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26 May 2022

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

By email

Dear Ms Lee

SSAB – quenched and tempered steel plate from USA
Comments regarding late-published Bisalloy response to SEF

We refer to a submission of Bisalloy Steels Pty Ltd, purportedly dated 12 May 2002 ("the Bisalloy letter"), being the day that was the 20th day after the publication of the statement of essential facts in this investigation ("SEF 578"). The Bisalloy letter was not placed on the public record of this investigation until 19 May 2022. Nonetheless, the matter pursued by Bisalloy therein can be disposed of in short order.

According to our understanding, the Bisalloy letter claims that goods exported from a third country were incorrectly excluded from the determination of the export price of the goods that were under investigation, being goods exported from the USA.

Under Section 269T of the *Customs Act 1901* ("the Customs Act"), which comprises the *"special provisions"* of the Customs Act relating to anti-dumping duties, the country of export of goods is defined as follows:

> *"country of export", in relation to goods exported to Australia, means a country outside Australia from which those goods are exported to Australia, whether or not it is the country where those goods are produced or manufactured.*

Under Section 269TC(4)(a) of the Customs Act, the Commissioner must give public notice of the decision to initiate an investigation setting out, amongst other things, *"the countries of export known to*

be involved". In this case that country set out therein was the USA. Section 269TC(4) refers to *"the goods the subject of the application"* in numerous places. At all times the goods subject to the application were goods exported to Australia from the USA.

The definition of *"country of export"* presupposes that such country may or may not be *"the country where those goods are produced or manufactured"*. Accordingly, the country where goods are produced are manufactured is not determinative in identifying the country of export of goods. That determination very simply requires the identification of the country outside Australia from which the goods were exported to Australia.

The references in the Bisalloy letter to provisions of Division 1A of the Customs Act and to the country of origin of goods are unhelpful for the identification task required by the definition of the *"country of export"*. With respect to Bisalloy's submissions regarding Sections 153M and 153Q of the Customs Act, we note that those provisions are in Division 1A of the Customs Act. Section 13 of the *Customs Tariff Act 1995* ("the Tariff Act") clearly states that the provisions of Division 1A are for the purposes of the Tariff Act. They are not for the purposes of Division XVB of the Customs Act, which comprises the *"special provisions"* of the Act relating to anti-dumping duties. Nor do we see any linkage between a claim that a country is the country of which goods are *"the manufacture of"*, and the *"allowable expenditure"* that would support such a claim, and a finding about the *"country of export"* of goods. With respect to the country of origin of goods, nowhere does Division XVB refer to *"country of origin"* in association with the determination of export price. Therefore, we do not know how it is that Bisalloy relates the distinct question of *"country of origin"* with that of *"country of export"*.

Whether the definition of *"country of export"* determines the question of where goods are exported from for export price purposes, or whether it is the opening words of Section 269TAB(1) which determine that question (in its direction that *"the export price of any goods exported to Australia is"*), it is at least clear from both those provisions that the Commission must decide where goods are exported from. Where a Section 269TC(4) notice sets out the country of export of goods, as it must, it is only those goods that were exported to Australia from that country that are subject to the investigation, and only those goods that are relevant for working out the export price.

On page 27 of SEF 578 the Commission summarises the processing and transformative activities that take place in that third country, and that create the physical character of the goods that are exported to Australia, and the independent activities that take place with respect to the exportation and sale of the goods to Australia, both within that country and within the corporate entity of the exporter in that country. For the purposes of Part XVB of the Customs Act, it is those matters that the Commission has decided are relevant to the finding that the third country was the country of export of those goods. We cannot see how that very simple and straightforward assessment can be disrupted.

In summary, the goods that the Commission has found were exported from the third country were exported from that third country.

Yours sincerely

Daniel Moulis
Partner Director

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