Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 20 May 2019 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application for review to the ADRP of a review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name:	**SSAB EMEA AB ("SSAB EMEA")**
Address:	**Klarabergsviadukten 70 D6** **Stockhom 10121** **Sweden**
Type of entity (trade union, corporation, government etc.):	**SSAB EMEA is a company.**

2. Contact person for applicant

Full name:	**Daniel Moulis**
Position:	**Partner Director**
Email address:	**daniel.moulis@moulislegal.com**
Telephone number:	**+61 2 6163 1000**

3. Set out the basis on which the applicant considers it is an interested party:

Pursuant to Section 269ZZC of the Customs Act 1901 ("the Act") a person who is an interested party in relation to a reviewable decision may apply for a review of that decision.

The reviewable decision in this case relates to an application made to the Commissioner under Section 269ZHG(1) requesting that the Minister secure the continuation of anti-dumping measures that apply to SSAB EMEA's exportation of certain quenched and tempered steel plate exported from Sweden.

Under Section 269T of the Act an "interested party" for the purpose of that kind of a reviewable decision is defined as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia.

SSAB EMEA is a manufacturer of the goods to which the decision relates, namely quenched and tempered steel plate which was exported to Australian from Sweden

during the the original investigation and in the inquiry period in the continuation inquiry undertaken by the Commission. SSAB EMEA is thus an "interested party" for the purposes of the Act and this application.

4. Is the applicant represented?

Yes ☒ No ☐

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.*

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the Customs Act 1901 the reviewable decision was made under:

☐Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☒Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods the subject of the reviewable decision, as described in Final Report 506 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 600mm up to and including 3,200mm, thickness between 4.5-110mm (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 steel, are excluded from the goods covered.

7. Provide the tariff classifications/statistical codes of the imported goods:

The goods are classified to the tariff subheading:

- **7225.40.00, statistical code 21, 22, 23, 24; and**
- **7225.99.00, statistical code 39.**

of Schedule 3 to the Customs Tariff Act 1995.

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number:	**Anti Dumping Notice No 2019/113**
Date ADN was published:	**4 October 2019**

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

Please refer to Attachment 1 – ADN 2019/113.

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

See Attachment 2.

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

See Attachment 2.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

See Attachment 2.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901. **See Attachment 2.**

13. Please list all attachments provided in support of this application:

The attachments provided in support of this application are:

- **Attachment 1– ADN 2019/113;**
- **Attachment 2 – SSAB EMEA ADRP application re QT continuation – grounds – confidential;**
- **Attachment 2 – SSAB EMEA ADRP application re QT continuation – grounds – non-confidential; and**
- **Attachment 3 – Letter to ADRP re ML authority – SSAB EMEA continuation inquiry review.**

PART D: DECLARATION

The applicant/the applicant's authorised representative *[delete inapplicable]* declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference before it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and

- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the Customs Act 1901 and Criminal Code Act 1995.

Signature:	
Name:	**Daniel Moulis**
Position:	**Partner Director**
Organisation:	**Moulis Legal**
Date:	**4 November 2019**

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative:	**Daniel Moulis**
Organisation:	**Moulis Legal**
Address:	**6/2 Brindabella Circuit Brindabella Business Park Canberra International Airport ACT 2609**
Email address:	**Daniel.Moulis@moulislegal.com**
Telephone number:	**+61 2 6163 1000**

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

Please refer to Attachment 3.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /

Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

ANTI-DUMPING NOTICE NO. 2019/113

Customs Act 1901 – Part XVB

Quenched and Tempered Steel Plate Exported from Finland, Japan and Sweden

Findings of the Continuation Inquiry No. 506 into Anti-Dumping Measures

Notice under section 269ZHG(1)of the Customs Act 1901[1] and section 8(5) of the Customs Tariff (Anti-Dumping) Act 1975

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 11 February 2019, concerning whether the continuation of the anti-dumping measures in the form of a dumping duty notice applying to quenched and tempered steel plate (the goods) exported to Australia from Finland, Japan and Sweden is justified.

Recommendations resulting from the inquiry completed by the Commissioner, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 506* (REP 506).

I, KAREN ANDREWS, the Minister for Industry, Science and Technology, have considered REP 506 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts and law therein.

Under section 269ZHG(1)(b) of the Act, I declare that I have decided to secure the continuation of the anti-dumping measures currently applying to quenched and tempered steel plate exported to Australia from Finland, Japan and Sweden.

I determine that pursuant to section 269ZHG(4)(a)(iii) of the Act, the notice continues in force after 5 November 2019, but after this day has effect as if different specified variable factors had been fixed in relation to all exporters generally.

In accordance with section 8(5BB) of the *Customs Tariff (Anti-Dumping) Act* 1975, and the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Regulation), the duty as that has been determined is an amount worked out in accordance as follows:

- with the combination of fixed and variable duty method pursuant to sections 5(2) and 5(3) of the Regulation as applied to all exporters from Finland
- with the *ad valorem* duty method pursuant to section 7 of the Regulation as applied to all exporters from Japan, and

[1] All legislative references are to the *Customs Act 1901* (the Act), unless otherwise specified.

- with the combination of fixed and variable duty method pursuant to sections 5(2) and 5(3) of the Regulation as applied to SSAB EMEA AB and all other exporters from Sweden.

Particulars of the dumping margins established for each of the exporters and the effective rates of duty are also set out in the following table.

Country	Exporter	Dumping Margin	Effective rate of duty	Duty Method
Finland	All exporters	129.7%	58.6%	Combination of fixed and variable duty method
Japan	All exporters	33.9%	25.8%	Ad valorem duty method
Sweden	SSAB EMEA AB	129.7%	58.6%	Combination of fixed and variable duty method
	All other exporters	129.7%	58.6%	

REP 506 has been placed on the public record which may be examined on the Anti-Dumping Commission website.[2] Enquiries about this notice may be directed to Client Support at clientsupport@adcommission.gov.au.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel,[3] in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Dated this 2nd day of October 2019

KAREN ANDREWS
Minister for Industry, Science and Technology

[2] The public record is available at www.adcommission.gov.au.
[3] The Anti-Dumping Review Panel website may be accessed at https://www.industry.gov.au/about-us/our-structure/anti-dumping-review-panel.

In the Anti-Dumping Review Panel

04 November 2019

Application for review

Quenched and tempered steel plate from Finland, Japan and Sweden

SSAB EMEA AB

A Introduction

By way of notice published 11 February 2019,[1] the Anti-Dumping Commission ("the Commission") initiated an inquiry regarding the continuation of the anti-dumping measures applying to quenched and tempered steel plate ("Q&T steel plate") exported from Finland, Japan and Sweden ("Inquiry 506").

Anti-dumping measures had been originally imposed on Q&T steel plate pursuant to *Public notice under subsections 269TG(1) and (2) of the Customs Act 1901* dated 28 October 2014 and published on 5 November 2014 ("the Original Notice").

Inquiry 506 was initiated based on an application lodged by Bisalloy Steels Pty Ltd ("Bisalloy"), constituting the Australian industry producing the like goods (from purchased "greenfeed" steel). In its

[1] ADN 2019/22.

application Bisalloy alleged exports from Finland, Japan and Sweden were continuing to be exported at dumped prices, and as a consequence of these exports the Australian industry was suffering material injury, and that this injury would be likely to occur or recur in the absence of the measures.

At the conclusion of Inquiry 506 the Minister for Industry, Science and Technology ("the Minister") declared, under Section 269ZHG of the *Customs Act 1901* ("the Act"), that she had decided to secure the continuation of the anti-dumping measures applying to Q&T steel plate exported to Australia from Finland, Japan and Sweden ("the Minister's Decision").

The recommendations of the Commission to that effect are contained in *Final Report No. 506 - Inquiry into the Continuation of Anti-Dumping Measures Applying to Quenched and Tempered Steel Plate Exported to Australia from Finland, Japan and Sweden* ("Report 506)".[2] The Minister confirmed that in making her decision she:

> *… considered [Report 506] and… decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts and law therein*[3]

The decision of the Minister was made on 2 October 2019 and subsequently published on the website of the Commission on 4 October 2019.[4]

SSAB EMEA AB ("SSAB EMEA") is a Swedish manufacturer and exporter of Q&T steel plate. In Report 506 it was also found to be the importer of the Q&T steel plate that it exported to Australia.

Further, the Minister decided that the original Notice should continue as if different specified variable factors had been fixed in relation to all exporters generally. With respect to SSAB EMEA, a dumping margin of 129.7% was found in the inquiry period for Report 506. With the application of the "lesser duty" rule the effective duty rate imposed on SSAB EMEA was 58.6%.

This duty rate will be imposed against SSAB EMEA's exports of Q&T steel plate on a combination basis (combination of fixed and variable duty). The fixed part is to be imposed on a unit (AUD/per MT) basis (Regulation 5(3)(b) of the *Customs Tariff (Anti-Dumping) Regulation 2013* refers). The variable part will be the amount by which the actual export price for any consignment is less than the ascertained export price worked out with respect to the inquiry period of calendar 2018 (Regulation 5(2)(b) of the *Customs Tariff (Anti-Dumping) Regulation 2013* refers). The new variable factors and per unit interim dumping duty ("IDD") based on the different variable factors will take effect on and from 5 November 2019.

As outlined in this application, SSAB EMEA seeks review by the Anti-Dumping Review Panel ("ADRP") of the Minister's Decision under Section 269ZZA(1)(d) and 269ZZC of the Act.

We now address the requirements of both the form of application that has been approved by the Senior Panel Member of the ADRP under Section 269ZY of the Act, and of Section 269ZZE(2) of the Act in relation to our client's grounds of review, being those requirements not already addressed within the text of the approved form itself, which we have also completed and lodged with the ADRP.

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2 See EPR 506, Doc 064.

3 ADN 2019/113 at page 1.

4 ADN 2019/113.

B Ground – not correct or preferable for the Minister to continue the measure because no probable likelihood of material injury that the measure is intended to prevent

9 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

The evidence in Report 506 either leads inexorably to, or cannot confirm, a conclusion that material injury of the kind that the original Notice was intended to prevent would be probable should the measures be allowed to expire.

At the outset, and before entering into a discussion of each of the sub-grounds offered in support of this application, we wish to draw attention to a pervading "mindset" that is evident upon a full reading of Report 506, being a mindset that is wrong at law and which may go some way towards explaining why the recommendations of Report 506 appear counterintuitive. Because of their importance, we reiterate these matters as a sub-ground in and of themselves in B.9(a) below.

Report 506 frames its recommendations in terms of proven dumping, which SSAB EMEA does not deny. However, what Report 506 fails to recognise is that the injury that the measures were intended to prevent was and is the degree of injury caused by injurious dumping, and not that caused by non-injurious dumping. In the Original Decision, and since, the relevant measure has been based on the enjoyment of an "unsuppressed selling price" by Bisalloy in the Australian market, from which a "non-injurious price" at the FOB level has been assigned to SSAB EMEA's exports. The future fact of a dumping margin, of whatever degree, is a box that must be ticked in assessing whether the measures should be allowed to expire, or should be continued. However Section 269ZHF(2) of the Act relates that satisfaction back to the dumping and the injury that the measures were intended to prevent. Critically, that is not the full margin of dumping technically calculated, nor is it anything other than a margin between price suppression and price *non*-suppression. Beyond that the fact of dumping, of whatever extreme, is simply irrelevant. The ruling part of the test under Section ZHF(2) is whether expiry would cause the dumping and the injury *that the measures were intended to prevent* to continue or to recur. The measures under the Original Notice were never intended to prevent dumping at a rate of 34% which was the margin worked out in the original investigation. The different variable factors specified in the Minister's decision also do not represent the dumping that the newly-installed measures are intended to prevent, whether at 129.7% or at the effective rate of 58.6%.[5]

To clarify this point – the 58.6% is the creation of an asymmetrical comparison of an ascertained export price (from which IDD was deducted by the Commission) and a non-injurious price (from which IDD was not deducted). SSAB EMEA does not challenge that finding in this review. However, it still must be recognised that 58.6% is not and could never be the price increase that needs to take place in the Australian market for Bisalloy not to be materially injured by dumping.

For the purpose of working out the probable likelihood of material injury, whether "continuing" or "recurring", it is the behaviours and interactions of the Australian industry on the one hand, and of SSAB

[5] ADN 2019/113 at page 2.

EMEA and SSAB Swedish Steel Pty Ltd ("SSAB AU") as exporter/importer and Australian distributor on the other hand, and the effects of those behaviours on each, that are the paramount considerations.

Contrary to that, it seems to us that Report 506 treats the fact that there are dumped goods in the Australian market against which Bisalloy has to compete as being proof enough that its financial performance has been affected and could be affected in the future. Viewed in that context, the recommendation in Report 506 that the measures be continued is simply anti-competitive. It is not a decision properly made within the constraints and disciplines of the anti-dumping legislation.

Nowhere is this clearer than in this extract from Report 506:

> *The Commission has found that the dumping margin for the goods exported from Sweden has increased significantly to 129.7 per cent during the inquiry period from 34.0 per cent during the original investigation, upon which the current measures are based. Given the significant price advantage this gives to the goods exported from Sweden and the strong competition between SSAB and the Australian industry, the Commission considers that the lower export prices of the goods from Sweden due to dumping has depressed and suppressed the domestic prices of like goods and thereby reduced the Australian industry's revenue and profit.*[6] [footnotes omitted]

And, the next sentence in Report 506 directly attributes that thinking – that "mindset" – to the recommendation that the measures be continued, saying:

> *The Commission is therefore satisfied that the expiration of measures on exports of Q&T steel plate from Sweden would be likely to lead to the continuation of material injury in the form of price suppression and reduced profit and profitability experienced by the Australian industry, that the anti-dumping measures are intended to prevent.* [underlining supplied]

Report 506's use of the words *"that the anti-dumping measures are intended to prevent"* appears to be simply formulaic. In the Commission's mind it was the significant price advantage given by a 129.7% dumping margin that has depressed and suppressed the domestic prices of the like goods, and could enable that to happen in the future, and it is because of that (*"therefore"*) that the expiration of the measures would be likely to lead to the continuation of material injury. We hope and trust that the Review Panel will not fall into the same error.

SSAB EMEA submits that the evidence shows:

(a) That Report 506 improperly weighs the fact of dumping more heavily than the facts relating to pricing.

(b) That the Australian industry has recovered its financial position in a relevantly contemporary period. Its vital signs in the inquiry period contradict and ultimately overbear its claim that it was materially injured by imported Q&T steel plate. Report 506's micro-analysis of certain

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6 Report 506, page 69.

transactions cannot reverse that. Report 506 confirms that SSAB's[7] behaviours have been fairly competitive at all relevant times and not materially injurious.

(c) That "price injury" in the inquiry period was not caused by SSAB. The Australian industry's management decisions – to source more expensive greenfeed, and to seek volume sales rather than increase price - are the cause of any momentary price injury in the inquiry period. SSAB's price was and is [CONFIDENTIAL TEXT DELETED – expression of opinion about prices] and its behaviours do not indicate a probable likelihood of its prices causing material injury that the measures were intended to prevent.

We intend to elucidate the key arguments listed above by working through the critical reasoning and findings arrived at in Report 506 against our client. We analyse them one by one, and provide more credible explanations and conclusions. In cases where the evidence and reasoning cannot support the finding made, in the sense that they are inconclusive with respect to that finding, then that should be recognised. An administrative decision maker cannot be satisfied of something that has not itself been evidenced simply because it was not disproven.

Ultimately, we believe that any reasonable and objective person would readily prefer the explanations and conclusions we offer, rather than the self-serving narrative that Bisalloy has advanced and that Report 506 accepts. Even if the ADRP remains uncertain as to the proposition that there is a probable likelihood of material injury of the kind intended to be prevented by the measures, then it must report to the Minister that the evidence does not positively support that proposition and that therefore a positive recommendation to secure their continuation is not possible.

The test under Section 269ZHF is not based on "could" or "might" – it is based on a probable likelihood. We respectfully submit that Report 506, properly evaluated, does not satisfy that test.

a Fact of dumping weighed more heavily than the facts relating to pricing

The first determination in a continuation inquiry is and will be whether dumping has occurred. This assessment requires an analysis of whether the export price is lower than the normal value. It is a factual mathematical comparative exercise. SSAB does not contest that based solely on an analysis of its normal value and export price in Australia, its exports were dumped and will likely continue to be, whether or not the measures are allowed to expire. Indeed, in its first submission in this inquiry, SSAB outlined that the key issue in this inquiry would be whether dumping would *"lead, or would be likely to lead, to a continuation of, or a recurrence of…material injury"*.[8]

We have said this already but it does bear repeating. In a case where a non-injurious price has been in effect at all relevant times, it is not an important or operative consideration, because it is not the margin of dumping that is the measure of injury. Instead, the measure of injury – being the injury that the measures were intended to prevent – is the degree to which the price in the Australian market is injurious, and nothing more.

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7 The use of the word "SSAB" in the context of an entity refers to SSAB EMEA and SSAB Swedish Steel collectively.

8 *Customs Act 1901*, Section 269ZHF(2).

The relevant provision states that the Commissioner must not recommend continuation of measures unless:

> *… the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.*[9]

An incorrect reference to the test for continuation, as interpreted by the Commission, is one that permeates Report 506:

> *Consideration of whether the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or recurrence of, material injury caused by dumping is discussed in Chapter 9 of this report.*[10]

We repeat – the test relates to the occurrence or recurrence of the injury that the measures were intended to prevent. Those important words are missed out. The injury that these measures were intended to prevent in this case was and is pricing in the Australian market that is injurious to the Australian industry.

We ask the Review Panel to conduct its review with a mindset that is quite different to that adopted in Report 506. We would reject any suggestion that Report 506 was "meant" to be presented on the "intended to prevent" basis we have put forward, or that there is "no difference" between the Commission's *dumping* focus and what we say must be a *competition* focus. There is a very great difference.

For example, the Report arrives at this finding in Section 9.1:

> *The Commission is satisfied that the expiration of the notice would lead, or be likely to lead to a continuation of material injury caused by dumping.*[11]

The following sentence confirms that the Commission thinks it is the effect of dumping, contemporaneously or in the future, that is the key element:

> *Further, based on a comparison of Bisalloy's inquiry period revenue and a counterfactual revenue calculated using the unsuppressed selling price, the Commission has determined that injury resulting from dumped imports was material.* [underlining supplied]

Insofar as that sentence suggests that Report 506 did have some regard to the correct test in the circumstances of this case, it is wholly insufficient, and inexplicable, in light of the amassed cost and price information in the Report. We see no explanation of such a counterfactual analysis in Report 506.

We submit that Report 506 is infected with the sense that a 129.7% dumping margin self-evidently supports the likelihood that material injury will be caused by dumping in the future. However the test is whether SSAB's pricing in the Australian market is injurious, because the measures are based on the application of the "lesser duty" rule. It might be contended by others that the Minister's decision was

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9 *Customs Act 1901*, Section 269ZHF(2).

10 Report 506, page 20.

11 Report 506, page 41.

based on the sales behaviour of SSAB in the Australian market, and that the impression of large scale dumping did not influence the Commission's thinking. But, if that is the case, how can the decision to continue the measures be justified in the face of evidence, on the record, that SSAB's price was **[CONFIDENTIAL TEXT DELETED – expression of opinion about prices]** in at least the last nine months before the Minister's decision, and probably longer?

How can a counterfactual analysis overcome this factual impediment to the Commission's finding? Typically, the Commission uses counterfactual analyses to say that the Australian industry concerned would have earned more money or would earn more in the future, if there had been no dumping. The evidence that SSAB was not suppressing Bisalloy's price renders any counterfactual impossibly meaningless, no matter how high its dumping margin might be.[12]

b Competitive impacts on Bisalloy's recovered financial position cannot be recast as material injury caused by dumping

The Commission found that:

- the market has increased overall since the imposition of measures – highlighting the improved conditions under which Bisalloy is operating;
- the Australian Q&T steel market is expected to expand;
- there are signs of recovery in mining investment and world steel prices – very much relevant to the forward looking "likelihood" test for continuation of measures;
- that, in contrast to world steel prices, in which there are "signs of recovery", bulk commodity prices – iron ore, metallurgical coal and thermal coal –were decreasing before the Minister's Decision and are forecast to decrease further;
- the Australian industry's sales of Q&T steel plate increased significantly in 2017 and 2019;
- since the imposition of measures Bisalloy's market share has overall increased;
- that the market share of imports from Sweden has overall decreased since 2016;
- that Bisalloy enjoyed restored profitability in 2017 and 2018;
- that Bisalloy's assets, capital investment, revenue, capacity utilisation, employment levels, average unit wage, and stock levels all improved from 2016 to 2018;
- that Bisalloy's return on sales improved from 2017 to 2018;

[12] The divergent structural plate / wear plate findings in Report 506 – whereby SSAB does not undercut Bisalloy's wear plate prices, but is said to undercut Bisalloy's structural grade prices - do not overcome this problem. The goods under consideration are Q&T steel plate. It is illogical to contend that a conclusion of material injury to Q&T steel plate in the future could be made because one type of Q&T steel plate is presently suppressed when the other type is not. If not, an Australian industry would not have to compete across the range of goods sold. It could simply rely on injury to one type of goods as being the basis for a material injury finding, even if its prices were not suppressed across that whole range.

- that Finland had vacated the market and the import activity with respect to Q&T steel plate from Japan was relatively low;
- that no factor at all caused material injury to Bisalloy (other than dumping), and that no factor – none at all - would cause it injury in the future (other than dumping); and
- that on aggregate SSAB's price for wear grade Q&T steel plate, which is 70% of the market, was 9% higher than Bisalloy's.

In the words of Report 506:

> *Bisalloy's overall position in relation to these factors has improved since 2014. In particular, the Commission notes that capacity utilisation has increased significantly since 2014, wages have increased year on year, in line with increased sales and revenue, return on sales increased significantly in 2017, and employment levels decreased in 2015 and started increasing again from 2016. The Commission does not consider that these economic factors have had an injurious impact on the Australian industry since the imposition of measures.*
>
> *The Commission notes that at the time of the original investigation, the Commission concluded that there were reasonable grounds to support Bisalloy's claims of injury with respect to all of the aforementioned economic factors.*[13]

These are true and important admissions. Why, then, did Report 506 recommend continuation of the measures? Bisalloy is competing in the market and doing so profitably, and the future looks rosy.

The reasons for the recommendation come down to the Commission's habit of searching-out some technical statistic which is then used to "overwrite" and "reverse" the appearance presented by the bigger statistic. Report 506, in particular Section 9.4.2 of same, reduces positive indicators of buoyant financial performance, as we have recited above, to narrow, technical "examples" of competitive interaction. These smaller, negative indicators are then valued more highly as evidence than the bigger, positive indicators. For example, technical examples of price competition on a head-to-head basis, designed to evidence a lost sale or a lower price, or an instance of undercutting, are claimed by Report 506 to reduce to nought the significance of all of the other sales made by both Bisalloy and SSAB to the larger number of competitors where there are not head-to-head sales. This habit seems to be devoid of any consideration of materiality or of the importance of the bigger indicator that motivated the minor-analysis in the first place. Report 506 seems untroubled by questions of "materiality" and effects of imports on the overall cohort of like goods. One or other product line is selected, with respect to one or other customer; a difficult to understand and untestable (due to confidentiality) set of parameters and assumptions are applied; and a finding of material injury emerges.

With respect, we believe that Report 506 treats any successful participation of an importer in the Australian market as being injurious. One is left with the abiding impression that if an importer subject to dumping duties makes a sale in the Australian market, then that sale causes injury to the Australian industry no matter what is happening at the overall "like goods" and corporate level. No sophistication and nuance is demonstrated in terms of offsets and degree.

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[13] Report 506, page 25.

Also, Report 506 imparts the sense that a continuation inquiry is an industry assistance exercise rather than one that is confined to the test under Section 269ZHF(2) of the Act. This sense is amplified by the consideration and assumed relevance of Bisalloy's economic condition and costs as far back as 2010.[14] We submit that benchmarking a continuation analysis to matters that took place a decade ago is an irrelevancy and contrary to the intention and aim of anti-dumping measures.

Reviewing information about the performance of Bisalloy all the way back to 2010, and drawing conclusions about how it "might" or "should" perform based on historical data of that vintage, is not apposite to a contemporary and future-based assessment of the type involved in a continuation inquiry.

Anti-dumping measures are not intended to operate as a product ban. They are not for the purpose of providing long term relief and indefinite protection to the Australian industry. We do not mean to say that measures cannot be continued. However where they have achieved the remedial effect intended, and when the participants in the market have been educated by the bitter experience of previous measures, then they should not be continued. As per Nicholas J in *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth*:[15]

> *Further, I do not agree with [the Australian industry] that the purpose of Part XVB of the Act is "to protect Australian industry". The purpose of Part XVB is far more complicated. It is apparent from the scheme of Part XVB that the legislature has sought to strike a balance, as the relevant international agreements no doubt seek to do, between various interests including not only those of Australian industries but also other WTO members and their own domestic industries, Australian consumers (in the broadest sense of that word) who may have an interest in acquiring imported goods at the lowest available prices and Australian exporters that supply their goods to other countries that are also members of the WTO.*

Data from 2010 has no relevance to Bisalloy's economic condition in 2019, and into the future. Bisalloy itself has acknowledged the changes that have taken place within the company and the profits reaped as a result. Harking back to "more golden times" as some kind of valid benchmark, and using narrow or even singular examples of a lost sale, to deny the picture of good financial performance otherwise presented, runs counter to competition policy and shields industries from the need to cope with contemporary trends, being trends that impact upon every industry and business.

Report 506 further dilutes, or entirely dismisses, the importance of the indicators of Bisalloy's broader financial performance by adopting the stance that injury factors can be considered, devalued or dispensed with depending on the circumstances. Report 506 states:

> *The Commission's view is that the relevance of each factor will vary depending on the nature of the goods being examined and the market into which the goods are being sold. No one factor can necessarily provide decisive guidance. The following analysis therefore examines a range of factors that the Commission considers are relevant to this inquiry.*[16]

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14 Report 506, page 20.

15 [2013] FCA 870 at [148].

16 Report 506, page 36.

We expect that this was said by the Commission in defending against concerns expressed by the European Commission ("EC") in its submission in Inquiry 506. The EC stated:

> *For instance, many injury factors regarding the situation of the domestic industry are missing or incomplete. In this regard, the Commission would like to recall that Article 3.4 of the WTO ADA determines that the "impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry" and it gives a list of fifteen indicators. The WTO Panel, when referring to such indicators, confirms that "the examination of the impact of dumped imports must include an evaluation of all the listed factors in Article 3.4".* [footnotes omitted]

The nine injury factors from Article 3.4, being those that were missing from Statement of Essential Facts No 506 ("SEF 506"), were not identified by Bisalloy in its application.[17] The Commission chose not to assess them in SEF 506. It was only after the EC's SEF response that these came to be assessed as relevant economic factors in Report 506. However the assessment did not ultimately involve giving them any weight. Report 506 states:

> *The Commission does not consider that these economic factors have had an injurious impact on the Australian industry since the imposition of measures.*[18]

With respect, we do not know what this is intended to mean. The sentence is nonsensical. The economic factors concerned are not advanced as factors other than dumping that may or may not have caused injury to the Australian industry. Instead, they must be evaluated as indicators of whether the Australian industry has suffered or is suffering material injury, such that any decision to continue the measures can be objective and evidence-based. If they do indicate that financial injury is not being caused or, as in this case, if they indicate financial good-health, then a finding that material injury would continue or recur cannot be reached.

Note, for instance, the graph of revenue. Here we see Bisalloy's revenue increasing sharply in 2018, at a time when its domestic sales volume and market share has also increased sharply. The question must therefore be asked – why did or why does Bisalloy consider that it has to keep its prices low (i.e. "suppressed") if, when they are increased, there is no detrimental effect on sales volume. Indeed, sales volume went up!

Note also the graph of return on sales. Here we see an increased return on sales in 2018 even though Report 506 presents a graph which professes that the positive gap between unit CTMS and unit revenue in 2017 actually *narrowed* in 2018.[19]

In these contexts alone the blithe and confusing dismissal of the other relevant economic factors in Report 506 is highly problematic and of serious concern. Report 506 appears to have misunderstood the requirement to consider the range of indicators of injury set out in the legislation. The test is not whether economic factors have had an injurious impact themselves. We are concerned that Report 506 has misstated and misunderstood this crucial test. The facts that these indicators have improved markedly since the measures were imposed; that Bisalloy's sales, market share and revenue have

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17 See, SEF at EPR 506, Doc 25 and Bisalloy's application at EPR 506, Doc 001, page 8.

18 Report 506, page 25.

19 Report 506, Figure 5.

improved; that Bisalloy has returned to profitability, all go to the proposition that the measures are no longer warranted.

c "Price injury" in the inquiry period was not caused by SSAB

The phrase "price injury" is used regularly in Report 506. In talking about the causes of "price injury" in this part of the application we are not to be taken to accept that:

- there was material injury of that type in the inquiry period caused by imports; or
- that there is any support for the idea that it is likely that price suppression would continue or recur thereby causing the material injury that the measures were intended to prevent.

There are, however, certain important facts and circumstances that the Review Panel should take into account in this regard.

At the outset, we remind that we have already mentioned, above, that Bisalloy increased its overall sales revenue, and its return on sales, at the same time as it was increasing its unit sales revenue and the volume of its sales. One might think, therefore, that any concern about price suppression is merely crocodile tears on Bisalloy's part. The evidence of increasing sales indicates that it went out into the market to buy volume and market share. And, when it did increase its prices it discovered that it was not constrained in doing so.

The first of the important facts and circumstances for the Review Panel to consider is that Bisalloy's greenfeed costs and, apparently, also its sourcing of greenfeed changed in 2018 from that which was in place in previous years. Although it has been difficult to get any clarity around this issue, it seems to be the case that Bisalloy's greenfeed costs increased in 2018 because in that year it purchased "mainly" from BlueScope Steel, and no longer purchased from its cooperative joint venture operation in China ("CJV"). No explanation has been provided as to why it unilaterally decided to increase its steel costs in this way. True, that might be confidential, however it is not clear to us whether the Commission undertook a serious enough interrogation of Bisalloy or of BlueScope in this regard. Further, we repeatedly urged the Commission to test the reliability of those greenfeed costs, given the commercial interactions between Bisalloy, its CJV and BlueScope Steel, which include:

- that Bisalloy buys greenfeed from BlueScope;
- that BlueScope Distribution buys Q&T steel plate from Bisalloy; and
- that, potentially, BlueScope buys Q&T steel plate from the CJV.

What can be said is that the change in costs in 2018 appears to represent a management and commercial decision to purchase more expensive greenfeed over cheaper imported greenfeed that one would expect to be available to Bisalloy from its CJV entity in China. There is insufficient evidence, and apparently insufficient inquiry by the Commission, to explain otherwise.

We are also concerned about the accuracy of the data used by Report 506 to construct Bisalloy's CTMS. We note that footnote 58 of Report 506 states:

> *The Commission found that during the Australian industry visit, Bisalloy calculated a unit CTM as per the Commission's template. The template asked for the unit CTM to be determined*

> *against production quantity. However, since Bisalloy's CTM is in fact the cost of goods sold, the Commission considers it more appropriate to use sales volumes in its calculation of unit CTMS.*

To us, this explanation is largely indecipherable. However it does indicate that the method used by the Commission to calculate Bisalloy's CTMS as plotted in Figure 5 is not consistent with previous methods. We wonder therefore whether it represents an accurate trend in Bisalloy's CTMS and therefore in the comparison between CTMS and revenue.

The circumstances of these cost increases are important to consider. If Bisalloy was experiencing price suppression by SSAB, which is denied, the purchasing of higher priced greenfeed would be a more proximate cause of any such suppression, and a very odd way to respond to such suppression.

Another concern we have about the finding in Report 506 in this regard is the incongruity, whether only in optical or also in factual terms, of an overall price comparison between Bisalloy's prices and SSAB's prices in Report 506 showing the same or almost the same end-point for those prices in 2018 (Figure 9). We ask the Review Panel to consider how realistic this is, when wear plate sales occupy 70% of market volume and in the aggregate price comparisons for 2018 SSAB's wear plate prices are 9% higher than Bisalloy's (Figure 11).

Very significantly, another "price injury" factor to which we wish to alert the Commission is the fact that SSAB AU's Australian prices in at least the first six months of 2019 **[CONFIDENTIAL TEXT DELETED – expression of opinion about prices]**. We commented on this in one of our submissions to the Commission as follows:[20]

> *SSAB AU has been mindful of Bisalloy's application for continuation of the measures, and what that might portend for the market and for SSAB itself. Bisalloy's revised opinion of its performance in the Australian market – that imports from the nominated sources had a material impact on Bisalloy's profit and profitability - has been a surprise. Nonetheless SSAB AU has been increasing its prices throughout 2019, to the extent that its weighted average sales price for 2019 to date is* ***[CONFIDENTIAL TEXT DELETED – expression of opinion about prices, and number]****.*
>
> *We also refer to the other evidence of price increases unilaterally introduced into the market by SSAB AU during the first half of 2019, and to the multiple other reports of price offers by SSAB AU in 2018 and 2019 at higher prices than Bisalloy, as conveyed to the Commission in our previous submissions.*[21] [footnotes omitted, emphasis in original]

In Report 506, the following is said about the unsuppressed selling price:

> *The USP published in SEF 506 was $2,085.07 per metric tonne.*
>
> *Subsequent to publishing the SEF, the Commission has revised its calculation of the USP, which has affected the indexing calculation. The revised USP at free-into-store delivery terms is $2,015.93 per metric tonne.*

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[20] EPR 506, Doc 041.

[21] Ibid, page 07 (Confidential Version).

Accordingly, SSAB's average price in the Australian market in at least the first six months of 2019 was [CONFIDENTIAL TEXT DELETED – expression of opinion about prices]. *Ipso facto*, at the critical time, which was the date of the Minister's Decision, the record evidence shows that SSAB's overall price for Q&T steel plate was [CONFIDENTIAL TEXT DELETED – expression of opinion about prices].. Thus, SSAB's sales behaviour directly contradicts the finding that it would be likely to price its goods in a manner that would cause material injury of the type that the measures were intended to prevent.

We note that the evidence of SSAB AU's Australian market prices for the first six months of 2019 was provided to the Commission in a timely fashion, once the need for it became known, and in the exact same format as the Commission had requested and verified previously (for 2018) during Inquiry 506. We offered whatever time, space and assistance to the Commission should it have wished to verify that data. In the absence of that verification, and not having heard back from the Commission otherwise, our assumption was that the data was acceptable and would be taken into account.

The Commission's response to this information was only advised to us in Report 506, i.e. after the Minister's Decision. It was as follows:

> *SSAB provided sales data with its submission to demonstrate price increase above the USP in the first half of 2019. The Commission notes the claim of a price increase commencing in 2019 and the supporting information provided. SSAB AU did not explain why this information was not made available to the Commission during the verification visit to SSAB AU in March 2019.*[22]

Our client and ourselves take great exception to this response. The information was relevant and important; it was put together with great effort and care; and was provided to the Commission as soon as it became known to us what the Commission's intentions were.

The sentence "*SSAB AU did not explain why this information was not made available to the Commission during the verification visit to SSAB AU in March 2019*" is as insulting as it is ridiculous. First, how was it to be known that this data would be relevant before the SEF was issued and, second, by what process of time travel were our clients supposed to provide data for the first six months of calendar 2019 in March 2019?

The response to the evidence in Report 506, such as it is, concludes as follows:

> *Based on SSAB's historical behaviours and the price analysis above, the Commission remains of the view that Bisalloy would continue to experience injury as a result of exports by SSAB in the event that the measures expired.*[23]

This does not represent a proper consideration of the data submitted. Plainly, it is a rejection of that data and of what it proves. The data was highly relevant to the required consideration, and was not given the consideration it demanded. We ask the Review Panel to address and rectify this failure.

With regard to SSAB's historical behaviours, we can only think that Report 506 is referring to the dumping margin, in response to which we make the same submissions as we made throughout Inquiry 506 and as we have made in this application. Indeed, SSAB further explained its price behaviour at length in the same submission in which it provided its sales data to the Commission. We think it is useful

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22 Report 506, page 52.

23 Ibid.

to extract that explanation, for the purposes of supporting SSAB's *bona fides* throughout and its due regard for the position of the Australian industry:

> *At all times SSAB AU has been pricing its goods in the Australian market responsibly and with a view to profit. The Commission's inquiries confirm that SSAB AU's prices were much higher to over 70% of the market, and higher in aggregate over the entire market.*
>
> *Even if there is some uncertainty with respect to the latter proposition, it should also be stressed that the measures were imposed by applying the lesser duty rule, with the intention of the prices in the market being "non-injurious", and not that they are "un-dumped". Working out what is or is not an "unsuppressed selling price" from the perspective of an Australian industry is a task that can only be accomplished by the Commission, an agency that has direct access to the records of the Australian industry and has the responsibility of working out exactly what is or is not injurious. Indeed not even the Australian industry knows what its unsuppressed selling price is without being told by the Commission in an inquiry such as this.*
>
> *What information did SSAB AU have to go on, in knowing whether or not its prices were or were not "injurious"? We note these indications:*
>
> - *From Bisalloy's 2017 Annual Report – "EBITDA of $5.4m (FY2016 – $5.0m)", "Revenue increased by 16%", "Bisalloy Steels Australia successfully clawed back domestic market share in FY2017 in what is becoming a more stable market. There are positive signs this will further increase during FY2018. The main competition for Q&T steels in Australia continues to be from Sweden. Consistent with the Group's reasonable expectation to compete on a level playing field, Q&T imports are closely monitored and if dumping is apparent, further anti-dumping action will be considered."*
>
> - *From Bisalloy's 2018 Annual Report – "Operating EBITDA of $8.5m (FY2017 – $5.6m)", "Revenue increased by 38%", "To support the sales volume growth of Bisalloy QT wear, structural and armour products in FY2018, Bisalloy was able to increase greenfeed supply from both local and international suppliers. The confidence observed in the resources market at the back end of FY2017 continued throughout FY2018, resulting in an increase in repairs and maintenance spend, yet with continued poor visibility of demand. Consequently, both the Group and its distributors, were required to carry a higher level of inventory to service this market. In FY2017 a number of staffing changes were made within the sales and marketing functions of the Australian business with these changes having contributed to Australian domestic sales growing by more than 50%, with some of this growth the result of capturing domestic customers who were previously buying from Bisalloy's offshore competitors and the remainder of this growth the result of a further increase in the overall market.", "Bisalloy is forecasting profitability to be up in FY2019.", "This strategy and focus has resulted in high volumes in the second half of FY2018 with good momentum and a strong order book going into FY2019. Bisalloy's wear products are primarily sold in the traditional resources segment. This segment stabilised in FY2018 with Bisalloy increasing its market share within this segment. Bisalloy is forecasting to further capitalise on this improved position in FY2019."* [footnotes omitted]

The point we are making here, if not obvious, is that an exporter can make some assessments of its prices and costs in order to work out its exposure to accusations of dumping. It cannot reliably do the same with respect to what may or may not be an unsuppressed selling price from the perspective of its business competitor. The Australian industry might claim its selling prices are being suppressed, but even it cannot be sure that the Commission would agree with the Australian industry's view of affairs.

Bisalloy's public pronouncements in its 2017 and 2018 financial reports, as communicated to the public, to industry competitors and to the market, gave no indication of injury or the suppression of prices by dumped imports. Indeed, the precise opposite was communicated. SSAB's appreciation of affairs was that Bisalloy was doing very well. SSAB also believed it was the highest priced Q&T steel plate in the market, which the Commission has confirmed. As said by the Bisalloy Chairman in Bisalloy's 2018 Annual Report, Bisalloy made staffing changes that grew its Australian sales in that year by more than 50%, including by "capturing" customers who were previously customers of "offshore suppliers" to Australia. This stellar sales result was achieved by Bisalloy while marginally increasing prices (as per the SEF) and was accompanied by improving financial performance (as per the Chairman).

Given the above, SSAB cannot be said to have known or suspected that its prices in the Australian market were not high enough for Bisalloy's liking or, to put it into a dumping context, were causing "material injury".[24]

In sum, SSAB had no indication that it was causing injury to Bisalloy, whether by reason of price suppression, undercutting or other injury. Bisalloy presented upbeat reports to its shareholders and to the markets, which SSAB saw as well.

Furthermore, Bisalloy did not apply for any reviews of the variable factors at any time over the five years the measures have been in place, and had not alleged, until the application for the continuation inquiry, that it continued to be injured by SSAB's exports to Australia. Over that time it is undeniable that it has increased its sales revenue and profitability. SSAB was therefore entitled to expect that the price that it was exporting to Australia was not injuring Bisalloy. The situation that faces an exporter subject to an effective rate worked out on the basis of a non-injurious price is of course quite different to the situation that faces an exporter whose IDD is imposed at the dumping margin. This is because an exporter can fairly reliably work out its dumping margin. An exporter cannot read the mind or inspect the financial records of an Australian industry member to understand whether it could be accused of being injurious at any particular time.

SSAB's approach, as explained to the Commission, has been to put itself forward as the higher-priced "premium product" seller in the Australian market, a strategy that has become more pronounced over the past two to three years.

In Inquiry 506, Bisalloy gave consent to the Commission to reveal the unsuppressed selling price. This was unprecedented, effectively amounting to government-aided "price signalling". Whatever might be the propriety or impropriety of that action, that fact is now "in the open". Accordingly, SSAB can now self-monitor its Australian prices on a better-informed basis, and there is no reason to suggest that it would not do so. The extremity of the dumping margin is entirely irrelevant to that question, as we have

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[24] See EPR 506, Doc 041 page 05 – 07.

already explained. Contrastingly, what is relevant to that same question is the desire of SSAB not to find itself back in the position of having to pay punitive IDDs and to suffer the costs of multiple trade actions initiated by the Australian industry.

Therefore, it is both correct and preferable to find that there is no probable likelihood that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

10 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

The correct or preferable decision is that Minister should revoke the Minister's Decision and substitute a new decision declaring, under Section 269ZHG of the Act, that she has decided not to secure the continuation of the anti-dumping measures concerned with effect from the end of the day on 4 November 2019.

11 Grounds in support of decision

Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

The grounds set out in question 9 above support the making of the proposed correct or preferable decision by demonstrating the errors of fact and reasoning in the recommendations and reasons for the recommendations in Report 506, which were accepted by the Minister in making the Original Decision.

12 Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

The proposed decision is materially different to the reviewable decision, as the proposed decision will cause the non-continuation of the measures effective from the end of the day on 4 November 2019. On that basis exports of Q&T steel plate from SSAB EMEA will not be subject to the Original Notice.

Conclusion

The decisions to which this application refers are reviewable decisions under Section 269ZZA of the Act.

Where references are made to the Commission, Report 506 and its recommendations, it is those recommendations that were accepted by the Minister and form part of the reviewable decision that our client seeks to have reviewed.

SSAB EMEA is an interested party in relation to the reviewable decision.

SSAB EMEA's application is in the prescribed form and has otherwise been lodged as required by the Act.

We submit that the application is a sufficient statement setting out its reasons for believing that the reviewable decision is not the correct or preferable decision, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct and preferable decisions that should result from the grounds that are raised in the application are dealt with and detailed above.

Lodged for and on behalf of SSAB EMEA AB by:

Daniel Moulis
Partner Director