12 May 2022

Director
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Anti-Dumping Commission
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**Public File**

Dear Sir/Madam

**Investigation No. 578 – Bisalloy Steels Pty Ltd response to Statement of Essential Facts**

## I. Executive Summary

Bisalloy Steels Pty Ltd ("Bisalloy Steels") disagrees with the Commissioner's proposed recommendation to terminate Investigation No. 578 ("Invest 578"). The proposed recommendation is based upon a finding that certain goods manufactured by SSAB Alabama and exported to Australia via a related party in the third country have been excluded from SSAB Alabama's export price calculations.

The provisions of sections 153M and 153Q of the *Customs Act* detail the origin of goods imported into Australia (for preferential and non-preferential purposes respectively). The anti-dumping provisions do not override the relevant rules of origin provisions of the *Customs Act* and as such, all sales of goods manufactured by SSAB Alabama and imported into Australia, including via related parties in third countries, must be included in the assessment of SSAB Alabama's export price calculations.

A re-assessment of SSAB Alabama's export price and the subsequent impact on the calculated dumping margins is therefore required. It is further anticipated that the determination of dumping margins above negligible levels for SSAB Alabama will require a full evaluation of the economic condition of the Quenched and Tempered ("Q&T") steel plate industry in Australia and whether dumping has caused, and threatens to cause, material injury to the Australian industry.

## II. Background

Statement of Essential Facts No. 578 ("SEF 578") was published on 22 April 2022 concerning the export of Q&T steel plate exported to Australia from the USA.

SEF 578 details the findings that the Commissioner is relying upon for the purposes of his final recommendations to the Minister.

The findings relied upon by the Commissioner include:

- The Australian industry produces Q&T steel plate that is 'like' goods which are the subject of Bisalloy Steels' application;
- Exports to Australia by SSAB Alabama (and all other exporters in the USA) were found to have a weighted average dumping margin of 1.7 per cent during the 1 January 2020 to 31 December 2020 investigation period;
- It is not "necessary" to consider the Australian market for Q&T steel plate due to the Commissioner's determination of dumping margins at less than 2 per cent (i.e. negligible levels);

- The economic condition of the industry was also not considered as the Commissioner proposes to terminate the investigation; and
- A non-injurious price was also not determined due to the proposed recommendation to terminate the investigation.

In determining the relevant exports of the subject goods to Australia, the Commission has excluded certain sales from its normal values assessment for the exporter in the USA, SSAB Alabama, as those export sales "*were actually exported from SSAB facilities in other countries*". The Commission's analysis of normal values, export price and dumping margin for SSAB Alabama therefore exclude certain export sales to Australia for goods that exported via a related party in a third country.

This issue is central to Bisalloy Steel's submission opposing the proposed recommendation to terminate Investigation No. 578.

III. Like Goods

The Commissioner identified one major exporter of Q&T steel plate from the USA that accounted for 99.5 per cent of the exports to Australia during the investigation period.

The goods the subject of Investigation No. 578 include:

> "*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 compromises the following 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%
- Phosphorus – maximum of 0.04%
- Nickel – maximum 3.0%
- Chromium – maximum 3.0%
- Molybdenum – maximum of 2.0%
- Vanadium – maximum of 0.2%
- Boron – maximum 0.01%
- Aluminium – maximum 0.1%

- Titanium – maximum 0.1%
- Copper – maximum 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 al Q&T steel plate grades.

Q&T steel plate is classified to 7225.40.00 statistical codes 21 (Quenched and tempered) and 22 (Other), and 7225.99.00 statistical code 39 (Other) of the *Customs Tariff Act 1901.*

The Commissioner was satisfied that the Australian industry manufactured like goods to the goods exported to Australia by SSAB Alabama. Bisalloy Steels concurs with the Commissioner's assessment that the goods manufactured by Bisalloy Steels are "like goods" to the imported Q&T steel plate from the USA.

Following the verification of SSAB Alabama's cost and sales data, the Commission amended the Model Control Code (MCC) structure that had been applied in prior Investigations No. 234 and 506. The Commission considered that length and width of product did not impact unit cost or unit sales price of the goods and removed these categories from the MCC listing. Additionally, the Commission included an additional MCC category for 'blasted and primed' product.

Bisalloy Steels has previously commented on the alterations to the MCC structure following the SSAB Alabama verification and reaffirms its opposition to the Commissioner's exclusion of MCC categories taking account of width and length parameters and the inclusion of Blasted and Primed as a category. (refer EPR Document No. 026).

IV. SSAB Alabama exports of Q&T steel plate

The Commission has excluded certain exports of Q&T steel plate manufactured by SSAB Alabama and exported to Australia via a related party in a third country as goods exported from that third country and therefore not included in the determination of dumping margins for SSAB Alabama.

Bisalloy Steel disagrees with the Commission's preliminary finding that the "*third country processors (i.e. entities not in the USA)*" are the exporters of the goods. The Commission considered that as these related party 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*" the goods can be considered to have been exported from the third country.

This conclusion is incorrect and inconsistent with provisions of the sections 153M and 153Q of the *Customs* Act that determine the origin of the subject goods. The blasting, priming and cutting of the Q&T steel plate does not involve a process of transformation that alters the origin of the exported goods that were manufactured in the USA.

Bisalloy Steels provided a submission[1] to the Commission following the publication of the SSAB Alabama exporter verification report and the SSAB Australia importer verification report highlighting the Commission's erroneous conclusion on the country of export of the further processed Q&T steel plate.

The Commission has rejected Bisalloy Steel's representations.

In rejecting Bisalloy Steel's representations, the Commission has stated[2]:

- *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.* (emphasis added).

[1] Investigation No. 578, EPR Document No. 26.
[2] Statement of Essential Facts No. 578, P.27.

- *SSAB AU imports Q&T steel plate from various countries into its warehouses. The origin of the Q&T steel plate does not affect the price. When selling to customers, as* ***all products are branded the same.*** (emphasis added).
- *SSAB Alabama's sales to the third country processor comprised of goods of mill finish that were not blasted or primed, nor cut to the standard sizes that are imported by SSAB AU. The information in the HARDOX and STRENX guarantees, regarding shot priming and blasting, 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.*** (emphasis added).
- *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.*
- *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.*

Bisalloy Steels notes that SSAB AU has, upon completing import documentation, declared the country of origin of the third country imported products as the USA. It is further noted that all of the exported goods (direct and via third country) are branded with the same country of origin. The Commission, however, has accepted SSAB AU's assertions that the further processing may be considered a "transformation" that permits the transhipped goods to be considered the exports of the third country contrary to country of origin rules.

Bisalloy contends that the related party third country shipments were incorrectly excluded from the determination of export price for SSAB Alabama and have been incorrectly considered to have been manufactured outside of the USA.

## V. Rules of Origin

The declaration of the Country of Origin ("COO") of imported goods is a requirement for all imports into Australia. The origin of the goods is a determinant for preferential duty purposes and whether certain Free Trade Agreement(s) may apply to the goods.

The origin of goods is determined by reference to the "allowable factory costs" expended in the manufacture of the goods. Division 1A (Sections 153A to 153S) of the *Customs Act* stipulate the requirements of what constitutes allowable factory cost:

> *"In this Division:*
>
> ***allowable factory cost****, in relation to preference claim goods and to the factory at which the last process of their manufacture was performed, means the sum of:*
>
> *(a) The allowable expenditure of the factory on materials in respect of the goods worked out under section 153D; and*
> *(b) The allowable expenditure of the factory on labour in respect of the goods worked out under section 153F; and*
> *(c) The allowable expenditure of the factory on overheads in respect of the goods worked out under section 153G."*

The costs incurred for raw materials, labour and factory overhead where the goods were last processed or manufactured must account for at least ***50 per cent of the total factory cost of the goods*** (Section 153M).

Therefore, unless the process of manufacture of the goods meets the minimum 50 per cent of the allowable factory cost in the last country, that country cannot be considered the origin of the subject goods.

There exists a higher allowable factory cost under the *Customs Act* where the '*manufactured goods originating in a country that is not a preference country*' (Section 153Q). Under Section 153Q the allowable factory cost must be 75 per cent or higher.

Refer Confidential Attachment 1 for independent advice on the SEF in relation to the rules of origin requirements.

VI. SSAB exports via third country

SEF 578 states that the Commissioner has determined that exports of Q&T steel plate manufactured by SSAB in the USA and sold to an affiliated SSAB enterprise in a third country are further "processed" including blasting and priming, and cutting to size. The Commissioner has concluded that the goods exported to Australia via the third country are not subject goods for the purposes of Investigation No. 578 ("Invest 578") as these goods are considered to have been the export of the third country.

The Commissioner's finding is erroneous as the goods exported to Australia via the third country remain goods of USA origin and therefore must be included within the Commissioner's assessment of export price determinations for Invest 578.

The rules of origin require that as a minimum (for preference purposes such as Developing Country preference), 50 per cent of the factory costs must occur in the country of export for the goods to be considered to have originated from that country. For non-preferential purposes – and where there exists local Australian production – 75 per cent of the factory costs are required to have occurred in the country of export for that country to be the country of origin.

Bisalloy Steels submits that the Commission's assessment that the SSAB Q&T steel plate that is exported to Australia via a related party in a third country where minor treatment for transportation purposes has occurred (i.e blasting and priming, cutting), does not meet the necessary legislative threshold for factory costs as required by section 153M of the *Customs Act.* Similarly, for non-preferential purposes, the treatment conducted in the third country does not meet the threshold requirements of section 153Q.

Bisalloy Steel has further observed the Commissioner's comments concerning the transfer in ownership of the goods. In particular, the Commissioner has stated at Section 5.4.1:

- *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 STRENX 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.*
- *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 Commissioner's assessment (as referenced in the extract) led him to being satisfied that "*third country processors (i.e. entities not in the USA) are the exporters of the goods since the 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.*"

As indicated, the referenced "processing" of the goods in the third country does not meet the substantial transformation requirements of sections 153M and 153Q of the *Customs Act.* The

Commissioner (or Minister) does not have an overriding power to determine the origin of the goods for anti-dumping purposes.

Similarly, the Commissioner (or Minister) cannot conclude that the change in ownership of the goods constitutes a change in the origin of the goods.

Therefore, the Commissioner's finding at Section 5.4.1 that "*these [third country] 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*" is incorrect and must be set aside.

Further, the export of goods via a related party in a third country for minor processing does not constitute a transformation of the goods and is not in accordance with the origin rules of the *Customs Act*.

## VII. SSAB Alabama normal values

Bisalloy Steels notes that the Commissioner has concluded that domestic sales by SSAB Alabama to related customers on the USA domestic market are considered not to be at arms-length sales. It is further noted that the Commissioner found evidence that the price between the parties in the USA "*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 OEACD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration 2017, as adopted by SSAB.*

The determination of an arms-length sale relates to the assessment of normal values as reflected in section 269TAC of the *Customs Act*. The assessment is not based upon the exporter's transfer policy methodology but on whether the sales can be considered arms-length within the anti-dumping provisions of section 269TAC.

Bisalloy Steels concurs with the Commissioner's decision to exclude non-arms length sales from the determination of normal values for SSAB Alabama.

## VIII. Conclusions

Bisalloy Steels contends that the Commissioner's preliminary finding as detailed in SEF 578 cannot be relied upon as:

- Goods exported by SSAB Alabama to Australia via a third country for further treatment that **does not constitute substantial transformation** have been incorrectly identified as having been exported from that third country and not included in SSAB Alabama's export price;
- Goods exported to a third country for minor treatment cannot be considered to be the export of the third country **as the treatment does not constitute more than 50 per cent factory works cost** (or 75 per cent for non-preference countries), and thus **the origin of the goods remains the USA**; and
- The change in ownership of the goods exported via a related party in a third country does not alter the country of origin of the goods (i.e. they remain of USA origin).

The Commissioner's determination of SSAB Alabama's export price in SEF 578 therefore excludes relevant export sales for goods that were exported to Australia via a third country. Further, the Commissioner's recommendation to terminate Invest 578 is premised upon the exclusion of certain exports by SSAB Alabama to third countries that are not included in SSAB Alabama's export price calculations.

SSAB Alabama's export sales for all goods manufactured by it (those exported directly to Australia and those exported indirectly via a third country) **must** be considered by the Commissioner in the determination of export price in Invest 578.

The Commissioner is requested to re-assess SSAB Alabama's export price for all Q&T steel plate produced in the USA and exported to Australia (including those exports identified as having been exported via a related party in a third country) so that the correct dumping margin may be determined for all of SSAB Alabama's exports to Australia during the investigation period.

Following a re-assessment of SSAB Alabama's export price during the relevant investigation period, Bisalloy Steels anticipates that the Commissioner will conclude that exports by SSAB Alabama of Q&T steel plate were exported to Australia at dumped prices above negligible levels. Following this re-assessment, it is further anticipated that the Commissioner will:

- Examine the impact of the dumped exports by SSAB Alabama on the Australian industry manufacturing like goods;
- Examine the economic condition of the Australian industry; and
- Confirm that the Australian industry has suffered material injury from the dumped exports by SSAB Alabama to Australia during the investigation period.

Bisalloy Steels strongly opposes the recommendation contained in SEF 578 to terminate the investigation. Bisalloy Steels submits that following the re-assessment of the SSAB Alabama export price and the subsequent impact of exports on the Australian industry's economic performance, it would be appropriate for the Commissioner to receive submission from interested parties about the revised findings.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4272 0403 of Bisalloy Steel's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely

Rowan Melrose
CEO and Managing Director