-19 and its confidential attachment GP02.F.

3.6.3 Commercial likeness

The commission found that sales of locally produced Q&T steel plate compete directly with sales of imported Q&T steel plate and are sold to common customers in the Australian market.

3.6.4 Functional likeness

The commission found that the locally produced and imported Q&T steel plate has comparable or identical end-uses, is functionally substitutable and capable of performing to the same standards.

3.6.5 Submissions relating to 'like goods'

Bisalloy claims in its submission that it continues to compete head-to-head with SSAB on all grades of Q&T steel plate, including wear and structural. Yield strength and tensile strength correlate to standards for Q&T steel plate listed in the clarification tables. Some manufacturers may choose to use either yield or tensile strength to clarify products. However, the grades are comparable.²³

The commission acknowledges the responses to the Australian market questionnaire where respondents have made the following statements:

...all offer similar product [but] there are subtle differences in the quality, weldability, and product surface pre-treatment.²⁴

Bisalloy for instance seem to have a problem with flatness in their material. This is primarily but not limited to thickness up [to] 12 mm.²⁵

In general we have experienced difference in quality and behaviour from Bisalloy 450 wear plate in both bending and machining. Specifically, with pressing we had a batch of 5 and 6 mm bucket skins to press for a customer and we had many issues with consistency of the material.²⁶

In its submission, Bisalloy claims that there is a financial incentive for respondents of the Australian market questionnaire to continue to purchase SSAB Q&T steel plate at dumped prices and acknowledge customers in the Australian market will seek to source Q&T steel plate on a competitive basis.²⁷

3.6.6 Conclusion – like goods assessment

The commission notes the Australian market questionnaire responses and submissions in regards to the 'like goods'. The Commissioner is satisfied that the Australian industry produces 'like goods' to the goods under consideration, as defined in section 269T.

²³ EPR No. 578, item no. 08.

²⁴ EPR No. 578, item no. 18, page 1.

²⁵ EPR No. 578, item no. 16, page 1.

²⁶ EPR No. 578, item no. 15, page 1.

²⁷ EPR No. 578, item no. 19.

4 THE AUSTRALIAN INDUSTRY

4.1 Preliminary findings

The Commissioner is satisfied that there is an Australian industry, which consists of Bisalloy (section 269T(4)). The Commissioner is satisfied that Bisalloy carries out at least one substantial process in Australia in relation to the manufacture of the like goods (sections 269T(2) and 269T(3)).

4.2 Legislative framework

The Commissioner must be satisfied that the 'like goods' are in fact produced in Australia. Sections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Australian industry

Bisalloy stated in its application that it is the sole manufacturer in Australia of Q&T steel plate. It has operations in Unanderra, New South Wales.

Bisalloy was identified as the sole manufacturer of Q&T steel plate in REP 234 and REP 506 in relation to exports from Finland, Japan and Sweden. The commission has conducted further desktop research and remains satisfied that the Australian industry consists of Bisalloy only.

4.4 Australian production

The commission establish Australian production of like goods through a verification of Bisalloy's production information. The commission conducted the verification virtually because COVID-19 restrictions prevented a physical tour of Bisalloy's manufacturing plant.

During the verification process, the commission's officers had regard to a video provided by Bisalloy and Bisalloy's further explanations about its production process. A report concerning the verification of Bisalloy's data is available on the public record.²⁸

Having regard to the observations made in previous onsite verifications to Bisalloy, the commission is satisfied that Bisalloy undertakes at least one substantial process in the production of Q&T steel plate, being quenching and tempering of greenfeed plate steel, in Australia.²⁹

²⁸ EPR No. 578, item no. 23.

²⁹ Sections 269T(2) and 269T(3).

4.5 Preliminary assessment

Based on the information detailed above and in Chapter 3, the commission is satisfied that:

- Bisalloy manufactures Q&T steel plate that is like to the goods.³⁰
- the like goods have at least one substantial process taking place in Australia.³¹
- there is an Australian industry, consisting solely of Bisalloy, which produces like goods in Australia.³²

³⁰ Section 269T(1).

³¹ Section 269T(3).

³² Section 269T(4).

5 DUMPING INVESTIGATION

5.1 Preliminary finding

The commission found that prices of the goods exported to Australia from the USA reflected a dumped price and the margin of dumping was negligible.

The commission's assessment of the dumping margins is set out in the table below:

Country	Exporter	Dumping margin (%)
USA	SSAB Alabama	1.7
USA	All other exporters	1.7

Table 5 - Dumping margins

On the basis of the dumping margins outlined above for SSAB Alabama and all other exporters being less than 2 per cent, the Commissioner proposes to terminate the investigation pursuant to section 269TDA(1)(b)(ii).

5.2 Legislative and policy framework

In the report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that exporters exported dumped goods to Australia.

Section 269TDA(1) also requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that the exporter has not dumped the goods, or there has been dumping during the investigation period, but the dumping margin is less than 2 per cent.

Dumping occurs when an exporter exports a product from one country to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC, respectively.

5.2.1 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are 'arms length' transactions under section 269TAA. Section 269TAB(1)(a) generally provides that the export price of any goods exported to Australia is the price paid (or payable) for the goods by the importer, where the goods have been exported to Australia otherwise than by the importer, and purchased by the importer from the exporter in 'arms length' transactions.

5.2.2 Normal value

The normal value is determined in accordance with section 269TAC.

Section 269TAC(1) provides that:

...the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade [(OCOT)] for home consumption in the country of export in sales that are 'arms length' transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

Low volume of domestic sales

Section 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1). Relevant sales are sales of like goods sold for home consumption that are 'arms length' transactions and sold in the OCOT.

Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5 per cent of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison). As per the Manual, where the total volume of relevant sales is 5 per cent or greater than the total volume of the goods under consideration, and where comparable models exist, the commission also considers the volume of relevant domestic sales of like goods for each model (or MCC).³³

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than 5 per cent of the volume exported, the commission will consider whether a proper comparison can be made at the MCC level. In these situations, the commission may consider whether a surrogate domestic model is required to calculate the normal value for the exported model.

5.2.3 Dumping margin

For the dumping margins calculated for the purposes of this investigation, the commission compared export prices over the whole of the investigation period with the corresponding normal values.

5.3 Exporters

5.3.1 Cooperative exporters

Section 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' if the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'.

³³ The Manual, Chapter 7.

At the commencement of the investigation, the commission identified one major exporter, SSAB Alabama, in the ABF import database that exported the goods from USA to Australia during the investigation period. The commission forwarded a copy of the exporter questionnaire to SSAB Alabama and placed a copy of the exporter questionnaire on the commission's website for other exporters (who were not contacted directly) to complete.

SSAB Alabama provided a complete response to the exporter questionnaire (REQ).³⁴

5.3.2 Uncooperative and all other exporters

Section 269T(1) provides that an exporter is an 'uncooperative exporter' where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a reasonable period, or is satisfied that an exporter significantly impeded the investigation.

The commission found that exports from SSAB Alabama represented 99.5 per cent of the total volume of goods from the USA declared under the tariff classifications relevant to Q&T steel plate. For the remaining 0.5 per cent, which represented 16 consignments, the commission undertook further analysis to establish whether these were also the goods and therefore whether the relevant suppliers were considered to be exporters for the purpose of this investigation.

The relevant tariff classifications and statistical codes are listed at section 3.4. The commission notes that these classifications and statistical codes include flat-rolled products of other alloy steel of a width of 600 mm or more. These can be 'of silicon-electrical steel' or 'other'. There are also sub-categories, such as 'quenched and tempered' and 'other' which indicates that goods other than those subject to this investigation may be imported under these codes.

The commission found that for 9 of the 16 consignments the description of the products in the consignment demonstrated that these were not the goods under consideration. For most of these goods the goods description field in the ABF imports database contained references to metal specification datasheets that could be cross checked against the goods description relevant to this investigation at section 3.3. Specifically, the commission found that most of these consignments referred to special steel used for aerospace applications. These are not the goods due to a vastly different metal composition, in particular its levels of chromium and molybdenum.

For the remaining 7 consignments the goods description in the ABF imports database alone was not sufficient to determine whether the goods making up the consignment were the goods. Therefore the commission conducted further investigations to determine if they included Q&T steel plate.

³⁴ EPR No. 578, item no. 05.

The commission analysed other available information from the ABF import database, including the weighted average FOB export price and importer data. The commission further researched the nature of the product range sold by the relevant importers and exporters. This information was considered in the light of Bisalloy's application which states the main uses of Q&T steel plate:

*"Q&T steel plate is predominantly sold into the resources sector and is used in storage bins, dump trucks and chutes. Specifically, the Q&T steel plate is used in excavator and dragline buckets, off-highway dump truck bodies, on-highway truck bodies, longwall mining equipment applications including roof shields, pan-lines, etc, front-end loader arms and buckets, primary and secondary ore processing fixed plant equipment such as apron feeders, chute liners, ROM hoppers, train load-out hoppers, etc., rail bins, etc. General infrastructure applications include bridges and gantries, high strength structural beams, crane booms and lifting equipment, high strength beams and columns in buildings, general steel fabrication and heavy transport. Q&T steel plate is also used in defence applications including ADF Bushmaster Infantry Mobility Vehicles, civil armoured vehicles and submarine plate."*³⁵

It was found that the consignments were destined for industries concerned with cooling, aviation, and tubes, fittings and flanges. The commission therefore considers that it is not likely that these consignments contained Q&T steel plate.

The commission's analysis is at **Confidential Attachment 1**.

The Commissioner is therefore satisfied that there are no other exporters from the USA who exported the goods to Australia in the investigation period and the Commissioner does not consider there are any uncooperative exporters that would be the subject to the investigation, as defined in section 269T(1).

The commission has determined a rate for the category of 'all other exporters' in section 5.5.

5.4 Dumping assessment – SSAB Alabama

5.4.1 Verification

The commission conducted a virtual verification of SSAB Alabama's REQ.

The commission is satisfied that SSAB Alabama is the producer of the goods and like goods. The commission is also satisfied that SSAB Alabama's information is accurate and reliable for the purpose of ascertaining the variable factors applicable to the company's exports of the goods.

A report covering the verification findings is available on the public record.³⁶

³⁵ EPR No. 578, item no. 01, page 16.

³⁶ EPR No. 578, item no. 25.

Submissions received in relation to the verification reports

The commission received a submission from Bisalloy in response to the publication of the verification reports relating to SSAB Alabama and SSAB AU.³⁷ In its submission, Bisalloy disagrees with some of the commission's conclusions drawn in these reports, including the exclusion of some import volumes of the goods from the export price calculations, due to these quantities being exported by an SSAB entity in a third country. Bisalloy considers that the commission has erred in excluding these goods for the following reasons:

- The manufacturer of the goods (SSAB Alabama), the third country entity that performed further processing of the goods, and the Australian importer (SSAB AU) are all related entities. Therefore, Bisalloy asserts that it is impossible that SSAB Alabama would have no knowledge about the final destination of the relevant steel plates shipped.
- The sale between SSAB Alabama and the third party processor would have been a price transfer arrangement and not a genuine transaction.
- The commission should not accept that SSAB Alabama did not have knowledge of the final destination of the goods exported by SSAB Alabama to the third country entity that was eventually sold to Australia.
- Bisalloy asserts that the rare circumstances referred to in the Manual cannot be considered to apply where all parties in the transaction - manufacturer, intermediary and importer - are related and noted the guidance in the Manual concerning an intermediary party being considered as the exporter of the goods:

Depending on the facts, the Commission considers that only in rare circumstances would an intermediary be found to be the exporter. 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 trader and because it is acting more like a distributor the intermediary would usually have its own inventory for all export sales.³⁸

- Bisalloy claims that blasting and priming of the goods is not part of the production process but rather comprises the necessary steps undertaken to protect the goods during sea transport. The further work undertaken by the third country entity is not material and does not amount to substantial transformation of the goods. In the attachments to its submission, Bisalloy provided SSAB guarantees to demonstrate that SSAB plates branded HARDOX and STREX are shot blasted and primed prior to delivery to customers.

³⁷ EPR No. 578, item no.26.

³⁸ The Manual, page 26 and quoted in EPR No 578, item no. 26.

The commission's assessment of the goods

In response to the above assertions, the commission notes:

- Certain imported consignments were selected for verification. The ABF import database identified all consignments as being manufactured in the USA. SSAB AU claimed that certain consignments, despite being marked as having a country of origin as the USA, were actually exported from SSAB facilities in other countries. Therefore, further analysis was undertaken.³⁹
- SSAB AU imports Q&T steel plate from various countries into its warehouses. The origin of Q&T steel plate does not affect the price when selling to customers, as all products are branded the same.
- SSAB Alabama's sales to the third country processor comprised of goods of mill finish that were not blasted and primed, nor cut to the standard sizes that are imported by SSAB AU. The information in the HARDOX and STRENGTH guarantees, regarding shot blasting and priming, relied upon by Bisalloy in its submission would not apply to these sales.
- The commission traced the documentation relating to sample transactions from SSAB Alabama through to the third country processor to SSAB AU. In this process, the commission reconciled mill certificates, purchase orders and packing lists. The commission observed that the final plates that arrived in Australia had undergone transformation in the form of cutting, blasting and priming in the third country.
- Relevant sales and shipping documentation confirmed that the transactions between SSAB Alabama and the third country entities are separate from the transactions between the third country entity and SSAB AU.⁴⁰
- There was no evidence to support that SSAB Alabama had knowledge of the countries that third country processors would sell the goods SSAB Alabama had supplied.

The commission is satisfied that third country processors (i.e. entities not in the USA) are the exporters of the goods since these entities purchased mill finish goods from SSAB Alabama and subsequently further processed those goods prior to their export and sale to customers in Australia and other countries. Therefore, these consignments were not included in the determination of the export price for SSAB Alabama because they are not the goods exported to Australia from a country subject to this investigation.

5.4.2 Export price

The commission considers SSAB Alabama to be the exporter of the goods, as SSAB Alabama:

³⁹ EPR 578, item no. 24. See confidential attachment 1, pages 40-41 and its confidential attachment GP11-A.

⁴⁰ EPR 578, item no. 24. See confidential attachment 1, pages 40-41 and its confidential attachment GP11-A.

- is the manufacturer of the goods and knows the goods are destined for Australia
- is named on the commercial invoice as the shipper
- is named on the shipping manifest as the shipper
- is named on the bill of lading as the shipper-exporter
- is named on the certificate of origin as the shipper
- arranged and paid for the inland transport to the port of export
- arranged and paid for the handling charges and other charges
- arranged and paid for the ocean freight and marine insurance.

The commission is therefore satisfied that for all Australian export sales during the period, SSAB Alabama was the exporter of the goods.

'Arms length' assessment

In respect of SSAB Alabama's export sales of the goods to its sole customer in Australia, SSAB AU, during the investigation period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.⁴¹

However, the commission found evidence that the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller as:

- SSAB Alabama and SSAB AU are both ultimately wholly owned by SSAB AB
- SSAB Alabama was the exclusive supplier of the goods to SSAB Swedish Steel Pty Ltd in the investigation period
- SSAB Alabama's prices of the goods sold to SSAB AU were determined in accordance with the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration 2017 as adopted by SSAB AB and its subsidiaries.

The commission examined the particular methodology used by SSAB Alabama to determine prices for the goods sold to SSAB AU during the investigation period. The commission considers that, while the methodology may satisfy certain transfer pricing rules according to the OECD guidelines, this does not establish that the transactions were at 'arms length' in accordance with section 269TAA. Rather, the commission considers that the transfer pricing methodology involved considerations

⁴¹ Section 269TAA(1)(c).

influencing price that would not be taken into account in price negotiations between two unrelated entities.^{42 43}

The commission therefore considers that export sales to Australia made by SSAB Alabama to SSAB AU during the investigation period were not 'arms length' transactions, pursuant to section 269TAA(1)(b).

Export price assessment

In respect of SSAB Alabama's sales of the goods to Australia, the commission considers that these transactions were not conducted at 'arms length' and that the export price, therefore, cannot be determined under section 269TAB(1)(a). As the goods were subsequently sold by the importer in the condition that they were imported, the commission has determined the export price under section 269TAB(1)(b), being the price at which the goods were sold by the importer less the prescribed deductions.

The commission's export price calculations are at **Confidential Attachment 2**.

5.4.3 Normal value

Domestic sales to unrelated customers

In respect of SSAB Alabama's domestic sales of like goods to its unrelated customers during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The commission therefore considers that all of SSAB Alabama's domestic sales to its domestic customers during the period were 'arms length' transactions.

Domestic sales to related party customers

In respect of SSAB Alabama's domestic sales of like goods to its related customers during the investigation period, the commission found no evidence that:

⁴² The commission notes that the finding in this report that the export sales to Australia did not take place on an 'arms length' basis relates to the assessment of export prices for anti-dumping purposes under section 269TAB. It is not an assessment of its transfer pricing policy with respect to compliance with the revenue laws of any jurisdiction.

⁴³ The commission's 'arms length' assessment is at EPR No. 578, item no. 25, pages 15-16.

- there was any consideration payable for, or in respect of, the goods other than their price or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.⁴⁴

However, the commission found evidence that the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller as:

- SSAB Alabama and its related party domestic customers are ultimately wholly owned by SSAB AB and
- SSAB Alabama's prices of like goods sold to related party domestic customers in the investigation period were determined in accordance with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration 2017, as adopted by SSAB.

The commission examined the particular methodologies used by SSAB Alabama to determine prices for like goods sold to related party domestic customers during the investigation period. The commission considers that while the methodologies may satisfy certain transfer pricing rules according to the OECD guidelines, they do not establish that the transactions were 'arms length' in accordance with section 269TAA. Rather, the commission considers the methodologies involved considerations influencing price that were not taken into account, in the same manner, in price negotiations between SSAB Alabama and its unrelated customers of like goods. Therefore, the commission considers that SSAB Alabama's sales of like goods to its related party domestic customers during the investigation period were not arm's length transactions, pursuant to section 269TAA(1)(b).^{45 46}

'Arms length' assessment

The commission considers that all of SSAB Alabama's sales of like goods to its unrelated domestic customers during the period were 'arms length' transactions and that SSAB Alabama's sales of like goods to its related party domestic customers during the investigation period were not 'arms length' transactions, pursuant to section 269TAA(1)(b).⁴⁷ The commission therefore based the normal value calculations on the domestic sales to unrelated customers only.

⁴⁴ Section 269TAA(1)(c).

⁴⁵ The commission notes that the finding in this report that the sales to domestic customers did not take place on an 'arms length' basis relates to the assessment of normal values for anti-dumping purposes under section 269TAC. It is not an assessment of the exporter's transfer pricing policy with respect to compliance with the revenue laws of any jurisdiction.

⁴⁶ The commission's 'arms length' assessment is at EPR No. 578, item no. 25, pages 15-16.

⁴⁷ The commission notes that the finding in this report that the sales to domestic customers did not take place on an arm's length basis relates to the assessment of normal values for anti-dumping purposes under section 269TAC. It is not an assessment of the exporter's transfer pricing policy with respect to compliance with the revenue laws of any jurisdiction.

Ordinary course of trade

Section 269TAAD states that domestic sales of like goods are not in the OCOT if 'arms length' transactions are:

- unprofitable in substantial quantities over an extended period and
- unlikely to be recoverable within a reasonable period.⁴⁸

The commission tested profitability by comparing the net invoice price against the relevant cost for each domestic sales transaction.

The commission then tested whether the unprofitable sales were in substantial quantities (not less than 20 per cent) by comparing the volume of unprofitable sales to the total sales volume, for each MCC over the period.

The team tested recoverability by comparing the net invoice price against the relevant weighted average cost over the period for each domestic sales transaction.

The following table sets out further detail:

OCOT particulars	Details
Price	Net invoice price
Cost	Quarterly cost to make and sell, including direct selling expenses for each transaction.
Weighted average cost	Weighted average cost to make and sell over the period, including direct selling expenses for each transaction.

Table 6 - OCOT details

Volume of relevant sales

Section 269TAC(2) provides alternative methods for calculating the normal value of goods exported to Australia where there is an absence, or low volume, of relevant sales of like goods in the market of the country of export. An exporter's domestic sales of like goods are taken to be in a low volume under section 269TAC(14) where the total volume of sales of like goods for home consumption in the country of export by the exporter is less than 5 per cent of the total volume of the goods under consideration that are exported to Australia by the exporter (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison for the purposes of assessing a dumping margin).

The commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of domestic sales was 5 per cent or greater and therefore was not a low volume.

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the commission considers the volume of sales of each exported model on the domestic market. Where the volume of domestic sales of an

⁴⁸ In general, the commission will consider 'extended period' and 'reasonable period' to be the investigation, review or inquiry period.

exported model is less than 5 per cent of the volume exported, the commission will consider whether a proper comparison can be made at the MCC level. In these situations, the commission may consider whether a surrogate domestic model should be used to calculate normal value for the exported model.

This analysis is detailed in the table below.

Export MCC	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
S-B---1-B	N	There were no relevant sales in any of the quarters. The commission used the normal value for domestic model S-B--1-N with specification adjustments to reflect the difference between the cost to make sale of domestic model S-B---1-B and S-B---1-N. The difference in cost to make was uplifted by an amount for net profit (expressed as a percentage of the total cost to make and sell (CTMS) for an amount for profit sold in the OCOT) to reflect the expected market value of the differences between specifications.
S-B---2-B	Y	Domestic sales of S-B---2-B used under section 269TAC(1).
W---E-1-B	N	There were no relevant sales in any of the quarters. The commission used the normal value for W---E-2-N with specification adjustments to reflect the difference between the cost to make sale of domestic model W---E-1-B and W---E-2-N. The difference in cost to make was uplifted by an amount for net profit (expressed as a percentage of the total CTMS for an amount for profit sold in the OCOT) to reflect the expected market value of the differences between specifications.
W---E-2-B	N	There were no relevant sales in any of the quarters. The commission used the normal value for W---E-2-N with specification adjustments to reflect the difference between the cost to make sale of domestic model W---E-2-B and W---E-2-N. The difference in cost to make was uplifted by an amount for net profit (expressed as a percentage of the total CTMS for an amount for profit sold in the OCOT) to reflect the expected market value of the differences between specifications.
W---F-2-B	Y	Domestic sales of W---F-2-B were used under section 269TAC(1). However, there were certain quarters that did not have relevant domestic sales. The commission made timing adjustments to the available prices for W---F-2-B to determine normal values for those quarters without relevant sales.

Table 7 - Domestic volumes

The specification adjustments outlined above are calculated to reflect the difference between the cost to make and sell (CTMS) for a like good model identical to the exported model and the CTMS of the closest resembling domestic model. An amount of net profit relating to domestic like goods sales in the OCOT is then

applied.⁴⁹ Specifically, the OCOT profit for the specification adjustment applied in this inquiry is based on like goods of blasted and primed specification sold to unrelated customers.⁵⁰

The commission selected the profit margin for the adjustment after considering a proposal put forward by SSAB Alabama during verification of its data. SSAB argued that the calculation of the profit margin for the specification adjustment should be based on like goods of blasted and primed specification, because the goods exported to Australia also possess the same specification.⁵¹ The commission also observed that profits for other like goods were materially different to the profit for like goods of the blasted and primed specification.⁵²

The commission considers the circumstances relevant to SSAB Alabama supports that the application of the profit based on all like goods sales would affect the comparison between normal value and export price. Such differences would arise because the resulting normal value of like goods will not be in respect of identical goods.⁵³ The specific difference in this case being the profit margin component earned for like goods of blasted and primed specification versus a profit based on all like goods that represents a mix of product specifications.

Adjustments

The commission considers the following adjustments under section 269TAC(8) are necessary to ensure that the normal value so ascertained is properly compared with the export price of those goods.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport costs
Export inland transport	Add an amount for export inland transport costs
Export handling and other charges	Add an amount for export handling and other charges
Export credit terms	Add an amount for export credit terms
Specification adjustment	Add amounts (for three MCCs) for the difference between the CTMS of the domestic model identical to the exported model and the CTMS of the closest resembling domestic OCOT model. The difference is uplifted for an amount of net profit achieved on domestic sales of goods that is blasted and primed.
Timing adjustment	Add or deduct amounts (for one MCC) for timing adjustments to the available prices to determine normal values for those quarters without relevant sales.

⁴⁹ The Manual, Chapter 15.

⁵⁰ EPR 578, item no.25. See confidential attachment 1, pages 97-98 and its confidential attachments GP17.E and GP17.F.

⁵¹ The Manual (p.51) outlines an example where the profit margin component of the specification adjustment may have regard to all like goods sales. However, the Manual also states the commission may consider other reasonable methods.

⁵² EPR 578, item no. 25. See confidential attachment 1, pages 97-98 and its confidential attachment GP17.F.

⁵³ Section 269TAC(8)(b).

Table 8 - Summary of adjustments

Normal value assessment

The commission found that there were sufficient volumes of sales of like goods sold for home consumption in the country of export that were 'arms length' transactions and at prices that were within the OCOT. The commission is therefore not satisfied that there is an absence, or low volume, of sales relevant for the purpose of determining a price under section 269TAC(1).

The commission has determined a preliminary normal value under section 269TAC(1).

In using domestic sales as a basis for normal value, the commission considers that certain adjustments, in accordance with section 269TAC(8), are necessary to ensure that differences between the normal value of goods exported to Australia and the export price of the exported goods would not affect comparison of domestic prices with export prices, as outlined in the section above.

The preliminary normal value calculations are at **Confidential Attachment 3**.

5.4.4 Dumping margin

The dumping margin was assessed by comparing quarterly weighted average Australian export prices to the corresponding quarterly weighted average normal value for the investigation period under section 269TACB(2)(a).

The dumping margin for the goods exported to Australia by SSAB Alabama in the investigation period is **1.7 per cent**.

The preliminary dumping margin calculations are at **Confidential Attachment 4**.

5.5 All other exporters dumping margin

At section 5.3.2, the commission established that the volumes exported by SSAB Alabama represent the total volume of exports that are relevant to the investigation. As a result, the Commissioner is satisfied that there are no other exporters from the USA who exported the goods to Australia in the investigation period and the Commissioner does not consider there are any uncooperative exporters that would be the subject of the investigation as defined in section 269T(1).

The commission has therefore adopted the dumping margin for SSAB Alabama as an 'all other exporters' rate for this category of exporters from the USA. This approach is similar to that taken in *Anti-Dumping Commission Report No. 240*,⁵⁴ *Anti-Dumping Commission Report No. 466*,⁵⁵ and *Anti-Dumping Commission Report*

⁵⁴ This report contains the findings of dumping investigation no. 240 concerned with rod in coils exported from the Republic of Indonesia, Taiwan and the Republic of Turkey.

⁵⁵ This report contains the findings of dumping investigation no. 466 concerned with railway wheels exported from the People's Republic of Indonesia and the Republic of France.

No. 495.⁵⁶ In each of these cases, the Commissioner was satisfied that there were no other exporters from those countries, other than those examined, who exported the goods.

The dumping margin for the category of 'all other exporters' from the USA is **1.7 per cent**.

5.6 Summary of dumping margins

The commission has assessed the following dumping margins in relation to the goods exported to Australia during the investigation period:

Country	Exporter	Dumping margin (%)
USA	SSAB Alabama	1.7
USA	All other exporters	1.7

Table 9 - Summary of dumping margins

5.7 Volume of dumped imports

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been or may be dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than 3 per cent of the total volume of goods imported into Australia over the investigation period.

Using the ABF import database and having regard to the information collected and verified during the investigation, the commission determined the volume of imports in the Australian market. Based on this information, the commission:

- has determined that Section 269TDA(5) does not apply to this investigation
- is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of goods that have been exported from the USA at dumped prices was 3 per cent or greater of the total import volume
- has determined that the volume of dumped goods is not negligible.

The commission's calculations are at **Confidential Attachment 1**.

5.8 Level of dumping

Section 269TDA(1) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that:

- there has been no dumping by the exporter of any of those goods or

⁵⁶ This report contains the findings of dumping investigation no. 495 concerned with steel reinforcing bar exported from the Republic of Turkey.

PUBLIC RECORD

- that there has been dumping by the exporter of some or all of those goods, but the dumping margin when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2 per cent.

The margin of dumping for exports by SSAB Alabama and the category of 'all other exporters' is 1.7 per cent. The Commissioner therefore proposes to terminate the dumping investigation in relation to SSAB Alabama and the category of 'all other exporters' pursuant to section 269TDA(1)(b)(ii).

6 PROPOSAL TO TERMINATE THE INVESTIGATION

Section 269TDA provides for when the Commissioner must terminate an investigation.

Based on the findings in this SEF, and subject to any submissions received in response, the Commissioner proposes to terminate the investigation in relation to:

- SSAB Alabama and the category of 'all other exporters' on the basis that there has been dumping but the dumping margin is less than 2 per cent, in accordance with section 269TDA(1).

This terminates the investigation in its entirety.

7 ATTACHMENTS

Confidential Attachment 1	Analysis of exports
Confidential Attachment 2	SSAB Alabama deductive export price
Confidential Attachment 3	SSAB Alabama normal value
Confidential Attachment 4	SSAB Alabama dumping margin