Australian Government
Anti-Dumping Review Panel

Anti-Dumping Review Panel Report No. 171

Certain quenched and tempered steel plate exported from the Republic of Finland, Japan and the Kingdom of Sweden

August 2025

https://www.adreviewpanel.gov.au

Contents

Abbreviations

Term	Meaning
Act	*Customs Act 1901*
ABF	Australian Border Force
Anti-Dumping Agreement	*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
AUD	Australian Dollar
Appellate Body or AB	Appellate Body of the World Trade Organisation
Applicants	SSAB EMEA AB and SSAB Swedish Steel Pty Ltd referred to collectively
Bisalloy	Bisalloy Steels Pty Ltd
CIO Regulation	*Customs (International Obligations) Regulation 2015*
CTMS	Cost to Make and Sell
Commissioner	Commissioner of the Anti-Dumping Commission
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
Finland	Republic of Finland
FOB	Free on board
GAAP	Generally accepted accounting principles
Goods	Quenched and tempered steel plate
IDD	Interim dumping duty
Injury Direction	Ministerial Direction on Material Injury (2012)
inquiry period	1 October 2022 to 30 September 2023

Original Investigation period	1 January 2013 to 31 December 2013
Manual	Dumping and Subsidy Manual - December 2021
MCCs	Model Control Codes
Minister	Minister for Industry and Science
NIP	Non-injurious price
Period of analysis	The period of analysis relating to the Australian industry's economic condition since the measures were continued in 2019 for the purpose of the likelihood assessment
Preliminary Reinvestigation Report	Preliminary Reinvestigation Report Published on the ADC's website on 5 June 2025 and in respect of which interested parties were invited to comment
Q&T steel plate	Quenched and tempered steel plate
Reinvestigation Request	Written notice dated 17 March 2025 requesting the ADC to reinvestigate two issues related to Ground 1 in respect of the Reviewable Decision, in accordance with s 267ZZL
Reinvestigation Report	Report on the reinvestigation provided by the ADC on 18 July 2025, in accordance with s 269ZZL
RFI	Request for Information to the interested parties by the ADC during the reinvestigation
RIQ	Response to Importer Questionnaire
REQ	Response to Exporter Questionnaire
REP 638	The report published by the Commission in relation to the goods and dated 5 September 2024
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The former Minister for Industry and Science's decision pursuant to s 269ZHG(1)(b) in respect of certain quenched and tempered steel plate exported from the Republic of Finland, Japan and the Kingdom of Sweden
SCM	Agreement on Subsidies and Countervailing Measures

SEF 638	Statement of Essential Facts
SG&A	Selling, general and administration expenses
Specified expiry date	The date the measures were due to expire being 5 November 2024
SSAB EMEA	SSAB EMEA AB
SSAB AU	SSAB Swedish Steel Pty Ltd
Sweden	Kingdom of Sweden
USP	Unsuppressed selling price
WTO	World Trade Organization

Summary

1. This is a review of the decision of the former Minister for Industry and Science ('the Minister') in relation to the continuation of anti-dumping measures pursuant to s 269ZHG of the *Customs Act 1901* ('the Act') in respect of certain quenched and tempered steel plate ('Q&T steel plate') exported from the Republic of Finland ('Finland)', Japan and the Kingdom of Sweden ('Sweden') ('Reviewable Decision').

2. The two joint applicants for the review are SSAB EMEA AB ('SSAB EMEA') and SSAB Swedish Steel Pty Ltd ('SSAB AU'). SSAB EMEA is a Limited Liability Company registered in Sweden and SSAB AU is a Proprietary Limited Company registered in Australia. Collectively, they are referred to as the "Applicants" in this report.

3. For the reasons set out in this report, I recommend that the Reviewable Decision be affirmed.

Introduction

4. SSAB EMEA and SSAB AU jointly applied under s 269ZZC of the Act for a review of the Reviewable Decision. SSAB EMEA is directly concerned with the production and exportation into Australia of the goods that are the subject of the application and SSAB AU is directly concerned with the importation into Australia of those goods.

5. The Senior Member of the Anti-Dumping Review Panel ('Review Panel') directed in writing that the Review Panel be constituted by me in accordance with s 269ZYA of the Act.

6. The application was accepted and notice of the proposed review, as required by s 269ZZI, was published on 15 January 2025.

7. Pursuant to s 269ZZK of the Act, a report must be provided no later than 60 days beginning on the day of the publication of the notice of review, unless a

reinvestigation report is required under s 269ZZL(1) of the Act.[1] A reinvestigation was required, and a report was provided to the Review Panel on 18 July 2025.

Background

8. The measures, in the form of a dumping duty notice, were initially imposed on 5 November 2014 by the relevant Minister following consideration of the recommendation of the Commissioner of the Anti-Dumping Commission ('the Commissioner') in Anti-Dumping Commission ('ADC') Report No. 234 ('REP 234'). The original investigation and the imposition of the measures resulted from an application made under s 269TB by Bisalloy Steels Pty Ltd ('Bisalloy'), the sole member of the Australian industry producing like goods. Following an inquiry, the measures were continued by the relevant Minister for a further five years from 5 November 2019. This followed the Minister's consideration of the Commissioner's recommendation in ADC Report No. 506 ('REP 506'). The measures were due to expire on 5 November 2024 ('the specified expiry day').

9. The continuation inquiry was initiated on 4 December 2023 following consideration of an application lodged by Bisalloy seeking the continuation of the measures.[2] The inquiry period was from 1 October 2022 to 30 September 2023 ('inquiry period'). The period of analysis relating to the Australian industry's economic condition was since the measures were continued in 2019 for the purpose of assessing:

> *whether 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 measures are intended to prevent, and whether the notice should remain unaltered or apply to a particular exporter or exporters as if different variable factors had been ascertained.* ('period of analysis').

10. A Statement of Essential Facts ('SEF 638') was published by the ADC on 5 July 2024. The ADC subsequently made a report to the Minister, ADC Report No. 638 ('REP 638'), recommending that:

[1] Pursuant to s 269ZZK(3) of the Act.
[2] Anti-Dumping Notice ('ADN') No. 2023/084.

- the Minister declare pursuant to s 269ZHG(1)(b) of the Act, that the Minister decided to secure the continuation of the measures in relation to exports from Finland, Japan and Sweden.

- the Minister determine pursuant to s 269ZHG(4)(iii) of the Act, that the notice continues in force after the specified expiry day but that, after that day, the notice has effect in relation to exporters in Finland, Japan and Sweden as if the Minister had fixed different specified variable factors relevant to the determination of duty.

11. The Minister accepted the recommendations of the Commissioner and reasons for the recommendation, including all the material findings of fact and law set out in REP 638:

    - declaring under s 269ZHG(1)(b) of the Act, that he decided to secure the continuation of the anti-dumping measures.

    - determining under s 269ZHG(4)(a)(iii) of the Act, that the dumping duty notice continued in force after the specified expiry day but that, after that day, the dumping duty notice has effect as if different specified variable factors had been fixed in relation to all exporters from Finland, Japan and Sweden, relevant to the determination of duty.

12. Notice of the Minister's decision was published on 4 October 2024 ('the s 269ZHG notice').[3]

Conduct of the Review

13. In accordance with s 269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the reviewable decision, or revoke it and substitute a new specified decision. Section 269ZZK(1A) of the Act requires that the Review Panel may only make a recommendation to revoke and substitute a new specified decision if the new decision is materially different from the reviewable decision.

14. In undertaking the review, s 269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it

[3] ADN No. 2024/064.

were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.

15. Subject to certain exceptions,[4] the Review Panel is not to have regard to any information other than relevant information pursuant to s 269ZZK, i.e. information to which the Commission had regard or ought to have had regard when making its findings and recommendations to the Minister.

16. If a conference is held under s 269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information. A list of the conferences held during the course of the review is available at Appendix A.

17. A conference was held for the purpose of obtaining further information in relation to the application before the Review Panel with the Applicants on 16 December 2024 pursuant to s 269ZZHA of the Act ('the First Conference'). A non-confidential summary of the information obtained at the conference was made publicly available in accordance with s 269ZZX(1) of the Act ('the First Conference Summary'). A conference was held for the purpose of obtaining further information in relation to the review before the Review Panel with the ADC on 24 January 2025 pursuant to s 269ZZHA of the Act ('the Second Conference'). A non-confidential summary of the information obtained at the conference was made publicly available in accordance with s 269ZZX(1) of the Act ('the Second Conference Summary'). A conference was held for the purpose of obtaining further information in relation to the review before the Review Panel with the Applicants on 19 February 2025 pursuant to s 269ZZHA of the Act ('the Third Conference'). A non-confidential summary of the information obtained at the conference was made publicly available in accordance with s 269ZZX(1) of the Act ('the Third Conference Summary').

18. The time for submissions by interested parties under s 269ZZJ of the Act is 30 days after the publication of the s 269ZZI notice. As the Public Notice was given on 15 January 2025, the time for submissions expired on 14 February 2025. Submissions were received in this period from the ADC and Bisalloy.

[4] Section 269ZZK(4) of the Act.

19. Upon further review of Bisalloy's submission to the Review Panel dated 14 February 2025 ('the Bisalloy Submission') the Review Panel considered that Bisalloy may not have complied with the requirements of s 269ZZY(1) of the Act in making its submission because Bisalloy failed, at the time the Bisalloy Submission was made to the Review Panel, to provide a summary of the confidential information in the Confidential Attachments. Therefore, the Review Panel could not (and did not) have regard to Bisalloy's Submission in making its recommendation to the Minister due to the operation of s 269ZZK(5). However, having regard to the relevance to this review of the contents of the Bisalloy Submission, the Review Panel decided to hold a conference under s 269ZZHA(1) with Bisalloy for the purpose of obtaining further information in relation to the review, being the information contained in the Bisalloy Submission, including the confidential versions of Attachment 1, Attachment 2 and Attachment 3 as well as non-confidential summaries of all three confidential attachments. A conference was held for this purpose with Bisalloy on 10 July 2025 pursuant to s 269ZZHA of the Act ('the Fourth Conference'). A non-confidential summary of the information obtained at the conference was made publicly available in accordance with s 269ZZX(1) of the Act ('the Fourth Conference Summary'). The Bisalloy Submission was attached as Addendum 1 to the Fourth Conference Summary, and shall forthwith be referred to as the Bisalloy Addendum. Therefore, the Review Panel has had regard to the Bisalloy Addendum due to the operation of s 269ZZHA(2) of the Act, to the extent that the further information in the Bisalloy Addendum related to relevant information, within the meaning of s 269ZZK(6), and contained conclusions based on relevant information.

20. On 17 March 2025, pursuant to s 269ZZL of the Act, I required the Commissioner to conduct a reinvestigation in relation to specific findings that formed the basis of the Reviewable Decision. A report on the reinvestigation was provided by the ADC on 18 July 2025, in accordance with s 269ZZL. A copy of the Reinvestigation Report is at Attachment 1. A public version will be available following your decision on this report.

21. A further conference was held for the purpose of obtaining further information in relation to the review before the Review Panel with the ADC on 25 July 2025 pursuant to s 269ZZHA of the Act ('the Fifth Conference'). A non-confidential summary of the information obtained at the conference was made publicly available in accordance with s 269ZZX(1) of the Act ('the Fifth Conference Summary'). A

further conference was held for the purpose of obtaining further information in relation to the review before the Review Panel with the Applicants' Legal Representatives on 28 July 2025 pursuant to s 269ZZHA of the Act ('the Sixth Conference'). A non-confidential summary of the information obtained at the conference was made publicly available in accordance with s 269ZZX(1) of the Act ('the Sixth Conference Summary').

22. In conducting this review, I have had regard to the application (including documents submitted with the application) and the ADC submission received pursuant to s 269ZZJ of the Act insofar as it contained conclusions based on relevant information. I have also had regard to REP 638 and documents and information relevant to the review which were referenced in REP 638, including SEF 638 and to documents referenced in SEF 638. I have also had regard to further information obtained at conferences related to relevant information and to conclusions reached at the conferences based on relevant information. As required by s 269ZZK(4A), I have also had regard to the Reinvestigation Report.

23. Australia's anti-dumping and countervailing system implements the following World Trade Organisation ('WTO') agreements to which Australia is a party:

    a) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*[5] ('Anti-Dumping Agreement') – which prescribes rules for the conduct of anti-dumping investigations and the application of measures to address dumping, including how member countries may: initiate cases, calculate dumping margins, determine injury, enforce remedial measures and review past determinations; and

    b) *Agreement on Subsidies and Countervailing Measures*[6] ('SCM Agreement') – which regulates measures designed to remedy material injury caused by subsidised imports, along similar lines to the Anti-Dumping Agreement.

[5] *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*') ('Anti-Dumping Agreement').
[6] *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) ('*Agreement on Subsidies and Countervailing Measures*') ('SCM Agreement').

24. The *Customs Act 1901*[7] and the *Customs Tariff (Anti-Dumping) Act 1975*[8] are the principal legislation relating to anti-dumping measures in Australia. The Review Panel will interpret and apply the legislation, as far as its language permits, so that it is in conformity, and not in conflict, with Australia's international obligations. In practice, this means where the legislation is ambiguous the Review Panel will favour a construction that is consistent with the Anti-Dumping Agreement and the SCM Agreement and the obligations which they impose (see *Pilkington (Australia) Ltd v Minister of State for Justice & Customs* (2002) FCAFC 423 [25]-[27]).

25. It was stated in *Yara AB v Minister for Industry, Science and Technology*:[9]

> *[182] [The] Review Panel's conduct of the review, including its consideration of whether the Minister's decision was the correct or preferable decision, is confined and constrained in certain respects. In particular, the Review Panel must conduct the review in relation to the reviewable grounds and no other grounds. It must also only have regard to certain information, that information essentially being the information that the Commission had regard to, or was required to have regard to, as well as any reinvestigation report. The Review Panel cannot conduct its own investigations or obtain and use further information.*
>
> *[183] The fact that the Review Panel is required to conduct the review only in relation to the reviewable grounds is particularly significant, especially given that the criterion for determining whether a ground is a "reviewable ground" is whether it is a "reasonable ground for the reviewable decision not being the correct or preferable decision". What that must mean is that the nature of the review undertaken by the Review Panel is to essentially determine whether the reviewable decision is not the correct or preferable decision for any of the reasons articulated in the reviewable grounds. It is only to that extent, and on those terms, that the Review Panel is required to consider and determine whether the reviewable decision is the correct or preferable decision.*

[7] *Customs Act 1901* (Cth).
[8] *Customs Tariff (Anti-Dumping) Act 1975* (Cth).
[9] *Yara AB v Minister for Industry, Science and Technology* (2022) FCA 847 52 [182]-[183] ('Yara AB').

Grounds of Review

26. The grounds of review relied upon by the Applicants, which the Review Panel accepted, are as follows:

    1) Ground 1: Unsound price comparison basis for recommendation that the measures be continued.

    2) Ground 2: 'Likelihood' finding infected by misappreciation of market dynamics.

Consideration of Grounds

Ground 1: Unsound price comparison basis for recommendation that the measures be continued

The Applicants' ground and supporting arguments

27. The Applicants submitted in their joint application for review that the ADC can only recommend the continuation of measures if satisfied that their expiry will lead to the continuation or recurrence of material injury that the anti-dumping measure is intended to prevent. It was further submitted that this satisfaction must be achieved on the basis of probability and that it must be based on positive evidence upon which reasoned and adequate conclusions are drawn. The Applicants contended that the ADC did not arrive at a reasoned and adequate conclusion with respect to the conclusion in REP 638 that the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of the material injury the anti-dumping measure is intended to prevent.[10] The Applicants submitted that with respect to the first ground, this occurred because the ADC failed to appreciate the significance of order contract information that was provided to it.

28. The Applicants referred to Section 7.1 of REP 638, in which the ADC states:

[10] Applicants' application for review, 2.

> *...dumped imports from Sweden undercut the Australian industry's prices in relation to the most commonly sold grade of Q&T steel plate in the Australian market*.[11]

29. The Applicants submitted that the "satisfaction[s]" that the ADC cited for its conclusion that "the dumping will likely lead to a continuation or recurrence of material injury to the Australian industry" with respect to exports from Sweden are based on that finding. The Applicants submitted that the "satisfaction[s]" cited are based on the conclusion that there is a "price advantage that SSAB AU currently maintains on wear grade plate", and according to the Applicants, if there is no such current price advantage, there can be no satisfaction for whatever conclusion it is that the ADC seeks to draw from such an advantage.[12]

30. The Applicants contend that REP 638 offered no other evidentiary foundation for the finding that "[t]he dumping will likely lead to a continuation or recurrence of material injury to the Australian industry in the form of price depression and/or price suppression, lost sales volumes and market share, and reduced profit and profitability". The Applicants contend that the recommendation is based on the finding of price undercutting and submit that the belief that SSAB AU undercut Bisalloy's prices for wear plate is based on two charts in REP 638:

    a. The first chart being an aggregate quarterly price comparison between Bisalloy and SSAB AU's Swedish sourced wear grades.[13]

       According to the Applicants, the ADC concluded from this chart that:

        (i) Bisalloy had on aggregate a higher price for wear plate with undercutting by SSAB AU of up to 5%.

        (ii) this analysis demonstrates that Bisalloy's prices are undercut with respect to wear grade plate.

[11] REP 638, 52.
[12] For more details on this argument, see Applicants' application for review, 3. Reference is made to Section 7.1 of REP 638 and the ADC's explanation of its findings that dumping will lead to a continuation or recurrence of material injury. See page 52 of REP 638.
[13] Reference was made to the chart on page 73 of REP 638, reproduced on page 3 of the Applicants' application for review. Reference was made to Confidential Attachment 12 to REP 638.

b. The second chart being a price comparison between Bisalloy and SSAB AU for common Model Control Codes ('MCCs') of wear grade".[14]

According to the Applicants, the ADC arrived at the following conclusions:[15]

i. In relation to SSAB AU's 2 highest volume wear grade MCCs price undercutting ranged between 8% and 19%, which the ADC considered demonstrated that SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category.

ii. Further, a broader analysis of all sales of Q&T steel plate made by SSAB AU in the inquiry period, regardless of origin of the steel plate, indicated that SSAB AU is prepared to price aggressively and undercut Bisalloy's prices for the same models sold to the same large users of Q&T steel plate.[16] The ADC stated that this does not support Applicants' contention that its prices are consistently higher.[17]

31. Thus, the Applicants contend that Confidential Attachment 12, how it was constructed, and the accuracy of the information underlying it, was fundamental to the view formed by the ADC when it made its recommendation to the Minister at the conclusion of its inquiry. The Applicants contend that if it is wrong and does not establish the wear plate proposition that the ADC "trumpets" in REP 638, then the recommendation to continue the measures and the acceptance of that recommendation by the Minister does not represent the "correct or preferable decision" that the Review Panel is tasked with advising the Minister to make.[18]

32. The Applicants submitted that they and other companies in the group have demonstrated their bona fides with respect to Australia's anti-dumping system. The Applicants submitted that over the course of a number of investigations, they have been fully cooperative, and have never been found to be deficient in their

[14] Reference was made to the chart on page 74 of REP 638, reproduced on page 4 of the Applicants' application for review. Reference was made to Confidential Attachment 12 to REP 638.
[15] REP 638, 74.
[16] The ADC referred to the Applicants' submission of 13 June 2024 (EPR 638, Document No. 22, page 3), where the Applicants stated that at relevant times, they had applied an 'origin-agnostic sales policy'.
[17] Applicants' application for review, 3–4.
[18] Ibid 4–5.

collaboration with the ADC. The Applicants submitted further that their understanding of the intention of such measures, that the subject Australian industry should have the opportunity to make profit, unhindered by injurious dumping, subject always to the implications of factors other than dumping,[19] has been embedded in SSAB AU's Australian market sales policy. The Applicants further submitted that at all times they have intended to compete in the Australian market fairly, by continuing to make its premium Q&T steel plate products available to end users in their support of Australian resources, agricultural and construction industries, and by doing so at prices that exceed those of the Australian industry, as the measures require.[20]

33. The Applicants submitted that 214 days after the initiation of the continuation inquiry to which the application relates, the ADC placed SEF 638 on the public record, and that it was at that time that the ADC first made known to the Applicants that it intended to reach an adverse conclusion, and outlined the reason that was said to support that conclusion. The Applicants submitted the outcome relating to SSAB's wear plate pricing was not tested with the Applicants before that "essential fact" was reported. The Applicants submitted that proper inquiry would suggest that it should have been, given that the price undercutting proposition was 180 degrees opposed to the Applicants' submissions and expectations.[21]

34. The Applicants further submitted that, concerned about the proposition that its efforts to stay ahead of observable prices, steel indices, and other market indicators may not have been successful, and uninformed by the ADC as to how that had come about, SSAB AU reviewed the "C-2 Sales – 1 October 2022 to 30 September 2023" spreadsheet that had been requested and verified by the ADC and it was identified that no fields for "order date" or similar had been requested by the ADC. The Applicants further submitted that it became apparent to SSAB AU that a great many of the wear plate sales invoiced during the inquiry period to certain customers had been ordered and contracted by them before the inquiry period, and that perhaps was why the wear plate findings were so counter-intuitive from the Applicants' perspective. The Applicants further submitted that accordingly, they

[19] Reference was made to s 269TAE(2A) of the Act.
[20] For more details of the Applicants arguments, see Applicants' application for review, 5.
[21] Ibid.

doubled down on their pricing submissions and in their SEF submission, they restated their:

> *[r]igid adherence to a strategy of significant price leadership that recognises the premium status of SSAB's quenched and tempered steel plate and that actively stays well clear of Australian industry prices*.[22]

The Applicants submitted that the relevant purchase orders were collected to prove this, and columns for "Customer PO #", "Date of order", and "Date of Arrival into [name of port]" were added to the C-2 Sales spreadsheet. The Applicants stated that the information was provided to the ADC in the Applicants' submission in response to the SEF which was lodged within 20 days after the placing of the SEF on the public record.[23]

35. The Applicants referred to REP 638, which states that "SSAB has not provided any explanation of the relevance of the forward orders to the calculation of the export price".[24] The Applicants contended that it was not the case, and that the information provided was described as "[f]urther information about pricing". The Applicants submitted that the copies of the purchase orders, the contractual terms included with some of them to show they were binding arrangements, the fact that they were referred to as forward orders and were all dated prior to the inquiry period, and the matching of purchase orders with invoice lines to establish the sales that were pre-inquiry period, was all clearly evident. The Applicants submitted that they do not accept that the submission or its implications were not understood by the ADC, and notes that no effort was made by the ADC to clarify any aspect of the same.[25]

36. The Applicants submitted that the ADC's opinion that the information was incomplete or unreliable, was regrettable and that they have always been fully cooperative with the ADC. It was further submitted that the purchase orders and their dates are all clear evidence of what they say, and that there is nothing unreliable about them at all. The Applicants submitted further that the ADC was familiar with and had already accepted purchase orders in the same form from the

[22] Reference was made to the closing comments at SSAB EMEA verification re injury considerations (2), being contained in Confidential Attachment C3 of Schedule 2 to the Applicants' application for review.
[23] Applicants' application for review, 5.
[24] Reference was made to REP 638, 45.
[25] Applicants' application for review, 6.

same companies as "reliable" evidence at and following the SSAB AU verification. It was contended that those orders were all sales made before the inquiry period and at the time they were made, the "common customers" to which the ADC refers would have had the option of satisfying their requirements by purchasing from Bisalloy instead of SSAB AU, at whatever prices Bisalloy was offering at the time. The Applicants submitted further that the ADC's criticism that SSAB AU "has not provided the order dates for all sales transactions [such that] the information is incomplete" is incorrect, because that information was not relevant to provide for the sales made in the inquiry period.[26]

37. The Applicants submitted that, there can be a prolonged period over which goods exported to Australia by SSAB EMEA are stored in warehouses, and this was recognised by the ADC in REP 638 for one purpose (its export price determination)[27] but the Applicants suspected that was not being recognised by the ADC for the price comparisons. The Applicants submitted that the basis of those price comparisons was not revealed to the Applicants, and they are still unsure about how it was compiled and how the outcomes have been calculated.[28]

38. In summary, the Applicants submitted that the ADC published SEF 638 without testing its central assumption with the Applicants; gave SSAB only 20 days to respond; left the Applicants to guess what the reason might be for the adverse comparison with Bisalloy's prices; failed to appreciate the meaning and importance of the Applicants' submission and the use to which the information should have been put (which the Applicants consider is "remarkable"); and dismissed the Applicants' purchase order information as being "unreliable".[29]

39. In response to Question 10 of the application form to identify what, in the Applicants' opinion, the correct or preferable decision (or decisions) ought to be, resulting from the ground raised, the Applicants submitted that they expect that excluding pre-inquiry period sales, as must be done to ensure the proper timing of any price comparison test, will make a significant difference.[30] The Applicants submitted

[26] Ibid.
[27] Reference was made to REP 638, 44.
[28] Applicants' application for review, 6.
[29] Ibid.
[30] The Applicants submitted that, in accordance with the intention not to find itself in a position of being accused of injuring the Australian industry, and consistent with its premium product offering,

further that the time between order contract and domestic invoicing of the sales that they expected may have caused the appearance of price undercutting in Attachment 12, was extensive, because they were mill orders, and not sales from stock. The Applicants further submitted that it was also notable that some of the orders were placed by the customers prior to the Russia-Ukraine conflict that flared up on 24 February 2022. It was pointed out that that event caused serious supply chain disruption as well as substantial and immediate price increases of mill orders even over the two-month period that straddled the invasion.[31]

40. The Applicants further submitted that if their educated opinion of how Attachment 12 has been constructed and what it shows is correct, then these facts and circumstances create the likelihood that there was no price undercutting, thereby robbing the recommendation to the Minister of its essential fact. The Applicants further submitted that with no evidence of "aggressive" price undercutting of Bisalloy's prices by Q&T steel plate exported by SSAB EMEA from Sweden, the decision to secure the continuation of the measures would fall over. It was submitted that the foundation of the decision, based on the reasoning in the REP 638, will have been removed, and it will be shown not to have been the "correct or preferable decision". Instead, the Applicants submitted the "correct or preferable decision" would be a decision that the notice continues in force after the expiry day but ceases to apply in relation to SSAB EMEA as a "particular exporter" in the terms of s 269ZHG(1)(b) and s 269ZHG(4)(a)(ii) of the Act.[32]

ADC's Position

41. The ADC submitted in its s 269ZZJ submission that the pricing analysis undertaken in the inquiry and set out in REP 638 was sound and properly supported its finding that exports from Sweden undercut Australian industry pricing in the inquiry period. The ADC further submitted that it addressed the specific claim of the Applicants that

SSAB AU raised the prices in its internal price guides of certain of its products between 1 October 2021 (the earliest month date of the purchase orders provided to the ADC was August 2021) and 30 September 2023 (the last month of the inquiry period) by [redacted] and submitted that these indicative price rises far exceeded the "5%", "8%", and "19%" price undercutting accusations in REP 638. See response to Question 10 of the Applicants' application for review, page 6.

[31] See response to Question 10 of the Applicants' application for review, 7.

[32] Ibid.

the ADC failed to consider SSAB AU's forward order contract information submitted by the Applicants in response to SEF 638.

Likely effects of exports from Sweden

42. In its s 269ZZJ submission, the ADC referred to its pricing analysis set out at Section 7.7.2 of REP 638 to assess whether exports from Sweden had caused, or were likely to have caused injury to the Australian industry. The ADC stated that it analysed the selling prices of Bisalloy and SSAB AU's Swedish sourced imports (on a weighted average basis) over the inquiry period, and that the selling prices were derived from Bisalloy and SSAB AU's sales listing provided in response to industry and importer questionnaires.

43. The ADC stated that these sales listings were verified by the ADC during on-site verification of Bisalloy and SSAB AU questionnaire responses and that the ADC adjusted the sales listings to ensure comparable delivery terms across Bisalloy and SSAB AU's sales. The ADC further stated that it commenced its price analysis by comparing Bisalloy and SSAB AU's prices for all sales of wear and structural grades in aggregate (excluding armour grade plate) and then proceeded to refine the price analysis by focusing on prices for wear and structural grades separately, making the following findings from its analysis of prices in the inquiry period:

    a. Prices for the goods exported from Sweden in aggregate (excluding armour grade plate) were broadly comparable to Australian industry prices, with prices clustered within a 4% price range.

    b. Prices for wear grade exported from Sweden were up to 5% lower than Australian industry prices for wear grade Q&T steel plate.

    c. Prices for structural grade exported from Sweden were up to 28% higher than Australian industry prices.[33]

44. The ADC stated in its s 269ZZJ submission that it had observed that wear grade Q&T steel plate is the most common grade of Q&T steel plate sold in the Australian

[33] ADC's s 269ZZJ submission, 4–5 [21]–[24]. Reference was also made to page 72 of REP 638.

market accounting for approximately three quarters of the combined volume of sales of the Australian industry and SSAB AU (sourced from Sweden).[34]

45. The ADC further stated in its s 269ZZJ submission that having found price undercutting of up to 5% across all wear grade sales and given the range of different specifications available within the wear grade and the potential for price variation across those specifications, it further refined the price analysis by focusing on certain wear grade models (using MCCs as the basis of comparison) sold by both SSAB AU and Bisalloy. The ADC stated that it identified 10 common MCCs and found undercutting of 5 to 10% in aggregate terms.[35] It was stated that these 10 models accounted for nearly half of all wear grade sales by Bisalloy and SSAB AU in the Australian market and accounted for around 78% of SSAB AU's Swedish imports. The ADC stated that it then analysed prices of SSAB AU's two highest volume wear grade MCCs, within the context of key customer relationships, and found undercutting of 8 to 19%.The ADC stated that it found this to be a significant point of competition, and based on this analysis, the ADC concluded that SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category.[36]

46. During the Second Conference, the ADC provided further information relating to SSAB AU's two highest volume wear grade MCC's. This further information included that the two largest MCCs by volume of SSAB sales account for around [redacted]% of SSAB sales and that [redacted]% of these sales are to [redacted]Bisalloy's [redacted] customers [redacted]). The ADC stated that it considered this to be a significant point of competition. The ADC further stated that the levels of undercutting observed in relation to these common MCCs and common customers are significantly above the levels of undercutting observed at the broader category of common MCCs where

[34] ADC's s 269ZZJ submission, 5 [25].

[35] During the Second Conference, the ADC noted that as the margins of undercutting for the common wear grade MCCs were higher than the margins for the larger dataset of all wear grade MCCs, the ADC concluded that "the magnitude of price undercutting is higher in relation to these common MCCs than for the wear grade category in general". See Response to Request 5.a of the ADC's written response to the further information requested in the Second Conference and attached as Annexure A to the Second Conference Summary.

[36] ADC's s 269ZZJ submission, 5 [26]–[27]. Refence was also made to page 73 of REP 638 as well as Confidential Attachment 12 – "Wear – Common MCC", "Wear MCC 1" and "Wear MCC 2" worksheets.

less crossover exists with Bisalloy's customer base. Hence the conclusion that SSAB is prepared to price more aggressively where direct competition exists within the wear grade category.[37]

47. The ADC clarified during the Second Conference that SSAB sold [redacted] tonnes of 'Wear MCC 2' and [redacted] tonnes of MCC 1, to these 2 customers, which it considered to be material volume in the context of the wear grade market. The ADC further clarified that while the remaining eight common MCCs were also considered to be points of direct competition, the relative volumes for these remaining MCCs were much less significant to both SSAB AU and Bisalloy, and that the ADC was seeking to identify where Bisalloy was experiencing injury.[38]

48. During the Second Conference, the ADC clarified that all the sales transactions in both Bisalloy and SSAB AU's sales listings that were used in the undercutting analysis were based on invoice date, with no sales transactions based on contract or order date. The ADC clarified that the comparison was of sales from SSAB AU to its non-related Australian customers with Bisalloy's sales to its customers in Australia, both at invoice date.[39] During the Second Conference, the ADC clarified how it ensured that there was price comparability on both sides of the undercutting comparison in terms of: (i) the level of trade, and (ii) the physical characteristics of the product or product mix.[40]

Opportunity to respond to price analysis and assessment of forward order information provided in response to SEF 638

49. The ADC stated in its s 269ZZJ submission that the Applicants were provided an opportunity to respond to the price undercutting analysis as reported in SEF 638 and that the ADC acted consistently with its procedural obligations in the inquiry.

[37] For more details, see Response to Request 5.g (iii) and (iv) of the ADC's written response to the further information requested in the Second Conference and attached as Annexure A to the Second Conference Summary, including the ADC's responses to the additional further information requested during the Second Conference.
[38] Ibid, Response to Request 5.g (iv).
[39] See Response to Requests 1.a; 3.a; 3.b; 4.a; 4.b; 5.a and 5.b of the ADC's written response to the further information requested in the Second Conference and attached as Annexure A to the Second Conference Summary.
[40] Ibid, Response to Requests 3.e; 5.d and 5.g(iv).

50. The ADC stated that the Applicants presented the forward order information as a confidential attachment to their submission responding to SEF 638. The submission referred to the information as '*Forward order information*' under the heading '*Further information about pricing and non-subject country imports in the Australian market*'. The ADC stated that the submission provided no further explanation of the information, and was detailed in REP 638:

> *In its submission responding to SEF 638, SSAB provided two confidential attachments referring to 'forward order'. Other than noting that the two attachments form part of the submission, SSAB provided no further information about the two attachments.*
>
> *The first confidential attachment includes a worksheet relating to the commission's calculation of the deductive export price, which was calculated using SSAB AU's Australian sales. In this worksheet, SSAB added three additional columns identifying purchase order numbers, order dates and the date of arrival for certain transactions only. SSAB has not provided any explanation of the relevance of the forward orders to the calculation of the export price.*
>
> *The other confidential attachment includes copies of purchase orders relating to 13 transactions listed in the worksheet*.[41]

51. During the Second Conference, the ADC further clarified that the submission did not provide an explanation or claim as to the relevance of the information to SSAB's submission or to the inquiry more generally, nor was the relevance of the information apparent from the submission, and therefore, the ADC did not assess the information further. The ADC further clarified that it received the submission and further information from the Applicants on 25 July 2024, being the last day for submissions responding to the SEF and at this point of the investigation, given the Commissioner's recommendation to the Minister was due by 5 September 2024, the ADC did not seek further information from the Applicants. The ADC stated that it was not obvious from the submission that there were further lines of inquiry to be

[41] REP 638, 45.

made because it was not obvious from the submission how the information responded to the material findings of fact set out in the SEF.[42]

52. The ADC stated in its s 269ZZJ submission that REP 638 stated that the other confidential attachment included copies of purchase orders relating to 13 transactions listed in the worksheet.[43] The ADC further stated in its s 269ZZJ submission that it undertook a review of the information as it was presented. For the 13 transactions included in the forward order information, the ADC attempted to reconcile the information in the purchase orders to the relevant transactions in the worksheet listing SSAB AU's sales (verified by the ADC). The ADC stated that while it reconciled some unit prices as per the purchase orders to the unit prices as invoiced, the majority did not reconcile (there were discrepancies in the unit prices (including volumes) between the purchase order and the invoice). The ADC stated further that SSAB AU did not provide information relating to arrival date and for certain transactions, the ADC could not reconcile the date of arrival as provided by SSAB AU to the ABF import data relating to SSAB AU's imports. It was further stated that SSAB AU also did not provide the order dates for all sales transactions. The ADC submitted that it was important to note the incompleteness of the data that SSAB AU provided, and that of the more than 300 invoices for goods that were imported from Sweden, SSAB AU only provided 13 purchase orders relating to 140 invoices. On the basis of this review, the ADC considered that the submitted information was incomplete and appeared unreliable.[44]

53. The ADC stated in its s 269ZZJ submission that it reviewed the information to the extent possible given that it was incomplete and appeared unreliable and given the lack of explanation as to why it had been provided. The ADC submitted that it was not apparent from the Applicants' submission in response to SEF 638 that the Applicants' intention was to bring into question the adequacy or completeness of SSAB AU's sales listing that had been verified.[45] The ADC stated that the

[42] See Response to Requests 1.b.ii of the ADC's written response to the further information requested in the Second Conference and attached as Annexure A to the Second Conference Summary.
[43] ADC's s 269ZZJ submission, 6 [29] which referenced REP 638, 45.
[44] Ibid, 6–7 [30]–[32]. Reference was also made to Confidential Attachment 15 of REP 638.
[45] During the Second Conference in response to a clarification request as to why, after some analysis of the information, the ADC did not seek further clarification from SSAB as to an explanation of the information or regarding the alleged incompleteness and unreliability of the information, the ADC stated:

verification report had been provided to SSAB AU for review in May 2024 and was published on 30 May 2024. It further stated that in response to the application for review and the Applicants' claim that the ADC should have revisited its pricing undercutting analysis following receipt of the forward order information, the ADC submitted that the factual findings of price undercutting are correct findings of fact based on the verified sales listings.[46]

54. In its s 269ZZJ submission, the ADC set out the background to the provision of data submitted by SSAB AU that had been verified by the ADC following the importer questionnaire sent to SSAB AU seeking a listing of all SSAB AU's sales to its Australian customers in the inquiry period. For each sales transaction in the inquiry period, the questionnaire sought detailed information including the Australian customer, the invoice price and the date the commercial invoice was issued to the Australian customer (Worksheet 'C-2 Sales'). This information was used for the ADC's pricing analysis upon which the ADC's findings of price undercutting by SSAB AU were based. The ADC pointed out that at an importer verification visit to SSAB AU on 28 February 2024, it verified that the information provided by SSAB AU in response to the importer questionnaire (including Worksheet 'C-2 Sales') was complete, relevant and accurate. Details of the verification were set out in the Importer Verification Report published on the public record on 30 May 2024.[47]

55. The ADC further stated in its s 269ZZJ submission that it seeks to verify data provided to it to enhance the robustness of its analysis and recommendations. The ADC submitted that it engages with interested parties to obtain relevant data and then undertakes a rigorous verification process which includes the interested party reviewing the ADC's verification report and calculations. The ADC referred to the Applicants noting in their application for review that they had "demonstrated their bona fides with respect to Australia's anti-dumping system time and time again"

At this point of the investigation, given the Commissioner's recommendation to the Minister was due by 5 September 2024, the commission did not seek further information from SSAB. It was not obvious from the submission that there were further lines of inquiry to be made because it was not obvious from the submission how the information responded to the material findings of fact set out in the SEF.

See Response to Requests 1.b.ii of the ADC's written response to the further information requested in the Second Conference and attached as Annexure A to the Second Conference Summary.

[46] ADC's s 269ZZJ submission, 7 [33]–[35].

[47] Ibid [36]–[37].

pointing out that the Applicants would be aware of the ADC's rigorous verification process, and that in any event SSAB AU was notified of this during the inquiry.[48]

56. The ADC submitted that independence, objectivity and due care form the general principles of its investigative rigour, underpinning its approach to the administration of Australia's anti-dumping system, and that verification of financial and other data is a central part of the ADC's investigative rigour. The ADC further submitted that the incomplete information provided by SSAB AU as presented did not bring into the question the verified data and the findings of fact as set out in SEF 638.[49]

57. In response to the Applicants' claim in the application for review that the ADC failed to appreciate the significance of the forward order information, the ADC submitted that the claimed significance of the information was not articulated nor apparent from the submission. The ADC reiterated that the Applicants' submission referred to the information as "Forward order information" under the heading "Further information about pricing and non-subject country imports in the Australian market", providing no further explanation of the information. The ADC stated that in the application for review, the Applicants submitted that after the publication of the SEF, SSAB AU reviewed its Australian sales listing provided to the ADC in response to the importer questionnaire and identified that "a great many of the wear plate sales invoiced in the inquiry period to certain customers had been ordered and contracted by them before the inquiry period, and that perhaps this was why the wear plate findings [of price undercutting by SSAB AU] were so counter-intuitive from SSAB's perspective."[50]

58. The ADC stated in its s 269ZZJ submission that in the application for review, the Applicants submitted that the forward orders were collected to establish that the Applicants had a "[r]igid adherence to a strategy of significant price leadership that recognises the premium status of SSAB's quenched and tempered steel plate and that actively stays well clear of Australian industry prices." The ADC pointed out that in the Applicants' submission following SEF 638, this rationale or reasoning that the Applicants now include in their application for review was not made. Further, it was pointed out that the Applicants did not provide any explanation or claim as to the relevance of the information to SSAB's submission in response to SEF 638 or to the

[48] ADC's s 269ZZJ submission [38] which referenced the application for review, 15.
[49] Ibid [39]–[40].
[50] ADC's s 269ZZJ submission, 8 [41]–[42] which referenced the application for review, 15.

inquiry more generally. The ADC stated that the relevance of the forward order information to that submission was not otherwise apparent from the submission.[51] The ADC submitted that following the ADC's review of the information, and with the Commissioner's recommendation due to the Minister on 5 September 2024, it did not seek further information from SSAB AU, pointing out that it was not obvious from the submission that there were further lines of inquiry to be made. The ADC submitted that, in particular, it was not obvious from the submission how the information responded to the material findings of fact set out in SEF 638.[52]

The Bisalloy Addendum[53]

Unsound price comparisons

59. Bisalloy stated in the Bisalloy Addendum that the Applicants' basis for the first ground, relating to unsound price comparisons, rests on a false supposition that the ADC erred in its assessment of levels of price undercutting during the October 2022 to September 2023 inquiry period. Bisalloy submitted that the Applicants stated that the ADC failed to appreciate the significance of order contract information provided to it, but that it is inherently unclear how the ADC failed to appreciate these details, and therefore what arguments the Applicants are advancing to the Review Panel. Bisalloy submits that the Applicants also "bemoan the fact that they were not afforded special treatment" by the ADC during the inquiry.[54]

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[51] ADC's s 269ZZJ submission, 8 [43]–[44] which referenced the application for review, 5.
[52] ADC's s 269ZZJ submission, 8 [45].
[53] As noted in Paragraph [19] above and for reasons referred to therein, the Review Panel could not (and did not) have regard to Bisalloy's submission to the Review Panel dated 14 February 2025, in making its recommendation to the Minister, due to the operation of s 269ZZK(5). However, as also noted in Paragraph [19] above, the Review Panel decided to hold the Fourth Conference under s 269ZZHA(1) with Bisalloy for the purpose of obtaining further information in relation to the review, being the information contained in Bisalloy's submission dated 14 February 2025, including the confidential versions of Attachment 1, Attachment 2 and Attachment 3 as well as non-confidential summaries of all three confidential attachments. A non-confidential summary of the information obtained at the conference was made publicly available in accordance with s 269ZZX(1) of the Act ('the Fourth Conference Summary'). Bisalloy's submission dated 14 February 2025 was attached as Addendum 1 to the Fourth Conference Summary, and shall forthwith be referred to as the Bisalloy Addendum. Therefore, the Review Panel has had regard to the Bisalloy Addendum due to the operation of s 269ZZHA(2) of the Act, to the extent that the further information in the Bisalloy Addendum related to relevant information, within the meaning of s 269ZZK(6), and contained conclusions based on relevant information. The Review Panel has had regard to the Bisalloy Addendum due to the operation of s 269ZZHA(2) of the Act, to the extent that the further information in the Bisalloy Addendum relates to relevant information, within the meaning of s 269ZZK(6), and contained conclusions based on relevant information.
[54] Bisalloy Addendum, 2 [2].

60. Bisalloy stated in the Bisalloy Addendum that the key premise proffered by the Applicants is in questioning the construction and accuracy of Confidential Attachment 12 of the ADC's price undercutting analysis, namely that it may have included SSAB AU sales transactions not relevant to the inquiry period. Bisalloy refers to the Applicants' statement that if Confidential Attachment 12 is wrong, then it does not support the ADC's proposition that SSAB AU has undercut Bisalloy for wear grade Q&T steel plate within the range of 8 to 19 percent during the inquiry period, and that it is prepared to continue to price aggressively and undercut Bisalloy in the absence of continued measures.[55]

61. Bisalloy referred to the Applicants' expression of surprise that SEF 638 was the first time it was obvious to them that the ADC had reached the price undercutting conclusion. Bisalloy queried the Applicants' assumption that such an outcome should have been run past them prior to SEF 638. Bisalloy referred to the Dumping and Subsidy Manual – December 2021 ('the Manual')'s discussion on the SEF and its description as "a provisional document placed on the public record so that interested parties are provided the opportunity to address issues", and its reference to parties having 20 days after publication to comment on the SEF. Bisalloy submitted that at no point does the ADC consult, or is required to consult, with interested parties on SEF outcomes prior to the SEF and it was clearly not within the ADC's legislative or procedural mandate to "test" its findings with interested parties prior to the preliminary findings. Bisalloy further submitted that to do so in this case would have required the disclosure of Bisalloy's prices or an indication thereof, as materially undercut, to the applicants, and submitted that the Applicants were clearly misguided if they had assumed this would be the case. Bisalloy further submitted that the Applicants then placed a further commercial-type burden on the ADC, citing a lack of communication as to why its pricing strategies were unsuccessful. Bisalloy queried what obligation the ADC had to inform interested parties on such matters.[56]

62. Bisalloy further stated in the Bisalloy Addendum that irrespective of the Applicants' gripes, referred to above, the ambiguity of the first ground of review rested on what

[55] Ibid.
[56] Bisalloy Addendum, 2–3 [2].

appeared to be conflicting arguments in the application for review. Bisalloy referred to the following statement in the application for review:

> *SSAB AU reviewed the C-2 Sales – 1 October 2022 to 30 September 2023 spreadsheet that had been requested and verified by the Commission. It was identified that no fields for "order date" or similar had been requested by the Commission. It soon became apparent to SSAB AU that a great many of the wear plate sales invoiced during the inquiry period to certain customers had been ordered and contracted by them before the inquiry period, and that perhaps this was why the wear plate findings were so counter-intuitive from SSAB's perspective.*[57] [emphasis added by Bisalloy]

63. Bisalloy queried whether the Applicants were claiming that certain inquiry period sales should be removed, or that the ADC included within its inquiry period analysis, pre-inquiry period sales, stating that this required clarification. Bisalloy also referred to the Applicants "doubling-down" on pricing submissions relating to its "supposed" Australian price leadership strategy, a strategy that Bisalloy stated was refuted by it on multiple occasions throughout the inquiry, and which was ultimately confirmed by the ADC in REP 638.[58] Bisalloy submitted that the Applicants' SEF 638 response didn't 'double-down' on speculating whether Confidential Attachment 12 was constructed incorrectly, nor sought to emphasise that the ADC failed to appreciate the significance of order contract information, which Bisalloy referred to as "absent arguments", and on which the Applicants now placed "a singular and pivotal reliance on" in this review.[59]

64. Bisalloy further stated in the Bisalloy Addendum that in the Applicants' SEF response, under the heading "Further information about pricing and non-subject country imports in the Australian market", SSAB AU referred to three attachments as forming part of the submission, with no further details in what was SSAB AU's final submission to the continuation inquiry. Bisalloy submitted that if the Applicants had sought to place such heavy reliance on this point, it wasn't evident in the SEF response, and if they did in fact place heavy reliance, then the above-mentioned

[57] Ibid 4.
[58] Bisalloy referred to Confidential Attachments 1, 2 and 3 of the Bisalloy Addendum, its commercial-in-confidence submissions made to the ADC during the inquiry that refuted SSAB AU's claims.
[59] For more details of Bisalloy's arguments in this regard, see the Bisalloy Addendum, 4.

non-confidential narrative was wholly insufficient and fell well short of the requirements of s 269ZJ of the Act.[60]

65. Bisalloy stated in the Bisalloy Addendum that the Applicants criticised the ADC for finding that the forward order information provided was incomplete and unreliable. Bisalloy referred to the relevant part of REP 638 where the ADC addressed and assessed the Applicants' SEF submission in regard to the forward orders and stated that the ambiguity of the details provided to the ADC was clear from the assessment in REP 638.[61]

66. Bisalloy quoted from a passage in the application for review and submitted that the Applicant's assumption that pre-inquiry period sales were included in the ADC's analysis was dovetailed by the further unfounded assumption that its price increases during the inquiry period cannot have resulted in the levels of price undercutting found in REP 638. Bisalloy further submitted that the Applicants could not logically or commercially make this statement, as they were not privy to Bisalloy pricing, and contended that this assumption should therefore be dismissed.[62]

67. Bisalloy further submitted that the practice of longer lead time orders (as between order contact and invoice date) is standard industry practice and is not a unique circumstance to SSAB AU, pointing out that Bisalloy also provided longer lead time orders, including in the relevant period, and the exclusion of any such sales from the Applicants data would invalidate any comparison to Bisalloy's data. Bisalloy stated that the Applicants' situation regarding longer-lead times is not unique, and the arguments posited by the Applicants on reasons for longer lead-time sales are universal.[63]

68. In summary in relation to Ground 1, Bisalloy submitted that the Minister's decision concerning the likelihood of a continuation of material injury should the measures be allowed to expire, is therefore the correct and preferable decision. Bisalloy submitted that the Applicants had "opportunistically sought to hypothesize that the Commission's inquiry period price undercutting analysis may be incorrect". According to Bisalloy, this allegation called into question the very foundation of the

[60] Bisalloy Addendum, 4.
[61] Ibid, 5, where reference was made to a passage from REP 638, 45.
[62] Bisalloy Addendum, 5.
[63] Ibid, 5–6.

ADC's standard price undercutting assessment over the nominated inquiry period, and further submitted that the available evidence before the ADC did not support any other conclusion.[64]

Legislation and WTO framework

69. Section 269ZHF(2) of the Act requires that the Commissioner "must not recommend" that the Minister take steps to secure the continuation of the anti-dumping 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. [Emphasis added]

70. Section 269ZHF gives effect to Australia's obligations under Article 11.3 of the Anti-Dumping Agreement which is part of the agreements of the WTO. Article 11.3 of the Anti-Dumping Agreement provides that an anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review) unless the authorities determine that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. [Emphasis added]

71. Section 269TAE(2AA) of the Act provides:

> *A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.*

This enacts Australia's obligations under Article 3.1 of the Anti-Dumping Agreement which provides:

> *A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.* (emphasis added)

72. Section 269T(2AD) of the Act provides:

[64] Bisalloy Addendum, 6.

> *The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.*

73. Section 269T(2AE) of the Act provides:

> *However, subsection (2AD) does not permit any determination under this Part that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.*

Reinvestigation Request

74. After reviewing the Applicants' claims relating to Ground 1 and all related documents and submissions,[65] I considered that the Applicants' contentions raised two related issues that required reinvestigation, being:

    a. The "proper timing of any price comparison test"; and

    b. Whether the "pre-inquiry period sales" should have been excluded from the price undercutting analysis.

    Therefore, by written notice on 17 March 2025 and in accordance with s 269ZZL, I requested the ADC to reinvestigate the above two issues relating to Ground 1 ('Reinvestigation Request'). The Reinvestigation Request set out the reasons for making the request under s 269ZZL, summarised below.

Reinvestigation Issue A: Comparability of Price Undercutting Analysis

75. The Applicants had submitted in their application for review that an incorrect time comparison for price injury purposes could have occurred by using the invoice date rather than the contract date of the purchase order sales, and that any price competition with respect to the invoiced transactions took place at the time of price offers.[66] The Applicants submitted that time is a relevant consideration with respect to the injury analysis, and that at the time the offers were made, the "common customers" to which the ADC referred, would have had the option of satisfying their

[65] This included: REP 638 and Confidential Attachment 12, SEF 638 and related documents, the ADC's s 269ZZJ submission, the Bisalloy Addendum, the Second and Third Conference Summaries.
[66] Applicants' response to Request 1(a) of the summary of the Third Conference.

requirements by purchasing from Bisalloy instead of SSAB AU, at whatever prices Bisalloy was offering at the time.[67]

76. An analysis of the statutory framework and applicable WTO principles and jurisprudence in the Reinvestigation Request led to the conclusion that the ADC has an obligation to ensure comparability between prices that are being compared for the purpose of a price undercutting analysis, with respect to a likelihood of injury determination.[68] The analysis leading to this conclusion is as follows:

    (1) There is an obligation under s 269TAE(2AA) of the Act of to an ensure that a determination of material injury under s 269TAE must be "based on facts and not merely on allegations, conjecture or remote possibilities". Section 269TAE(2AA) enacts Australia's obligations under Article 3.1 of the Anti-Dumping Agreement which provides that a determination of injury, relating to Article 3 of the Anti-Dumping Agreement "shall be based on positive evidence and involve an objective examination".

    (2) It has been concluded in WTO jurisprudence that the provisions of Article 3 of the Anti-Dumping Agreement relating to the "Determination of Injury" (enacted into Australian law by s 269TAE of the Act), while not directly applicable in sunset reviews (the equivalent of continuation inquiries in Australian law), may be relevant to the interpretation of the obligations contained in Article 11.3.[69] It has been further concluded that, if such provisions are found to be relevant, the fundamental requirement of Article 3.1 that an injury determination be based on "positive evidence" and an "objective examination", is equally relevant to likelihood of injury determinations under Article 11.3.[70]

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[67] Applicants' application for review, 6.

[68] Reinvestigation Request [5]–[8], including Footnotes 6–14 for details of the analysis of the statutory framework and applicable WTO principles and jurisprudence leading to the above-mentioned conclusion.

[69] In this regard, the AB stated in *US – OCTG Sunset Reviews* that "investigating authorities are not *mandated* to follow the provisions of Article 3 when making a likelihood-of-injury determination". See AB Report, *US - OCTG Sunset Review,* [280].

[70] See AB Report, *US - OCTG Sunset Review,* [284]. See also Panel Report, *European Union - Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia (Second Complaint)*, WTO Doc WT/DS494/R (24 July 2020) [7.380]–[7.381].

(3) Applying this principle to Australian law would mean that if a provision under s 269TAE of the Act is relevant in a likelihood of injury assessment, such as an undercutting analysis under s 269TAE(1)(e), this would mean that s 269TAE(2AA) would be applicable and that the price undercutting analysis in the likelihood of injury assessment would need to be "based on facts and not merely on allegations, conjecture or remote possibilities".

(4) Further, according to WTO jurisprudence, where a price undercutting analysis is undertaken as part of a determination of injury under Article 3 (or a determination of likelihood of injury under Article 11.3), it is essential to ensure comparability between prices that are being compared, for a determination to be considered to be based on an "objective examination" and "positive evidence" in compliance with Article 3.1 (and Article 11.3).[71] Relevantly, it has been held that:

> … *the prices being compared must correspond to products and transactions that are comparable if they are to provide any reliable indication of the existence and extent of price undercutting by the dumped or subsidized imports as compared with the price of the domestic like product...*[72]

(5) Applying this principle to Australian law would mean that where a price undercutting analysis is undertaken as part of a likelihood of injury determination, it is essential to ensure comparability between prices that are being compared, for a determination to be "based on facts" and in compliance with s 269TAE(2AA) of the Act.

77. The Reinvestigation Request referred to the Second Conference during which the ADC clarified that the sales transactions in both Bisalloy and SSAB AU's sales

[71] See AB Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States ("China – GOES"),* WTO Doc WT/DS414/AB/R (12 October 2012) [200], where the AB stated that it did not see how a failure to ensure price comparability could be consistent with the requirement under Articles 3.1 that a determination of injury be based on "positive evidence" and involve an "objective examination" of, inter alia, the effect of subject imports on the prices of domestic like products. The AB went on to cite with approval the statement at [7.530] of the Panel Report that "[a]s soon as price comparisons are made, price comparability necessarily arises as an issue."

[72] Panel Report, *China − Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States ("China – Broiler Products")*, WTO Doc WT/DS427/R (2 August 2013) [7.475].

listings, for the purpose of the undercutting analysis in Confidential Attachment 12 to REP 638, were based on 'invoice date' and that no sales transactions were based on contract or order date. The ADC further clarified during the Second Conference that the comparison was of sales during the inquiry period (based on invoice date) from SSAB AU to its non-related customers in Australia with Bisalloy's sales to its customers in Australia.[73]

78. It was stated in the Reinvestigation Request that the Review Panel considered that there was validity in the Applicants' contentions relating to comparability with respect to the price undercutting analysis in respect of timing. It was reiterated that the ADC has an obligation to ensure comparability between prices that are being compared in a price undercutting analysis, to meet the requirements of s 269TAE(2AA) of the Act (and Articles 3.1 and 11.3 of the Anti-Dumping Agreement). Reference was also made to the Manual which particularly refers to "timing" with reference to ensuring that the transactions are made under the same conditions in a price undercutting analysis that compares the price of the imported goods with the sales price of the locally produced goods.[74] It was also stated in the Reinvestigation Request that the ADC and the Review Panel have previously recognised the importance of considering different lead times in an undercutting analysis, in circumstances where there are acknowledged extended lead times between the date of order (when price is set) and date of invoice, by using the order date as the relevant date for both the imported product and the domestic product.[75] It was noted that there was no indication from a review of Confidential Attachment 12 to REP 638 that the ADC took account of the different lead times or a timing adjustment in its undercutting analysis in Inquiry 638, notwithstanding that this would not be an unusual consideration in an investigation.

79. It was stated in the Reinvestigation Request that while the Review Panel agreed with the ADC and Bisalloy that there was no clear written explanation of the "forward order information" included in the Applicants' SEF Submission, the information provided should have alerted the ADC to the possibility of different lead

[73] See Reinvestigation Request [9] and the Response to Requests 1.a and 3.a of the ADC's written response to the further information requested in the Second Conference and attached as Annexure A to the Second Conference Summary.
[74] See Reinvestigation Request [12] and the Manual, 100.
[75] See Reinvestigation Request [13] and Footnote 23 which referred to *Infrabuild NSW Pty Ltd v Anti-Dumping Review Panel* [2023] FCA 1229 *('Infrabuild* case'), where the Court recognised that the Review Panel did consider the fact that there was a time lag in the undercutting analysis.

times and a timing issue in its undercutting analysis. The Review Panel stated that it did not consider that any perceived deficiencies in the Applicants' SEF Submission detracted from the ADC's obligation under s 269TAE(2AA) to ensure comparability in the price undercutting analysis, particularly since the details of the ADC's methodology for the price undercutting analysis and price comparisons, contained in Confidential Attachment 12, were not disclosed to the parties, other than in very general terms in SEF 638, and subsequently in REP 638, making it challenging for a party to coherently challenge the methodology and analysis of a price comparison.[76] Reference was also made to WTO jurisprudence which has stated that while investigating authorities may have discretion to frame their investigations and analyses in light of the information gathered by the authorities and the arguments presented to the authorities by the parties, "authorities remain bound by their overarching obligation to conduct an objective examination on the basis of positive evidence, irrespective of how the issues were presented or argued during the investigation."[77]

80. The Review Panel considered that in the circumstances, the ADC had an overriding obligation under s 269TAE(2AA) to ensure comparability in respect of timing in the price undercutting analysis, with regard to Confidential Attachment 12. The Review Panel requested the ADC to reinvestigate its findings relating to the price undercutting analysis in respect of wear grade products in order to ensure comparability, in respect of timing, in compliance with its obligations under of s 269TAE(2AA). In this regard, the ADC was requested to reinvestigate whether the appropriate price comparisons should be based on the purchase orders of both SSAB AU and Bisalloy, rather than invoice date.[78]

81. It was noted in the Reinvestigation Request that the Applicants' focus on comparability relating to timing appeared to be only in respect of purchase orders of wear plate identified as having been ordered, contracted, and priced prior to the inquiry period, although invoiced at that price in the inquiry period. It was noted that the Applicants contended that these "pre-inquiry period" sales should be excluded from the price comparison analysis as being outside the inquiry period, and that this

[76] Reinvestigation Request [15]–[16].
[77] Ibid [17] and Footnote 29 which referred to Appellate Body Report *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States* ("*China – GOES*"), WT/DS414/AB/R, [201].
[78] Reinvestigation Request [18].

would be the subject of the second part of the reinvestigation, being Issue B, discussed below. However, the Review Panel pointed out that the reinvestigation relating to the price undercutting analysis and ensuring price comparability in terms of timing, should not be limited in this way and should relate to all the transactions in the price comparison, in accordance with the ADC's obligations under s 269TAE(2AA) to ensure that the price undercutting analysis that forms the basis of its likelihood of injury determination, involves an objective examination and is "based on facts".[79]

Reinvestigation Issue B: Exclusion of Pre-Inquiry Sales

82. The second issue for reinvestigation articulated in the Reinvestigation Request related to the Applicants' contention that the so-called, "pre-inquiry period" sales (that is, transactions invoiced during the inquiry period that had been ordered and contracted before the inquiry period), should have been excluded from the price undercutting analysis.

83. In response to Question 10 of the application form to identify what, in the Applicants' opinion, the correct or preferable decision (or decisions) ought to be, resulting from the ground raised, the Applicants referred to excluding pre-inquiry period sales to ensure the proper timing of any price comparison test.[80] During the Third Conference, the Applicants contended that the so-called, "pre-inquiry period sales" (that is, transactions invoiced during the inquiry period that had been ordered and contracted before the inquiry period), should have been excluded from the price undercutting analysis. The Applicants contended that the purchase order sales were contracted prior to the inquiry period, and that the price competition with respect to those purchase orders took place before the inquiry period.[81]

84. It is quite usual in original investigations and continuation inquiries that the period of investigation for dumping is different to the period of injury analysis, which is often a longer period. This is in line with s 269T(2AD) of the Act which provides that the fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of

[79] Ibid [19].
[80] See response to Question 10 in Applicants' application for review, 6–7.
[81] See Applicants' written responses to the introductory paragraph of Request 1 and Request 1(b) of the Third Conference Summary, first and third pages of Addendum 1 (unpaginated).

determining whether material injury has been caused to an Australian industry.[82] Reference was made to REP 638 where it was stated that the inquiry period for the purpose of dumping was 1 October 2022 to 30 September 2023, which was also set out in the public notice initiating the inquiry. It was also stated in REP 638 that the ADC examined information relating to the economic condition of the Australian industry and Australian market since the measures were continued in 2019, for the purpose of assessing whether expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures were intended to prevent.

85. Since the price undercutting analysis in Inquiry 638 related to the determination of likelihood of injury (which had a longer analysis period than for dumping), it was not apparent, on the face of it, why the "pre-inquiry period" sales should have been excluded from the price undercutting analysis and why the price undercutting analysis, as part of the likelihood of injury analysis, would be limited to the inquiry period.

86. Section 269T(2AE) of the Act follows on from s 269T(2AD) (which as discussed above, permits the examination of periods before the investigation period for the purpose of determining whether material injury has been caused to an Australian industry) and provides:

> *However, subsection (2AD) does not permit any determination under this Part that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.*

87. With reference to s 269T(2AE), I considered that if the "pre-inquiry period sales" were part of export transactions that were outside the inquiry period, then there could be a basis to exclude them from the price undercutting analysis since any injury measured by the undercutting analysis cannot then be attributed to dumping.

[82] See s 269T(2AD) of the Act which provides:

> *The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.*

88. I also referred to the Manual which clarifies the roles of the investigation period, the injury analysis period and the causation analysis, stating:

> *It is the Commission's view that section 269T(2AD) allows the examination of material injury indicators before the investigation period, but it cannot support an inference or presumption that material injury identified as occurring before the investigation period can be attributed to dumped imports*.[83]

89. Therefore, based on the above discussion, I considered that if the "pre-inquiry period sales" were part of export transactions that were actually outside the inquiry period (by invoice date), there could be a basis to exclude them from the price undercutting analysis since any injury (in the form of undercutting) cannot then be attributed to dumping. However, it was pointed out that the Review Panel's understanding from the C2 Sales spreadsheet and the Third Conference is that those purchase orders falling outside the inquiry period, were in fact part of the relevant export transactions of SSAB AU, as reflected in the C2 Sales spreadsheet, that were included in the dumping calculation for the inquiry period.[84]

90. I therefore requested, if the ADC's reinvestigation of Reinvestigation Issue A resulted in the price comparison being based on the purchase order date (rather than invoice date), then the ADC was requested to reinvestigate and further consider, the Applicants' contention that the "pre-inquiry period sales" should have been excluded from the price undercutting analysis. In this regard the ADC was requested, in its reinvestigation, to take into consideration its obligations under s 269T(2AD) and s 269T(2AE) of the Act.[85]

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[83] Reinvestigation Request [23]-[25] and the Manual, 99.
[84] Reinvestigation Request [27] and Footnote 38 in which it was noted that during the Third Conference, the Applicants confirmed that:

- the transactions that were "in" the period for the export price side of the dumping analysis were SSAB Swedish Steel invoices issued in that period, as provided in the C-2 Sales spreadsheet.
- The sales were part of the data collected by the Commission in the C-2 Sales spreadsheet and that no "order date" information was requested in the C-2 sales spreadsheet.
- The invoices for the PO sales were part of the dumping calculation in the inquiry period.

[85] Reinvestigation Request [28].

Reinvestigation Report

91. The ADC conducted its reinvestigation and on 5 June 2025 published a preliminary Reinvestigation Report on its website which outlined the Commissioner's preliminary findings ('the Preliminary Reinvestigation Report') and invited interested parties to lodge submissions in response to the report by 18 June 2025. The final Reinvestigation Report was provided to the Review Panel on 18 July 2025 in accordance with s 269ZZL ('Reinvestigation Report'), which is summarised below in respect of each of the two issues relating to Ground 1, identified in the Reinvestigation Request.

Reinvestigation Report Issue A: Proper Timing of Price Comparison Test

92. The ADC stated in the Reinvestigation Report that it had requested additional information and the purchase order data considered necessary to establish whether purchase order date would be the appropriate point of price comparison. The ADC stated that SSAB AU claimed that the date of the purchase order was the date of sale while Bisalloy had submitted that the material terms of sale were established at the invoice date, rather than the purchase order date. The ADC stated that both parties completed Requests for Information ('RFI') and provided information in support of their respective claims.[86]

93. In the Reinvestigation Report, the ADC sets out in detail the additional information it requested from the parties and the purchase order data considered necessary to establish whether purchase order date would be the appropriate point of price comparison. This included supporting documentation from SSAB AU in relation to the largest purchase orders by volume to demonstrate that the purchase order resulted in the manufacture of the goods ordered, and that those specific goods were delivered and invoiced in satisfaction of the terms implicit to the purchase order. The ADC stated that it also held a teleconference with two significant purchasers of the goods in the Australian market to inform its understanding of their purchasing processes and expectations. The ADC elaborated on its methodology of

[86] Reinvestigation Report, 10–11.

assessing and verifying the information and its areas of further enquiry, such as stagged delivery in relation to purchase orders resulting in multiple invoices.[87]

94. The ADC stated that having assessed the information provided by SSAB AU, within the context of this case and how the facts are applied to the legislative requirements, policy and practice, it was satisfied that where the price and quantity on the sales invoice reflected the price and quantity on the purchase order (noting that staggered delivery was consistent with customer expectations at the time of ordering), that it was reasonable to conclude that the material terms of sale were established at the date of purchase order.[88] The ADC considered that such a finding reflected the specific circumstances of the sales the subject of this reinvestigation. Therefore, the ADC found that the proper timing for price comparison, in these circumstances, was the purchase order date. The ADC stated that this was in accordance with SSAB AU's submission that the material terms of the contract are set at the date of the purchase order and that is therefore the appropriate timing for a price comparison.[89]

Reinvestigation Report Issue B: Exclusion of Pre-Inquiry Sales

95. The ADC reiterated in the Reinvestigation Report that it considered that a price undercutting analysis undertaken as part of a continuation inquiry is done for the purposes of informing its consideration of the likelihood of the recurrence or continuation of material injury in the absence of measures. It was further stated in the Reinvestigation Report that, in that context, the ADC assessed the likelihood of the recurrence or continuation of material injury for the purposes of this continuation inquiry taking into consideration its obligations under sections 269T(2AD) and 269T(2AE), in the context of a continuation inquiry. The ADC stated that these sections expressly relate to the determination and attribution of material injury to dumping in the context of an investigation, and that a continuation inquiry examines

[87] For details of the ADC's methodology of assessing and verifying the information and its areas of further enquiry, see Reinvestigation Report, 10–11

[88] It should be noted that the ADC found that the material terms for 97% (by volume) of SSAB AU's invoiced sales were established in the purchase orders which led the finding that the proper timing for price comparison, in these circumstances, was the purchase order date. See Reinvestigation Report, 4 and 11. During the Fifth Conference, the ADC confirmed that all the sales that were excluded were structural grade and that no wear grade sales were excluded. See Response to Request 1 of Addendum 1 to the Fifth Conference Summary.

[89] Reinvestigation Report, 11–12.

the likelihood of the continuation or recurrence of material injury in the absence of measures.[90]

96. The ADC further noted in the Reinvestigation Report that a price undercutting analysis for the purposes of a continuation inquiry will generally be undertaken for the inquiry period, being the period most proximate to the impending expiry of measures. However, the ADC also noted that a continuation inquiry will, at times, require the contemplation of the likelihood of the continuation or recurrence of material injury where no price undercutting analysis is possible, such as where there has been a cessation of exports following the imposition of measures. In this regard, the ADC considered that a price undercutting analysis is not a mandatory form of analysis when contemplating the likelihood of the continuation or recurrence of material injury, but rather an analysis that forms part of a broader range of considerations that the ADC may undertake as part of its inquiry.

97. The ADC stated further in the Reinvestigation Report, that it therefore considered that it followed that there is no mandated timeframe to which the ADC must limit its price undercutting analysis, and no grounds upon which the ADC is compelled to exclude the pre-inquiry purchase order sales identified by SSAB AU.[91]

98. The ADC considered instead that the appropriate course of action was to include the sales that occurred during the inquiry period but for which the purchase orders were placed in the period prior to the inquiry period as part of its price comparability assessment. The ADC stated that it considered this approach to be consistent with principles raised by SSAB AU in its application to the Review Panel (and reiterated in the RFI provided to the ADC for the purposes of the reinvestigation).[92]

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[90] Ibid 13.

[91] Reinvestigation Report [13].

[92] Ibid, 13–14. The ADC made reference to the following two statements of SSAB AU:

> *At the time they were made, the 'common customers' to which the Commission refers, would have had the option of satisfying their requirements by purchasing from Bisalloy instead of SSAB, at whatever prices Bisalloy was offering at the time.*
>
> and:
>
> *The simple fact of the matter is that the PO sales were contracted prior to the inquiry period. The price competition with respect to the wear plate as identified by the Commission, purportedly indicating price undercutting by SSAB, did not exist. Any price competition with respect to those purchase orders took place before the inquiry period.*

See Applicants application for review, 6:

Revised Undercutting Analysis Based on Outcome of Reinvestigation Issue A and B

99. The ADC stated in the Reinvestigation Report that for the purposes of revising the analysis undertaken in REP 638 to reflect the purchase order date as the appropriate date of price comparison, the ADC sought (among other information) purchase order information from both SSAB AU[93] and Bisalloy[94] that related to the pre-inquiry period to allow a proper comparison. The ADC stated that it then conducted a price undercutting analysis using purchase order date as the date of comparison. It was further stated that this analysis was conducted within the context of the findings in REP 638 that:

    - undercutting was evident only for wear grade Q&T steel plate, and
    - the levels of undercutting were higher in respect of certain MCCs sold to certain common customers.[95]

[93] During the Fifth Conference, the ADC clarified that the worksheet "SSAB Aust arms length sales" in Confidential Attachment 1 was based on the updated C2 Sales spreadsheet (that was attached to the Applicants' submission to the ADC of 25 July 2025). The ADC pointed out that it included additional information requested from SSAB in respect of each transaction for the purpose of the reinvestigation, including: purchase order numbers; purchase order date; unit price as per purchase order; estimated delivery date as per purchase order; actual date of arrival in Australia; date of delivery; quantity; date invoice paid etc. In addition, the ADC stated during the Fifth Conference that it requested that SSAB add additional lines of data as necessary, for any purchase orders raised during the inquiry period where the sales invoice was issued outside the inquiry period. During the Fifth Conference the Reviewing Panel Member requested further clarification, and requested that the ADC identify and isolate (in a separate schedule) the additional transactions with purchase order ('PO') dates in December 2021 or February 2022 but where the invoice date falls outside the Inquiry Period (1 October 2022 – 30 September 2023). However, following the Fifth Conference, the ADC confirmed that there were in fact no transactions where the invoice date fell outside the inquiry period, and therefore no new lines of data were added by SSAB. See Response to Request 5.b of Addendum 1 to the Fifth Conference Summary, including the ADC's responses to the additional clarifications requested during the conference.

[94] During the Fifth Conference, the ADC clarified that all sales listed in the "Bisalloy PO Sales" worksheet were considered for the purposes of the price comparison, however the nature of a price comparison was such that only the most relevant information for price comparison purposes was used. It was pointed out that this necessarily involved the exercise of judgement. For example, some of the volume of sales contained on the "Bisalloy PO Sales" worksheet related to MCC's that were not relevant for price comparison purposes, or were sold to destinations that were not considered appropriate for comparison purposes. As such, the ADC pointed out that while all of the Bisalloy data was used for the purposes of the analysis, filters were used to refine the analysis and, in this instance, Bisalloy's sales transactions were filtered by "MCC" and "State" to refine the analysis to sales of certain wear grade models to ensure the greatest degree of price comparability with SSAB AU sales. See Response to Request 5.d of Addendum 1 to the Fifth Conference Summary.

[95] Reinvestigation Report,14.

100. It was stated in the Reinvestigation Report that the approach adopted by the ADC in conducting the price undercutting analysis was as follows. The ADC identified from data submitted by SSAB AU that certain purchase orders had selling prices that were materially different to the sales invoice relating to that purchase order. The ADC considered that this material difference in price invalidated those purchase orders from any comparison based on purchase order date (i.e. the price on the purchase order is not representative of the final price paid in relation to the supply of the goods).[96] Having excluded those purchase orders, the commission identified that:

    - approximately 90% of purchase orders for wear grade Q&T steel plate related to 2 customers, both of which also source the goods from Bisalloy.
    - approximately 80% of purchase orders for those 2 customers fell in 2 months only.[97]

101. The ADC also noted that for the 2 key months, the prices quoted for these customers were the same (or very similar) across multiple MCCs. This was a relevant consideration when the additional data requested from SSAB AU and Bisalloy was compared. For the 2 months where the majority of SSAB AU's purchase orders were received, SSAB AU had 4 MCCs relating to those purchase orders, while Bisalloy only had a single comparable MCC. Noting the uniformity of prices across the 4 SSAB AU MCCs, the ADC considered it reasonable to compare MCCs at a higher point of comparison (using MCC categories of grade, Brinell hardness and thickness) rather than the extended MCC which included width and length.[98]

[96] During the Fifth Conference, the ADC clarified that in aggregate terms, for the total volume of SSAB AU sales of both wear and structural grade, around 3% of sales were excluded (all of which were structural grade), and around 97% were included. All wear grade sales are included and for structural grade, [redacted]% of sales were excluded. See Response to Request 1 of Addendum 1 to the Fifth Conference Summary.

[97] See Reinvestigation Report, 14.

[98] Ibid. During the Fifth Conference, the ADC clarified that "grade, Brinell hardness and thickness" was the basis of comparison and that additional MCC categories of length and width were disregarded as they were found to have no impact on SSAB AU pricing. The ADC further clarified that the purpose of the term "higher point of comparison" was meant to refer to the fact that on the data available it was considered reasonable to only compare the three identified MCC's. See Response to Request 2 of Addendum 1 to the Fifth Conference Summary.

102. The Reinvestigation Report stated that with these considerations in mind, the ADC focussed its undercutting analysis on the higher level MCC, the subject of the vast majority of SSAB AU's wear grade sales for those 2 customers and those 2 months. The ADC noted from Bisalloy's data that while Bisalloy did not have purchase orders directly from either of those 2 customers in the 2 months identified, it did have purchase orders for other customers, and specifically a distributor that supplies one of the customers. The ADC considered that the price listed on the purchase order for Bisalloy's distributor represented a reasonable basis for the price comparison because:

    - the Bisalloy purchase orders are contemporaneous with the SSAB AU purchase orders and therefore represent a reasonable indicator of the price Bisalloy was offering at the time SSAB AU secured sales with its customers,

    - the distributor was a purchaser of large volumes of Q&T steel plate from Bisalloy (a large volume purchaser is more likely to obtain price advantages relative to a smaller volume purchaser), and

    - the distributor was in the same state as the 2 customers identified, ensuring the price comparison includes the costs of transporting the goods to a comparable location.[99]

103. The ADC noted in the Reinvestigation Report that the price to the distributor is at a different level of trade to the SSAB AU sales, however, it considered it was nonetheless reasonable for the purposes of price comparability. This is because the ADC considers that were Bisalloy to sell directly to the end customer rather than via the distributor, it would likely do so at a price at least equal to the price agreed with the distributor. The ADC stated that the price would be potentially higher noting the distributor would be adding a margin in selling to the end user that would make its price to the end user higher than that which Bisalloy is selling to the distributor for.[100]

[99] See Reinvestigation Report, 14–15.

[100] See Reinvestigation Report, 15. During the Fifth Conference, the ADC clarified that it considered the undercutting percentage would have been higher if an adjustment was made for the level of trade. For more details of the explanation, see response to Request 3 of Addendum 1 to the Fifth Conference Summary.

104. The ADC determined in the Reinvestigation Report that, based on this comparison, SSAB AU undercut Bisalloy by between 7% and 9%,[101] with the ADC's price undercutting analysis contained in Confidential Attachment 1 to the Reinvestigation Report. The ADC stated in the Reinvestigation Report that its finding that SSAB AU had undercut Bisalloy, based on using the purchase order date as the relevant point of comparison, was consistent with the finding of REP 638, though the ADC noted the degree of undercutting using this approach is lower.[102]

105. During the Fifth Conference, the ADC confirmed that for the reasons detailed above,[103] the analysis undertaken for the reinvestigation was more targeted than that conducted in REP 638. In response to a request to clarify the range of undercutting for the same two [redacted] customers in REP 638, with reference to Confidential Attachment 12 to REP 638, the ADC referred to worksheets "Wear MCC 1" and "Wear MCC 2" in Confidential Attachment 12 to REP 638, where on worksheet "Wear MCC 1" the range of undercutting was between 17% and 19% and on worksheet "Wear MCC 2" the range of undercutting was between 8% and 17%.[104]

106. During the Fifth Conference, the ADC clarified that the same analysis as that conducted in REP 638 (quarterly by grade and quarterly for top 10 MCC) was not conducted for the reinvestigation. The ADC stated that because it was evident from SSAB AU data that purchase orders extended from August 2021 to September 2023 (that were then invoiced in the inquiry period), the period of data that needed to be examined was much longer in the reinvestigation. The ADC stated that it therefore conducted the analysis using the periods December 2021 and February 2022 and this decision to focus on these specific periods was made based on a range of considerations including:

    - the time and resources available to conduct the reinvestigation,

[101] During the Fifth Conference, the ADC confirmed that the percentage undercutting, as reflected in the "Price Undercutting by PO" sheet of Confidential Attachment 1 was calculated with reference to the total value of the sales for the period divided by the total volume of sales for the period, for SSAB AU and Bisalloy, respectively, that is, weighted average. See Response to Request 4.a of Addendum 1 to the Fifth Conference Summary.
[102] See Reinvestigation Report, 15.
[103] These reasons were also outlined in detail during the Fifth Conference. See Explanation for Response to Request 4.b of Addendum 1 to the Fifth Conference Summary.
[104] See Response to Request 6 of Addendum 1 to the Fifth Conference Summary.

- the scale/scope of additional data required from Bisalloy that would be required to undertake the analysis based on purchase order date rather than sales invoice data, and

- the basis of the finding in REP 638 that underpinned the ADC recommendation to continue measures, that is that "SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category".

The ADC also clarified during the Fifth Conference that, having considered SSAB AU's C2 Sales data, it was evident that over 90% of SSAB's wear grade sales were to 2 customers ([redacted]) and that around 80% of sales to these customers related to purchase orders raised in two months (December 2021 and February 2022), which the ADC considered represented a meaningful basis of comparison.[105]

107. During the Fifth Conference, the ADC also clarified that the change to considering the data by purchase order date resulted in significantly reduced points of price comparison. The ADC also stated that upon review of the sales data provided by SSAB, it was noted that for each purchase order there could be a large number of sales invoices over an extended period of time, which expanded the number of points of sale invoice comparison for that period. The ADC stated that by moving to an analysis by purchase order date, the ADC could more clearly target the date of the purchase orders whereas the analysis in REP 638 by sales invoice date had to cover sales invoices spread across the entire inquiry period. The ADC further clarified that while the ADC generally undertakes a quarterly price undercutting analysis, as was done in REP 638, a monthly analysis where possible is in fact preferable as it provides greater contemporaneity of pricing when considering purchasing decisions. The ADC considered that moving to an analysis by purchase

[105] See Explanation for Response to Request 4.b of Addendum 1 to the Fifth Conference Summary. Further details were provided by the ADC during the Fifth Conference, relating to the challenges faced by Bisalloy in providing an extended data set within a timeframe suitable, leading to the case team's decision to narrow the scope of the information request to Bisalloy to capture information relevant for price comparison purposes for the period December 2021 to February 2022 given the high volume of sales during these months.

order date in the reinvestigation rendered the quarterly analysis undertaken in REP 638 unnecessary.[106]

108. The ADC considered the revised analysis supported the finding in REP 638 that SSAB AU was prepared to price more aggressively where direct competition exists within the wear grade category.[107] During the Fifth Conference, the ADC clarified that given the time and resources available for reinvestigation and the issues detailed in terms of the data available for comparison, the ADC's reinvestigation focussed on the key finding in REP 638 that "SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category". The ADC further clarified during the Fifth Conference that the conclusion reached in REP 638 for using a sales invoice comparison remains the same for when purchase orders are used as the basis of price comparison, and was satisfied that this conclusion was supported, given the following:

- [redacted] accounted for over 90% of SSAB AU's wear grade sales
- The volume of these sales is [redacted] tonnes and the value of these sales is [redacted]
- Around 80% of sales relating to [redacted] derived from purchase orders raised in 2 months, December 2021 and February 2022
- Undercutting was evident in relation to these purchase orders
- SSAB AU's prices for the same MCC were [redacted] around the same time sales were made to [redacted][108]

[106] See Explanation for Response to Request 4.b of Addendum 1 to the Fifth Conference Summary.
[107] See Reinvestigation Report, 15.
[108] See Explanation for Response to Request 4.b of Addendum 1 to the Fifth Conference Summary. page 5. On the final dot point above, the ADC noted during the Fifth Conference, with reference to the tab "SSAB PO Pricing by MCC" of Confidential Attachment 1 to the Reinvestigation Report, that prices to [redacted].

109. During the Fifth Conference, the ADC stated that the fact that the prices paid by these customers [redacted] supports the ADC finding that "SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category". Further, it was stated that this finding underpins the ADC's view that in the absence of measures SSAB AU would likely continue to aggressively target common wear grade customers and in so doing undercut Bisalloy's prices leading to the continuation of material injury that the measures are intended to prevent.[109]

110. The ADC therefore reaffirmed the following conclusions drawn in REP 638:

> *Noting that Bisalloy and SSAB are the largest suppliers of Q&T steel plate in the Australian market, and in the face of intense competition within the market, the commission considers that should the measures expire, SSAB AU will likely undercut Bisalloy in order to maintain or increase its market share. Specifically, the commission considers that if the measures expire, the competitive price advantage that SSAB AU currently maintains on wear plate would likely be even greater, while the premium it has on structural grade Q&T steel plate would likely be lessened, reducing the Australian industry's competitive advantage in relation to structural grade plate. In a price competitive market, the expiration of measures would therefore further increase the attractiveness of dumped exports from Sweden relative to the Australian industry's like goods*.[110]

111. The Commissioner therefore found, upon reinvestigation, that the Minister's decision in Continuation Inquiry 638 should be affirmed.[111]

Conference with the Applicants held on 28 July 2025 ('the Sixth Conference') and Consideration of Preliminary Issue Arising from Reinvestigation

112. Following receipt of the Reinvestigation Report on 18 July 2025, in a letter dated 21 July 2025, the Applicants requested that consideration be given to the Review

[109] See Explanation for Response to Request 4.b of Addendum 1 to the Fifth Conference Summary, 5.
[110] See REP 638, 79.
[111] See Reinvestigation Report, 15.

Panel holding a conference under s 269ZZHA of the Act to address the Review Panel relating to s 269ZZK(4A) of the Act.[112]

113. In a letter dated 22 July 2025, the Review Panel requested that the Applicants provide an outline of the further information they wished to provide to the Review Panel, together with reasons to support the request that the Review Panel exercise its discretion to hold a conference with the Applicants to obtain that further information. On 23 July 2025, the Applicants' legal representative submitted an outline of the further information that the Applicants wished to provide and reasons to support the exercise of discretion to hold a conference. After consideration of the outline of the further information and reasons to support the exercise of discretion to hold a conference, I decided to hold a conference with the Applicants under s 269ZZHA, which was held on 28 July 2025 (the Sixth Conference').

114. During the Sixth Conference, the Applicants provided further information for the purposes of the review.[113] The Applicants referred to the Reinvestigation Request that required the ADC to investigate a specific finding that formed the basis of the reviewable decision, being the finding that the ADC's pricing analysis showed that in relation to wear grade plate SSAB AU's imports of dumped goods from Sweden undercut the Australian industry's prices. The Applicants submitted that under s 269ZZL(2), the Commissioner must conduct a reinvestigation in accordance with the requirements of the Review Panel.

115. Prior to analysing and considering the substantial issues of Ground 1 including with reference to the Reinvestigation Report, I will address the preliminary issue raised by the Applicants' submissions in the Sixth Conference. The Applicants submit that the Review Panel should conclude that its requirements and opinions expressed in the Reinvestigation Request have not been addressed to the Review Panel's satisfaction and that the Review Panel's reservations as to whether the ADC's recommendations to the Minister were correct or preferable, have not been resolved. In summary, the Applicants contend that the Commissioner did not

[112] Section 269ZZK(4A) of the Act provides:

> *If the Review Panel gives the Commissioner a notice under subsection 269ZZL(1), then, in making the recommendation, the Review Panel must have regard to the report the Commissioner gives the Panel under subsection 269ZZL(2).*

[113] For details of the further information provided during the Sixth Conference, see Addendum 1 to the Sixth Conference Summary.

conduct the reinvestigation in accordance with the requirements of the Review Panel under s 269ZZL(2) of the Act.

116. It should be noted that the consideration of this preliminary issue relating to the Reinvestigation Report is only focussed on whether the Commissioner conducted the reinvestigation in accordance with the requirements of the Review Panel under s 269ZZL(2) of the Act, and is not a consideration of the substantive issues in the Reinvestigation Report, including methodology and calculations, which will be discussed in detail below, under the section entitled, "Analysis and Consideration of Ground 1".

Consideration of Applicants' Submission on First Requirement of the Reinvestigation Request

117. During the Sixth Conference, the Applicants submitted that the ADC did not follow the first requirement of the Reinvestigation Request to reinvestigate its findings relating to the price undercutting analysis in respect of wear grade products to ensure comparability, in respect of timing, in compliance with its obligations under s 269TAE(2AA), in particular to reinvestigate whether the appropriate price comparisons should be based on the purchase orders of both SSAB AU and Bisalloy, rather than their invoice date. The Applicants contended that the ADC did not follow this requirement because it maintained its focus, in the Preliminary Reinvestigation report, on a comparison outside the inquiry period. The Applicants submitted that the Review Panel had made it clear, in the Reinvestigation Request, that SSAB's contentions about the price undercutting analysis relating to comparability in respect of timing, were valid.[114]

118. The Applicants are correct in their submission that the Review Panel had made it clear, in the Reinvestigation Request, that SSAB's contentions about the price undercutting analysis relating to comparability in respect of timing were valid. In the Reinvestigation Request, I particularly referred to the Applicants' contention that an incorrect time comparison for price injury purposes could have occurred by using the invoice date rather than the contract date of the purchase order sales and that any price competition with respect to the invoiced transactions took place at the time of price offers. I also referred to the Applicants' submission that time is a

[114] Ibid.

relevant consideration with respect to the injury analysis, and that at the time the offers were made, the "common customers" to which the ADC referred would have had the option of satisfying their requirements by purchasing from Bisalloy instead of SSAB, at whatever prices Bisalloy was offering at the time.[115]

119. In the Reinvestigation Request, I had discussed in detail the statutory framework and WTO jurisprudence that led me to conclude that:

- while the Act does not set out any particular methodology for undertaking the likelihood of injury assessment under s 269ZHF, consistent with the position under Article 11.3 of the Anti-Dumping Agreement and WTO jurisprudence, it is clear, however, that the ADC must arrive at reasoned conclusions on the basis of facts and positive evidence, in respect of such a likelihood of injury assessment; and

- the ADC has an obligation to ensure comparability between prices that are being compared in a price undercutting analysis, to meet the requirements of s 269TAE(2AA) of the Act (and Articles 3.1 and 11.3 of the Anti-Dumping Agreement). I also referred to the Manual which particularly refers to "timing" with reference to ensuring that the transactions are made under the same conditions in a price undercutting analysis that compares the price of the imported goods with the sales price of the locally produced goods.[116]

120. In the Reinvestigation Request, I also specifically referred to the ADC and the Review Panel having previously recognised the importance of considering different lead times in an undercutting analysis, in circumstances where there are acknowledged extended lead times between the date of order (when price is set) and date of invoice, by using the order date as the relevant date for both the imported product and the domestic product.[117]

121. The ADC had clarified that the sales transactions in both Bisalloy and SSAB AU's sales listings, for the purpose of the undercutting analysis in Confidential Attachment 12 to REP 638, were based on 'invoice date' and that no sales transactions were based on contract or order date. There was also no indication

[115] Reinvestigation Request, [11].
[116] Ibid [6]–[8], [12].
[117] See paragraph [13] of the Reinvestigation Request.

that the ADC took account of the different lead times or a timing adjustment in its undercutting analysis in REP 638, notwithstanding that this would not be an unusual consideration in an investigation. I considered that in the circumstances the ADC had an overriding obligation under s 269TAE(2AA) to ensure comparability in respect of timing in the price undercutting analysis and therefore requested the ADC to reinvestigate its findings relating to the price undercutting analysis in respect of wear grade products to ensure comparability, in respect of timing. I particular stated that, in this regard, the ADC should reinvestigate whether the appropriate price comparisons should be based on the purchase orders of both SSAB AU and Bisalloy, rather than invoice date.[118]

122. During the Sixth Conference, the Applicants contended that the ADC did not follow this first requirement of the Reinvestigation Request because, (i) firstly, it maintained its focus, in the Preliminary Reinvestigation Report, on a comparison outside the inquiry period, and (ii) secondly, that in the Preliminary Reinvestigation Report, the ADC did not take account of different lead times nor make a timing adjustment for pre-inquiry period purchase orders in its undercutting analysis.

123. I disagree with the Applicants' first contention that the ADC did not follow the first requirement of the Reinvestigation Request because it 'maintained its focus' in the Preliminary Reinvestigation report, on a comparison outside the inquiry period. I had noted in the Reinvestigation Request that the Applicants' focus in terms of comparability relating to timing, appeared to be only in respect of purchase orders of wear plate identified as having been ordered, contracted, and priced prior to the inquiry period, although invoiced at that price in the inquiry period ("pre-inquiry period" purchase order sales) which the Applicants had contended should be excluded from the price comparison analysis. It was particularly stated in the Reinvestigation Request that the question of exclusion of the pre-inquiry period purchase order sales would form the subject of the second part of the reinvestigation (Section B) and that the reinvestigation relating to the price undercutting analysis and ensuring price comparability in terms of timing, should not be limited to the pre-inquiry period purchase order sales, but should relate to "all the transactions in the price comparison". At the time of the Reinvestigation Request, the Review Panel was unaware of the extent that the purchase orders of those transactions that were part of the price comparison, with invoice dates falling

[118] Ibid [14], [18].

in the inquiry period, would have purchase order dates prior to the inquiry period. It should be noted that the transactions that were part of the price comparison in REP 638 were those transactions listed in SSAB AU's C-2 spreadsheet, in respect of which the invoice dates fell into the inquiry period. These were also the transactions included in the dumping calculation for the inquiry period.[119]

124. I do not consider that it can be said that the ADC "maintained" a focus in the Preliminary Reinvestigation Report, on a comparison outside the inquiry period, even though most (or even all) the purchase order dates relating to those transactions in the price comparison (with invoice dates falling in the inquiry period) may have been before the inquiry period. There is nothing to suggest that in this regard the ADC did not conduct the reinvestigation in accordance with the requirements of the Review Panel relating to the transactions that were part of the price comparison. It was confirmed during the Fifth Conference that the worksheet "SSAB Aust arms length sales" in Confidential Attachment 1 is based on the C2 Sales spreadsheet, but includes additional information relating to, among other, purchase order numbers and purchase order dates.[120]

125. I turn now to the Applicants' second contention relating to the first requirement of the Reinvestigation Request, that the ADC did not take account of different lead times nor make a timing adjustment for the pre-inquiry period purchase orders, in its reinvestigated undercutting analysis. There does not seem to be support for the Applicant's contention since the Reinvestigation Report sets out in some detail the process of obtaining additional information and submissions from interested parties and the examination and analysis as to whether the appropriate price comparisons should be based on the purchase orders of both SSAB AU and Bisalloy, rather than invoice date, in order to ensure comparability in respect of timing in the price undercutting analysis. Having assessed the additional information provided, within the context of the reinvestigation and "how the facts are applied to the legislative requirements, policy and practice", the ADC was satisfied that it was reasonable to conclude that the material terms of sale were established at the date of purchase

[119] This was confirmed by the ADC during the Fifth Conference. See Response to Request 5 of Addendum 1 to the Fifth Conference Summary. During the Third Conference, the Applicants also confirmed that the "transactions that were "in" the period for the export price side of the dumping analysis were SSAB Swedish Steel invoices issued in that period, as provided in the C-2 Sales spreadsheet". See Response to Request 1(a) of Addendum 1 to the Third Conference Summary, which included the Applicants' response to the further clarification sought during the conference.
[120] See Response to Request 5 of Addendum 1 to the Fifth Conference Summary.

order, and further that in the circumstances, the appropriate point for price comparison (for 97% of sales) was the purchase order date.[121]

126. The purchase order date therefore formed the basis of the comparison for the reinvestigated price undercutting analysis for both SSAB AU and Bisalloy. Using the purchase order date as the basis of the price undercutting analysis, rather than the invoice date, appears to take cognisance of:

- the Applicants' contention referred to in the Reinvestigation Request that an incorrect time comparison for price injury purposes could have occurred by using the invoice date rather than the contract date of the purchase order sales and that any price competition with respect to the invoiced transactions took place at the time of price offers;

- the Applicants' contention referred to in the Reinvestigation Request that time is a relevant consideration with respect to the injury analysis, and that at the time the offers were made, the "common customers" to which the ADC referred, would have had the option of satisfying their requirements by purchasing from Bisalloy instead of SSAB, at whatever prices Bisalloy was offering at the time; and

- the specific examples referred to in Reinvestigation Request of the ADC and the Review Panel having previously recognised the importance of considering different lead times in an undercutting analysis, in circumstances where there are acknowledged extended lead times between the date of order (when price is set) and date of invoice, by using the order date as the relevant date for both the imported product and the domestic product.

127. During the Sixth Conference, I requested that the Applicants substantiate the contention that, in the Preliminary Reinvestigation Report, the ADC "did not take account of different lead times nor make a timing adjustment for pre-inquiry period purchase orders in its undercutting analysis". In this regard, the Applicants were requested to clarify why they considered that the ADC's revision of its analysis undertaken in REP 638 (which was based on invoice date) "to reflect the purchase

[121] See Reinvestigation Report, 12. According to the Reinvestigation Report, this finding was in accordance with the Applicants' submissions during the reinvestigation, while Bisalloy had argued that the material terms of sale for the purpose for price comparison should be established at invoice date.

order date as the appropriate date of price comparison, consistent with SSAB's submission", did not address the issue of timing and different lead times ('the First Clarification Request').

128. The Applicants, in responding to the First Clarification Request during the Sixth Conference made a number of points in support of its contention.[122] I will set out each point made by the Applicants and thereafter address the issue raised:

    a. Applicants' Point

    The Applicants submitted that the Preliminary Reinvestigation Report attempted to make a comparison of certain pre-inquiry period purchase orders placed on SSAB AU with certain pre-inquiry period purchase orders placed on Bisalloy at the same pre-inquiry period time, referring to a statement by the ADC that it "conducted a price undercutting analysis using purchase order date as the date of comparison".

    Review Panel Response

    It is apparent from the Reinvestigation Report, including the Confidential Attachments to the Reinvestigation Report and from the Fifth Conference Summary, that the price undercutting analysis undertaken for the reinvestigation, which reflects the purchase order date as the appropriate date of price comparison, is more targeted than that undertaken in REP 638. It is also apparent that this analysis was conducted within the context of the findings in REP 638 that undercutting was evident only for wear grade Q&T steel plate and the levels of undercutting were higher in respect of certain MCCs sold to certain common customers.

    With these considerations in mind, the ADC focussed its reinvestigated undercutting analysis on the higher level MCC, the subject of the vast majority of SSAB AU's wear grade sales for those 2 customers and those 2 months.[123]

    While the Applicants' point (a) above implies that the comparison of "certain Pre-Inquiry Period Purchase Orders placed on SSAB" with "certain Pre-

[122] For more details of the Applicants' response to the First Clarification Request during the Sixth Conference, see Addendum 2 to the Sixth Conference Summary.
[123] See Reinvestigation Report, 14–15 and Fifth Conference Summary.

Inquiry Period Purchase Orders placed on Bisalloy" at the same time, is somewhat haphazard, it is apparent from the Reinvestigation Report (including Confidential Attachment 1 thereto) and from the Fifth Conference Summary, that the ADC has comprehensively set out the details of its methodology for the reinvestigated price undercutting analysis based on purchase order date, and its reasons for all the components of its methodology for the price undercutting analysis, and including comprehensive reasons for any deviations from methodologies adopted in REP 638.

Without considering the substance of the issues reinvestigated or the correctness of the ADC reinvestigated findings, there is nothing to suggest from the Applicants' point (a) above or the discussion relating thereto, that the ADC did not conduct the reinvestigation in accordance with the requirements of the Review Panel in the Reinvestigation Request.

b. Applicants' Point

The Applicants submitted that with "multiple admissions of non-comparability, and multiple assumptions regarding MCCs, prices, customers, levels of trade, and commercial behaviour by third parties, intended to overcome non-comparability, and all tilted against SSAB AU, the ADC arrived at a pre-inquiry period "finding" of price undercutting."

Review Panel Response

The Applicants' point (b) makes a number of rather general and unsubstantiated assertions related to the reinvestigated price undercutting analysis".

It is reiterated, that it is clear from the Reinvestigation Report (including Confidential Attachment 1 thereto) and from the Fifth Conference Summary, that the ADC has comprehensively set out the details of its methodology for the reinvestigated price undercutting analysis based on purchase order date, and its reasons for all the components of its methodology for the price undercutting analysis, including reasons for any deviation from methodologies adopted in REP 638.

There is nothing to suggest from the Applicant's point (ii) above or the discussion relating thereto, that the ADC did not conduct the reinvestigation in accordance with the requirements of the Review Panel in the Reinvestigation Request.

c. Applicants' Point

The Applicants submitted that the ADC does not understand or has chosen to actively ignore the fundamental point that the Review Panel carefully and repeatedly explained in the Reinvestigation Request, which is that an injury determination must be based on positive evidence and an objective examination.

Review Panel Response

Again, it is reiterated that it is apparent from the Reinvestigation Report (including Confidential Attachment 1 thereto) and from the Fifth Conference Summary, that the ADC has comprehensively set out the details of its methodology for the reinvestigated price undercutting analysis based on purchase order date, including reasons for any deviation from methodologies adopted in REP 638. As discussed above and in the Reinvestigation Request, the Act does not set out any particular methodology for undertaking the likelihood of injury assessment under s 269ZHF, consistent with the position under Article 11.3 of the Anti-Dumping Agreement and WTO jurisprudence. It is clear, however, that the ADC must arrive at reasoned conclusions on the basis of facts and positive evidence, in respect of such a likelihood of injury assessment. Indeed, that is an important part of the substantive consideration of the likelihood of injury finding in this review and in the reinvestigation, as was referenced in the Reinvestigation Request, as part of my reasons for requesting the reinvestigation. Any challenge to the ADC's reinvestigated finding relating to the likelihood of injury analysis not being based on positive evidence, goes to the substance of the ADC's finding, rather than being characterised as non-compliance with the Reinvestigation Request under s 269ZZL(2) of the Act.

There is nothing to suggest from the Applicant's point (c) above or the discussion relating thereto, that the ADC did not conduct the reinvestigation in

accordance with the requirements of the Review Panel in the Reinvestigation Request.

d. Applicants' Point

The Applicants submitted that the Review Panel observed in the Reinvestigation Request that there was no indication in REP 638 that the ADC took account of different lead times or a timing adjustment in its undercutting analysis in Inquiry 638 "notwithstanding that this would not be an unusual consideration in an investigation". The Applicants submitted that there was no indication in the Preliminary Reinvestigation Report that this has been done.

Review Panel Response

This point has already been addressed. It is clear from the Reinvestigation Report that the purchase order date formed the basis of the comparison for the reinvestigated price undercutting analysis for both SSAB AU and Bisalloy. The use of the purchase order date as the basis of the price undercutting analysis, rather than the invoice date, indicates that the ADC took into consideration different lead times and timing, in response to the Reinvestigation Request, to ensure comparability in the price comparison. .

There is nothing to suggest from the Applicant's point (d) above or the discussion relating thereto, that the ADC did not conduct the reinvestigation in accordance with the requirements of the Review Panel in the Reinvestigation Request by not taking account of different lead times or make a timing adjustment for pre-inquiry period purchase orders in its undercutting analysis. In fact, there are contrary indications.

Second Requirement of the Reinvestigation Request

129. During the Sixth Conference, the Applicants stated that the second requirement of the Reinvestigation Request was that the ADC reinvestigate and further consider whether the pre-inquiry period sales should have been excluded from the price undercutting analysis, and that this was required to be reinvestigated if the reinvestigation with respect to the first requirement resulted in the price comparison taking account of purchase orders before the inquiry period. The Applicants

submitted that this requirement presupposed that the subject purchase orders would be brought into the inquiry period price undercutting analysis (which was contended, the ADC did not do) such that consideration could then be given to whether they be excluded from that analysis.[124]

130. During the Sixth Conference, the Review Panel requested that the Applicants provide further explanation of the following statement relating to the second requirement of the Reinvestigation Request, and in particular, further clarification of the emphasised wording:

> *This requirement presupposed that the subject purchase orders would be brought into the inquiry period price undercutting analysis, which the Commission did not do, such that consideration could then be given to whether they be excluded from that analysis." [emphasis added]*[125]

131. The Applicants responded to the Second Clarification Request during the Sixth Conference, stating that based on the Reinvestigation Request, it was the Applicants' assumption that taking account of different lead times or making a timing adjustment was a suggestion on the Review Panel's part for the ADC to consider in order to render the purchase order sales "comparable" with Bisalloy sales in the inquiry period. Further, that it would only be in the circumstances where the ADC had done that accounting or adjustment that the question would arise as to whether it was appropriate for the pre-inquiry period orders to be treated and considered in that way in the price undercutting analysis, or whether it was appropriate that they be excluded. The Applicants submitted that this understanding of the ADC's "Section B issue" underlies and explains the sentence concerned and the emphasised wording therein.[126]

132. I considered the Applicants' submission related to this second requirement of the Reinvestigation Request (including the Applicants' response to the Second Clarification Request during the Sixth Conference). The second requirement of the Reinvestigation Request to reinvestigate the Applicants' contention that the "pre-inquiry period sales" should have been excluded from the price undercutting

[124] See Addendum 1 of the Sixth Conference Summary.
[125] See Addendum 2 of the Sixth Conference Summary.
[126] For more details of the Applicants' response to the Second Clarification Request during the Sixth Conference, see Addendum 2 to the Sixth Conference Summary.

analysis, was articulated in the Reinvestigation Request as being somewhat conditional on the reinvestigation under Section A of the Reinvestigation Request resulting in the price comparison being based on the purchase order date (rather than invoice date).[127] I found the above-quoted statement of the Applicants during the Sixth Conference, to be somewhat confusing (even with the Applicants' response to the Second Clarification Request during the Sixth Conference) and consider that conditionality of the second requirement may have been mischaracterised. The ADC's reinvestigation of the price undercutting analysis under Section A of the Reinvestigation Report, did in fact result in the price comparison being based on the purchase order date (rather than invoice date) and the ADC went on to reinvestigate whether the pre-inquiry period sales should be excluded under Section B of the Reinvestigation Report.

133. I do not consider that there is anything in, or omitted from, the Reinvestigation Report to suggest that the ADC did not conduct the reinvestigation in accordance with the second requirement of the Review Panel.

Conclusion of Applicants' Submissions Regarding the Reinvestigation Request and Reinvestigation Report

134. The Applicants submitted that, thus, in having regard to the Reinvestigation Report, the Review Panel should conclude that:

    a. the requirements and opinions expressed by the Review Panel in its reinvestigation request have not been addressed to the Review Panel's satisfaction; and

    b. the Review Panel's reservations as to whether the ADC's recommendations to the Minister were correct or preferable have not been resolved.

    The Applicants submitted that, alternatively, as per the observations of former Senior Panel Member, the Hon Michael Moore, in Review Panel Report No. 24:

    > *…it is highly arguable that what occurred did not constitute a reinvestigation of the type contemplated by s.269ZZL and that the report is not [a] Reinvestigation Report to which I must have regard under s.269ZZK(4A). I required a reinvestigation of the specified finding and consequential findings*

[127] See paragraph [28] of the Reinvestigation Request.

> *on the premise that s.269TACB(3) authorised only the comparison of export prices as a monetary amount. If s.269ZZL allows the Commissioner to report as he has in this matter, then the legislative scheme for review is, in my opinion, significantly flawed in this respect*.[128]

135. For the reasons set out above, I do not consider that the ADC did not conduct the reinvestigation in accordance with the requirements of the Review Panel under s 269ZZL(2). Unlike in Review No. 24, I do consider that there is a basis to argue that, "what occurred did not constitute a reinvestigation of the type contemplated by s.269ZZL and that the report is not [a] Reinvestigation Report to which I must have regard under s.269ZZK(4A)". It should be noted that the circumstances that led the Hon Michael Moore, in Report No. 24 to make those observations were entirely different to the circumstances of this review and reinvestigation. I do not consider that there is any reason not to have regard to the Reinvestigation Report provided to me pursuant to s 269ZZL(2), in accordance with s 269ZZK(4A) of the Act.

136. I will now proceed to analyse and consider the substantive issues in the Reinvestigation Report and the claims related to Ground 1, below, and will determine whether the relevant findings in REP 638, as reinvestigated in the Reinvestigation Report, are the correct or preferable decisions.

Analysis and Consideration of Ground 1

137. At the outset, it is worth stating that s 269ZHF(2) of the Act explicitly requires that the Commissioner "must not recommend" that the Minister take steps to secure the continuation of the anti-dumping 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 dumping and material injury that the anti-dumping measure is intended to prevent. Section 269ZHF gives effect to Australia's obligations under Article 11.3 of the WTO Anti-Dumping Agreement.[129] It should be also stated that it is generally accepted that the 'likely' test established under

[128] See Addendum 1 to the Sixth Conference Summary, 1 and Footnote 1 thereof where reference was made to paragraph [62] of Review Panel Report No. 24 - Power Transformers exported from the Republic of Indonesia, Taiwan, the Kingdom of Thailand and the Socialist Republic of Vietnam.
[129] Article 11.3 of the Anti-Dumping Agreement provides that an anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review) unless the authorities determine that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. [emphasis added]

s 269ZHF(2) is interpreted to mean "more probable than not",[130] and that a decision to continue measures must be based upon "a foundation of positive evidence".[131]

138. The underlying basis for Ground 1 is the Applicants' contention that the ADC did not arrive at a reasoned and adequate conclusion with respect to the finding in REP 638 that the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of the material injury that the anti-dumping measure is intended to prevent ("the likelihood of injury"). More particularly, the Applicants contend that the ADC's conclusion on the likelihood of injury is based on an "unsound price comparison" leading to the finding in REP 638 that SSAB AU undercut Bisalloy's prices for wear plate, based on Confidential Attachment 12 to REP 638,[132] and the subsequent likelihood of injury finding.

139. It should be noted at this point that the Act does not set out any particular methodology for undertaking the likelihood of injury assessment under s 269ZHF, consistent with the position under Article 11.3 of the Anti-Dumping Agreement and WTO jurisprudence.[133] Therefore, the Commissioner has a wide discretion in the methodology in making the likelihood of injury assessment. While it is not mandated to use a price undercutting analysis (or any other injury factor referred to in s 269TAE of the Act), as part of the methodology of such a likelihood of injury assessment, the Commissioner is permitted to use a methodology incorporating a price undercutting analysis. However, it has been acknowledged that the Commissioner (or ADC) must nevertheless base any conclusions and recommendation on facts and must arrive at reasoned conclusions based on positive evidence.[134] It is important to bear this important principle in mind in the consideration of the ADC's likelihood of injury finding.

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[130] *Siam Polyethylene Co Ltd v Minister of State for Home Affairs and Another* (No 2) (2009) 258 ALR 515 at [48].

[131] *US – Dynamic Random Access Memory Semiconductors (DRAMs) from Korea*, WT/DS99/R, at [6.42]. See also AB Report, *US – Oil Country Tubular Goods Sunset Reviews*, [281] and AB Report, *US – Oil Country Tubular Goods Sunset Reviews*, [234].

[132] Applicants' application for review, pages 3–4.

[133] AB Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan ("US – Corrosion-Resistant Steel Sunset Review")*, WT/DS244/AB/R), [123].

[134] See *US - Oil Country Tubular Goods Sunset Reviews*, [341], which states:

> *The requirements of "positive evidence" must, however, be seen in the context that the determinations to be made under Article 11.3 are prospective in nature and that they involve a*

140. There are several different issues relating to the Applicants' challenge of the ADC's undercutting analysis in Ground 1. I set out below my analysis and consideration in respect of the different issues arising in Ground 1, which all relate to the Applicants' challenge of the undercutting analysis, which forms part of the ADC's likelihood of injury analysis.

Consideration - Proper Timing of Price Comparison

141. The Applicants submitted in their application for review that an incorrect time comparison for price injury purposes could have occurred by using the invoice date rather than the contract date of the purchase order sales, and that any price competition with respect to the invoiced transactions took place at the time of price offers.[135] The Applicants claimed that the ADC failed to appreciate the significance of the order contract information that was provided to it in the Applicants' submission responding to SEF 638 dated 25 July 2023 ('the SEF Submission').[136]

142. I considered that there was validity in the Applicants' contentions relating to comparability with respect to the price undercutting analysis in respect of timing. As discussed in some detail above, I requested the ADC to reinvestigate its findings relating to the price undercutting analysis in respect of wear grade products in order to ensure comparability, in respect of timing, in compliance with its obligations under of s 269TAE(2AA). In this regard, the ADC was requested to reinvestigate whether the appropriate price comparisons should be based on the purchase orders of both SSAB AU and Bisalloy, rather than invoice date.[137]

143. The ADC's findings in the Reinvestigation Report in regard to this matter have also been discussed in some detail above. The ADC stated that having assessed the information provided by SSAB AU, within the context of this case and how the facts

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"forward-looking analysis". Such an analysis may inevitably entail assumptions about or projections into the future. Unavoidably, therefore, the inferences drawn from the evidence in the record will be, to a certain extent, speculative. In our view, that some of the inferences drawn from the evidence on record are projections into the future does not necessarily suggest that such inferences are not based on "positive evidence".

See also AB Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina* ("*US – OCTG Sunset Reviews"*), WT/DS268/AB/R, [234]. See also AB Report, *US – Corrosion-Resistant Steel Sunset Review*, [114].

[135] Applicants' response to Request 1(a) of the summary of the Third Conference.

[136] Applicants' application for review, 2. Also see Document #27 of EPR 638.

[137] See paragraph [18] of the Reinvestigation Request.

are applied to the legislative requirements, policy and practice, it was satisfied that where the price and quantity on the sales invoice reflected the price and quantity on the purchase order (noting that staggered delivery was consistent with customer expectations at the time of ordering), that it was reasonable to conclude that the material terms of sale were established at the date of purchase order. The ADC considered that such a finding reflected the specific circumstances of the sales the subject of this reinvestigation.[138] Therefore, the ADC found that the proper timing for price comparison, in these circumstances, was the purchase order date.

144. The ADC provided a detailed explanation of its methodology and analysis regarding this issue in the Reinvestigation Report. I consider that the ADC's reinvestigated analysis and the evidentiary basis for its findings relating to the proper timing of the price comparison, to be comprehensive and supported by facts and documentary evidence. The ADC provided reasoned explanations of how the evidence and data supported its conclusion that the proper timing for price comparison in these circumstances was the purchase order date.

145. I agree with the ADC's conclusion and consider that the ADC's reinvestigated finding addresses the concerns expressed in the Reinvestigation Request relating to comparability in respect of timing and ensuring compliance with s 269TAE(2AA) of the Act. I accept the ADC's reinvestigated findings.

Consideration - Exclusion of Pre-Inquiry Sales

146. The next issue for consideration relates to the Applicants' contention that the so-called, "pre-inquiry period" sales (that is, transactions invoiced during the inquiry period that had been ordered and contracted before the inquiry period), should have been excluded from the price undercutting analysis. The Applicants contended that the purchase order sales were contracted prior to the inquiry period, and that the price competition with respect to those purchase orders took place before the inquiry period.[139]

147. I considered that the basis for the Applicants' contention that a proper comparison would require the "'pre-inquiry period" sales to be excluded from the price

[138] See Reinvestigation Report, 11—12.
[139] See Applicants' written responses to the introductory paragraph of Request 1 and Request 1(b) of the Third Conference Summary, first and third pages of Addendum 1 (unpaginated).

comparison analysis, as being outside the inquiry period, required further examination. I therefore requested the ADC, if its reinvestigation of the price undercutting analysis resulted in the price comparison being based on the purchase order date (rather than invoice date), to also reinvestigate and further consider the Applicants' contention that the "pre-inquiry period sales" should have been excluded from the price undercutting analysis. In this regard I requested that the ADC should, in its reinvestigation, take into consideration its obligations under s 269T(2AD) and s 269T(2AE) of the Act. The detailed reasons for the reinvestigation were set out in the Reinvestigation Report and have been discussed above.

148. The ADC stated in the Reinvestigation Report, that it considered that there is no mandated timeframe to which the ADC must limit its price undercutting analysis, and no grounds upon which the ADC is compelled to exclude the pre-inquiry purchase order sales identified by SSAB AU. The ADC considered instead that the appropriate course of action was to include the sales that occurred during the inquiry period but for which the purchase orders were placed in the period prior to the inquiry period as part of its price comparability assessment.[140]

149. I agree with the ADC's characterisation of a price undercutting analysis for the purposes of a continuation inquiry, as not being a mandatory form of analysis, but rather an analysis that forms part of a broader range of considerations that the ADC may undertake as part of its inquiry. I agree that there is no mandated timeframe to which the ADC must limit its likelihood if injury analysis and I also agree with the ADC that the appropriate course of action in the circumstances was "to include the sales that occurred during the inquiry period but for which the purchase orders were placed in the period prior to the inquiry period as part of its price comparability assessment". [Emphasis added] My understanding of the emphasised phrase was that it included only those sales in respect of which the invoices were drawn in the inquiry period.

150. I do not, however, agree with the ADC's emphatic statement that there are "no grounds upon which the ADC is compelled to exclude the pre-inquiry purchase order sales identified by SSAB AU". As discussed above, I consider there could be a basis to exclude such transactions from the price undercutting analysis since in accordance with s 269T(2AE) of the Act, the ADC cannot attribute injury observed

[140] Reinvestigation Report, 13—14.

during the period prior to the investigation period, to the dumping.[141] I also note the ADC's statement in REP 638:

> *To inform its consideration of the likely effect of dumped imports on prices, the commission has analysed:*
>
> - *price undercutting within the Australian market during the inquiry period*
> - ..." [Emphasis added][142]

151. I had noted in the Reinvestigation Request that my understanding from the C2 Sales spreadsheet and the Third Conference was that those purchase orders falling outside the inquiry period were in fact part of the relevant export transactions of SSAB AU, as reflected in the C2 Sales spreadsheet, and were included in the dumping calculation for the inquiry period (that is, with invoices falling within the inquiry period).[143] During the Fifth Conference, the ADC clarified that the worksheet "SSAB Aust arms length sales" in Confidential Attachment 1 was based on the updated C2 Sales spreadsheet. The ADC pointed out that it included additional information requested from SSAB in respect of each transaction relating to purchase orders. In addition, the ADC stated during the Fifth Conference that it requested that SSAB AU add additional lines of data as necessary, for any purchase orders raised during the inquiry period where the sales invoice was issued outside the inquiry period. During the Fifth Conference, I requested further clarification on this issue and requested that the ADC identify and isolate (in a separate schedule) the additional transactions with purchase order dates in December 2021 or February 2022 where the invoice date fell outside the Inquiry Period (1 October 2022 – 30 September 2023).

152. However, following the Fifth Conference, the ADC confirmed that there were in fact no transactions where the invoice date fell outside the inquiry period, and therefore no new lines of data were added by SSAB AU.[144] This confirmed my initial understanding that all the purchase orders falling outside the inquiry period, were in

[141] See [23]–[27] of the Reinvestigation Request.
[142] REP 638, 71.
[143] See [27] and Footnote 38 of the Reinvestigation Request.
[144] See Response to Request 5.b of Addendum 1 to the Fifth Conference Summary, including the ADC's responses to the additional clarifications requested during the conference.

fact part of the relevant export transactions of SSAB AU, as reflected in the C2 Sales spreadsheet, that were included in the dumping calculation for the inquiry period (that is, all with invoices falling within the inquiry period). Therefore, I considered that s 269T(2AE) of the Act was in any event not applicable and therefore, in the particular circumstances, there were "no grounds" to exclude the pre-inquiry purchase order sales identified by SSAB AU.

153. I therefore agree with the outcome of the ADC's reinvestigated finding, "to include the sales that occurred during the inquiry period but for which the purchase orders were placed in the period prior to the inquiry period as part of its price comparability assessment". I consider the ADC's reinvestigated findings are based on positive evidence and include reasoned and adequate explanations. I accept the ADC's reinvestigated finding in this regard.

154. The Applicants' claim that the pre-inquiry period sales (that is, transactions invoiced during the inquiry period that had been ordered and contracted before the inquiry period), should have been excluded from the price undercutting analysis, is therefore rejected.

Consideration - Price Undercutting Analysis

155. Having addressed the issues regarding (i) proper timing of price comparison and (ii) the exclusion of pre-inquiry sales, I now turn to consider whether the ADC's price undercutting analysis and findings in REP 638 read together with the reinvestigated findings in the Reinvestigation Report, and as a significant component of the 'likelihood of injury' assessment, meet the applicable legal standards of a likelihood of injury assessment in a continuation inquiry.

156. The Applicants submitted in their application for review that Confidential Attachment 12, how it was constructed, and the accuracy of the information underlying it, was fundamental to the view formed by the ADC when it made its recommendation to the Minister at the conclusion of its inquiry. The Applicants submitted that the basis of the price comparisons was not revealed to them and that they were unsure about how Confidential Attachment 12 was compiled and how the outcomes were calculated. The Applicants submitted further that if the analysis is wrong and does not establish the "wear plate proposition" that the ADC "trumpets" in REP 638, then according to the Applicants, the recommendation to continue the measures and the

acceptance of that recommendation by the Minister does not represent the "correct or preferable decision" that the Review Panel is tasked with advising the Minister to make.[145]

157. As has been discussed above, the Act does not set out any particular methodology for undertaking the likelihood of injury assessment under s 269ZHF, allowing for a wide discretion for the ADC in determining a methodology for the likelihood of injury assessment. At this point, it is worth reiterating that the details of the ADC's methodology for the price undercutting analysis and price comparisons, contained in Confidential Attachment 12, were not disclosed to the parties, other than in very general terms in SEF 638, and subsequently in REP 638 and in respect of their own data used in the analysis. As I pointed out in the Reinvestigation Request, this makes it challenging for a party to coherently challenge the methodology and analysis of a price comparison. In the Reinvestigation Request, I also referred to WTO jurisprudence that stated that while investigating authorities may have wide discretion to frame their investigations and analyses in light of the information gathered by the authorities and the arguments presented to the authorities by the parties, "authorities remain bound by their overarching obligation to conduct an objective examination on the basis of positive evidence, irrespective of how the issues were presented or argued during the investigation."[146]

158. In furtherance of this important principle, I sought clarification from the ADC as to whether each party was, during the inquiry, shown the workings of the undercutting analysis as it related to that party only, so that the party could review its own figures that formed part of the undercutting analysis. I requested further clarification as to whether it would raise confidentiality problems if, as part of the description of methodology in response to further information sought for the Second Conference, each party was shown those parts of the undercutting analysis calculations that related to that party's respective data. The ADC explained that it does not provide the undercutting analysis, or even a component of the undercutting analysis, due to confidentiality. The ADC stated that it would be apparent to the parties what methodology was used given that the ADC relied on the parties' sales data for the analysis. It was pointed out, however, that given that the parties do not have the other party's selling prices, they could not replicate the undercutting analysis for

[145] Applicants' application for review, 4—5.
[146] AB Report, *China – GOES,* [201].

themselves.[147] The particularly sensitive nature of the price undercutting assessment undertaken as a significant component of the likelihood of injury analysis places a greater burden on authorities to conduct an objective examination based on positive evidence and to provide as much detail and clarification as to methodology and information as possible.

159. The ADC determined in the Reinvestigation Report that, based on this comparison, SSAB AU undercut Bisalloy by between 7% and 9%, with the ADC's price undercutting analysis contained in Confidential Attachment 1 to the Reinvestigation Report. The ADC stated that its finding that SSAB AU had undercut Bisalloy, based on using the purchase order date as the relevant point of comparison, was consistent with the finding of REP 638, though the ADC noted the degree of undercutting using this approach was lower.[148] The ADC stated that it considered that the revised analysis supported the finding in REP 638 that SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category. The ADC therefore reaffirmed the conclusions drawn in REP 638.

160. The details of the revised undercutting analysis based on the outcome of Reinvestigation Issue A and B have been discussed in detail above, including the further information and clarifications relating to the ADC's reinvestigated findings, obtained in the Fifth Conference.

161. It was clear that the reinvestigation into the timing of the price comparison and the revision of the analysis to reflect the purchase order date as the date for the price comparison had a significant impact on the approach adopted by the ADC in the price undercutting analysis. The most significant impact was that the analysis was far more targeted than in REP 638, both in respect of the period of examination and in respect of data groups.

[147] See written Response to Request 3b of Annexure A to the Second Conference, which includes the ADC's responses to the further information requested during the conference.
[148] During the Fifth Conference, the ADC clarified that because the approach to analysis in the reinvestigation was more targeted, the conclusion in the Reinvestigation Report that "the degree of undercutting using this approach is lower" was an inference drawn from worksheets "Wear MCC 1" and "Wear MCC 2" in Confidential Attachment 12 to REP 638, where on worksheet "Wear MCC 1" the range of undercutting was between 17% and 19% and on worksheet "Wear MCC 2" the range of undercutting was between 8% and 17%. See Response to Request 6 of Addendum 1 to the Fifth Conference Summary.

162. As discussed above, the ADC provided detailed explanations and reasons for the targeted approach to the undercutting analysis in the Reinvestigation Report and clarified in some detail in the Fifth Conference. The ADC provided detailed explanations for the decision to use a far more limited time period, from December 2021 to February 2022, and why the data was limited to sales to 2 common customers of SSAB and Bisalloy. I considered the reasons to be valid, which reasons related to:

    a. time and resources available to conduct the reinvestigation;

    b. the scale/scope of additional data required from Bisalloy (to match the period covering SSAB AU's purchase orders), and the difficulties experienced by Bisalloy in extracting the relevant data; and

    c. significantly it was the basis of the key finding in REP 638 and focus of Bisalloy's injury, that underpinned the ADC recommendation to continue measures, that is, that "SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category".

163. The ADC's reaffirmation of the finding in REP 638 that, "SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category" is a significant element of the finding. In this regard, I consider that the analysis and findings of REP 638 (and as clarified in the Second Conference) are still important and relevant to the revised undercutting analysis finding.

164. In REP 638 the ADC comprehensively outlined its approach with its analysis commencing at an aggregate level for all sales of wear and structural grade combined to all customers regardless of MCC specifications or level of trade, and refining the pricing analysis by: firstly, focusing on wear and structural grades separately; then, analysing common MCCs; and finally, analysing specific MCCs within the context of key customer relationships, which became the focus of the analysis in the reinvestigated analysis. The ADC provided further clarification during the Second Conference on its finding in REP 638 relating to the statement, "SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category".

165. During the Second Conference, the ADC also provided detailed descriptions of its methodology for the price comparisons at all the different levels of analysis, pointing

out that at a high level, the methodology remained the same, with the ADC using the same data (sales listings) as it used for its broader analysis set out in the worksheet 'Wear Grade Undercutting'.

166. After detailed review and taking all the above into consideration, I consider that the ADC's analysis was most comprehensive and based on positive evidence, with reasoned explanations of how the data supported the findings of REP 638, as revised by the Reinvestigation Report. The ADC provided reasoned explanations for the revised approach adopted in the Reinvestigation Report and why it was unable to conduct a similar price comparison to that in REP 638.

167. The ADC provided analysis and comprehensive reasons to demonstrate that the targeted approach was still representative, providing relevant and fact-based statistics, such as:

    a. over 90% of SSAB's wear grade sales were to 2 customers ([redacted],

    b. around 80% of sales to these customers related to purchase orders raised in two months (December 2021 and February 2022), and

    c. by expressing its satisfaction that purchase orders which accounted for 80% of the total volume of sales to SSAB's key customers represented a meaningful basis of comparison.

    The ADC, in the Reinvestigation Report, also provided comprehensive details of the information and data that it obtained from the parties and how it was collated, verified and analysed, as well as details of its methodology used in the analysis. I consider that the reinvestigated findings are based on positive evidence and include reasoned and comprehensive explanations.

168. I agree with the ADC's analysis and conclusions articulated in the Reinvestigation Report and supported by Confidential Attachment 1 that:

    a. Based on the price comparison, SSAB AU undercut Bisalloy by between 7% and 9%,

b. The revised analysis supported the finding in REP 638 that SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category, and

c. The above findings, considered along with other relevant findings outlined in REP 638, support the finding that the expiration of the measures would lead or be likely to lead to a continuation of, or recurrence of, the material injury that the measures are intended to prevent.

169. I consider that the ADC's findings are the correct or preferable decision. The Applicants' Ground 1 of an unsound price comparison basis for recommendation that the measures to be continued, is rejected.

Summary of findings and conclusion relating to the Ground 1

170. Summary of findings:

a. The Applicants' claim that the proper timing for the price comparison in the circumstances was the purchase order date, was accepted, and the undercutting analysis was revised accordingly.

b. The Applicants claim that the pre-inquiry period sales (that is, transactions invoiced during the inquiry period that had been ordered and contracted before the inquiry period), should have been excluded from the price undercutting analysis, was rejected.

c. It was found that:

- SSAB AU wear grade imports undercut Bisalloy by between 7% and 9%,
- the revised analysis supported the finding in REP 638 that SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category,
- the above findings, considered along with other relevant findings outlined in REP 638, support the finding that the expiration of the measures would lead or be likely to lead to a continuation of, or

recurrence of, the material injury that the measures are intended to prevent.

Conclusion

171. I reject this ground of review.

Ground 2: 'Likelihood' finding infected by misappreciation of market dynamics

The Applicants' ground and supporting arguments

172. The Applicants submitted that they wished to advance this second ground (that the 'likelihood' finding was infected by misappreciation of market dynamics) because it also supports a recommendation to the Minister to revoke the decision to continue the measures, whether in tandem with the first ground or on its own, should the first ground be unproven.[149]

173. The Applicants submitted that: the long period over which very significantly high interim dumping duties have been in place against Finnish, Japanese and Swedish exports; the documented and severe reduction of imports from those countries; the entry of Chinese Q&T steel plate into the market in large quantities; new imports as well from France, Germany, and the Netherlands; and SSAB's intentional reduction of Swedish exports to Australia in favour of US exports, are competitive factors that have transformed the market from that existing 10 years ago.[150]

174. The Applicants submitted that prices have increased substantially over the past five years and referred to a statement in REP 638 that the ADC, "estimates that the price of imports, on a weighted average basis, and the Australian industry's prices increased by over 50% since the measures were continued".[151] The Applicants further submitted that Bisalloy's profit has also rocketed over the past five years, as clearly demonstrated by data placed on the public record by the SSAB

[149] Applicants' application for review, 8.
[150] Applicants' application for review, 8 and Footnotes 16 and 17, which refer respectively to Attachment C2, Slide 16 and REP 638, 28.
[151] REP 638, 29.

companies.[152] The Applicants further submitted that the "ebb and flow of business" had been kind to Bisalloy but it may not be kind to Bisalloy in the future, or the market might turn for the worse for all participants, or competition may intensify because of the actions of one or more of them. The Applicants submitted that in that context Australia's anti-dumping policy makes clear that injury must be greater than likely to occur in the normal "ebb and flow".[153]

175. The Applicants submitted that the evidence of the present state of the market is that Bisalloy's prices are affected by lower priced imports not subject to dumping duties. The Applicants submitted that such prices are an "anchor" which hold back Bisalloy from achieving the "balloon" prices enjoyed by SSAB for its premium Q&T steel plate products. The Applicants contended that Bisalloy's application for continuation of the measures against Sweden is an attempt to force even higher prices for premium wear plate so that Bisalloy can be subsidised in its maintenance of lower prices to compete against non-subject country exports.

176. The Applicants further submitted that the market activities and prices of exporters, importers and distributors selling cheaper Q&T steel plate that is not subject to measures in the Australian market will not cease with the expiry of the measures with respect to Sweden and that the observable fact of those lower priced imports, their distribution links, and their market penetration will continue to be a price anchor that holds back Bisalloy from achieving its ever-higher profit aspirations. The Applicants submitted that the ADC glossed over this reality and that the market is awash with non-subject country imports. The Applicants contended that it is simply not credible to attribute future material injury to higher priced Swedish imports when there is so much lower-price competition in the market from countries not subject to measures. The Applicants pointed out that the recommendation to continue the measures in the circumstances of such a level and extent of lower priced competition from non-subject sources differs from existing and relevant administrative precedent.[154]

[152] Reference was made to Slide 8: "Bisalloy financial metrics 2" of Document #11 of EPR 638.
[153] Applicants' application for review, 8–9, and Footnote 20 which refers to the Ministerial Direction on Material Injury (2012) ('Injury Direction')
[154] Applicants' application for review, 9, as well as Footnote 21 which refers to Attachments PR5 and C25, footnotes 7 and 8.

177. The Applicants further submitted that the interplay between market suppliers and customers is not limited to SSAB and Bisalloy supplying common and uncommon customers. The Applicants pointed out that the ADC recognised this, and Bisalloy openly claimed that it is competitive pressure from imports "from Sweden, the [United States] ('US') and China", that hold back its prices. The Applicants made reference to various statements by the ADC in REP 638 and other EPR documents, relating to openness of competition in the Australian market and its effects that are on the public record.[155]

178. The Applicants submitted that there are 575 occurrences of the word "SSAB" in REP 638, while "Bisalloy" and "Australian industry" collectively achieve 474 hits and the words "other exporters" are mentioned only 16 times. The Applicants further submitted that the relevance of other exporters and their lower priced suppliers in the market has about the same proportional relevance to the ADC's likelihood recommendation as these numbers suggest.[156]

179. The Applicants stated that they made submissions and provided price and market behaviour evidence about exporters, importers and distributors. The Applicants also stated that they advised the ADC about the practices of at least five other market players, using sensitive documents, emails, reports, and extracts from SMS messages, but could not disclose their identities or the information publicly for reasons of significant confidentiality.[157] The Applicants submitted that there can be no doubt that this information was highly relevant to the inquiry, as it demonstrated the business practices and price undercutting being engaged-in by third parties in the market. The Applicants' further submitted that despite that relevance, REP 638 did not engage in an earnest consideration of these submissions and of the accompanying information, and in the main there was no mention of them at all.[158] The Applicants submitted that the proposition that any holding-back of the profitability of the Australian industry is attributable to non-subject country volumes

[155] See the Applicants' application for review for details of these statements, 9–10,
[156] Applicants' application for review, 10.
[157] Reference was made to a number of the confidential attachments listed in Schedule 2 to the Applicants' application for review. See page 10 and Footnote 26 of the application.
[158] For more details of the argument in this regard, see the Applicants' application for review, 10 including Footnote 10.

and low prices of 32% of the market[159] and not the high priced subject country practices of 6% of the market, is not explored at all.[160]

180. The Applicants submitted further that REP 638 contains no clear indication as to whether the ADC felt it had to consider or did consider the submissions and price and market behaviour evidence about non-subject country exporters, importers and distributors provided by SSAB, nor whether it undertook its own inquiries in this regard. The Applicants submitted further that, for example, the ADC could have sought submissions from interested parties about these matters, based on the reasonable assumption that the information provided by SSAB was at least evidence of what it said, and that key issues raised by that information deserved further inquiry. It was submitted that the ADC could have done this by way of placing a File Note or Issues Paper on the public record but did not do so. In summary, the Applicants submitted that the record suggests that the ADC had not appreciated the significance of SSAB's submissions, and that the continuation inquiry may have failed to involve any "inquiry" with regard to those submissions.[161]

181. The Applicants submitted that by way of letter dated 16 May 2024, SSAB addressed its concerns about the lack (or paucity) of market inquiries by the ADC, in which it referred to all the evidence that had been provided to the ADC and requested the ADC to use its own powers and discretions to seek data and opinions that substantiate the findings on which the recommendations are to be based. The Applicants stated in the letter that it was open to the ADC to do so by encouraging and questioning parties other than the main protagonists. SSAB also recognised that broader inquiries may be time consuming, and that resources are limited." [162]

182. The Applicants submitted the present and likely future impact of Chinese and other non-subject country importations in volume and price terms, and of higher priced US exports in volume terms, was relevant and remained relevant to the continuation

[159] It was clarified in Footnote 28 of the Applicants' application for review that this referred to the market share of "China" and "All Other Countries" according to measurement of ADC's statistics, with reference to Figure 4 of REP 638, 34. See the Applicants' application for review, 10.
[160] It was clarified in Footnote 29 of the Applicants' application for review that this referred to the market share of "Sweden" according to measurement of ADC's statistics, with reference to Figure 4 of REP 638, page 34, which is likely to have been overstated by reason of the sales timing issue that is the basis of the first ground. See the Applicants' application for review, 10.
[161] See the Applicants' application for review, 10–11.
[162] For more details of the passage from the letter that was reproduced, see the Applicants' application for review, 11. Reference was made to Document #17 of EPR 638, 1.

decision. It was further submitted that Chinese and US import volumes are much larger than Swedish volumes, with US exports being priced the same as Swedish exports but with Chinese exports being much lower priced. According to the Applicants, Bisalloy admitted to pricing its Q&T steel plate in light of competitive pressures from imports from three countries, being Sweden, the US and China. The Applicants contended that the ADC's likelihood recommendation postulates that not maintaining duties on products from Sweden, being one of two countries (Sweden and the US) with high prices, would be likely to lead to material injury to an Australian industry. However, according to the Applicants, the Australian industry would still be facing the same competition as before from the other higher priced country (the US) and from the other non-subject countries that are engaging in price undercutting that is severe with respect to China, and that is very material with respect to France, Germany, and the Netherlands. It was stated that in SSAB's opinion, this was an illogical postulation. The Applicants reiterated that Bisalloy's application for continuation of the measures against Sweden was an attempt to force even higher prices for premium wear plate so that Bisalloy can be subsidised in its maintenance of lower prices to compete against non-subject country exports.[163]

183. The Applicants requested that should the Review Panel reach this second ground, it should review the extensive information provided by SSAB about prices of Q&T steel plate in Australia and what that information reveals about the dynamics of the market, and then to assess the credibility of a finding that allowing duties to expire on high priced Q&T steel plate will be likely to cause a recurrence of material injury to an industry still facing the same low and high priced competition as before.[164]

184. The Applicants submitted that as in the case of the first ground, the "correct or preferable decision" with respect to the second ground would also be a decision that the notice continues in force after the expiry day but ceases to apply in relation to SSAB EMEA as a "particular exporter" in the terms of s 269ZHG(4)(a)(ii) of the Act.[165]

[163] Applicants' application for review, 11.
[164] Ibid.
[165] See the response to Question 10 of the Applicants' application for review, 11.

185. The Applicants submitted that due to the market stasis and highly profitable condition in which the Australian industry finds itself,[166] allowing the measures to expire against SSAB EMEA would not lead to a continuation or a recurrence of the material injury the measure was intended to prevent. It was further submitted that other prices and forces operating in the market staying the same would continue to hold Bisalloy in its existing market position, regardless of a decision to allow the measures to expire as against SSAB EMEA's exports from Sweden, making a decision to allow those measures to expire the "correct or preferable" decision. It was submitted that the dumping measures against Sweden have successfully delivered a competitive market outcome, unaffected by injurious dumping from Sweden. It was stated that Bisalloy may not like that, but that is the situation that the ADC has itself encouraged and created by its recommendations to impose and retain the measures against SSAB EMEA over the ten years they have been in place.[167]

ADC's Position

Likelihood finding properly considered the dynamics of Australian Q&T steel plate market

186. The ADC submitted in its s 269ZZJ submission that the Commissioner's 'likelihood' finding properly considered the dynamics of the Australian Q&T steel plate market and appropriately considered the effect of other imports on the Australian industry.

Likelihood of material injury finding

187. In its s 269ZZJ submission, the ADC set out the basis of its likelihood of material injury finding, that is, if the measures on Sweden were to expire, it was likely that:

    a. SSAB AU would import a greater volume of dumped goods from Sweden that would continue to undercut and suppress Bisalloy's prices;

    b. without the constraint of the measures, the magnitude of price undercutting observed in the inquiry period would likely be greater, which would likely lead to price depression and/or price suppression; and

[166] In this regard reference was made to Confidential Attachment C8 of the application for review.
[167] See the response to Question 11 of the Applicants' application for review, 11.

c. the Australian industry would suffer material injury in the form of reduced profit and profitability, as well as other factors related to price and volume injury.[168]

188. The ADC submitted that this likelihood of material injury finding was based on the significant factors set out in Section 7.7 of REP 638.[169] The ADC submitted that in formulating these findings, it considered the submissions of all interested parties concerning the dynamics of the market and how those market dynamics should factor into the ADC's assessment of the likely continuation or recurrence of material injury if the measures on Sweden were to expire. The ADC further submitted that the likelihood finding was sound and that it properly considered all relevant factors including the market dynamics in the Australian market and the likely effect of imports from other countries not subject to the measures. The ADC stated that its analysis supporting the likelihood finding is set out in Chapter 7 of REP 638 and referred to various sections in REP 638 that were relevant to this Ground 2.[170] The ADC set out more details of its analysis as is set out below:

Effect of other imports over inquiry analysis period

189. The ADC stated that it assessed the effect of imports from other countries on the Australian market over the injury analysis period, and that these effects were then factored into the ADC's assessment of whether material injury was likely to continue or recur if the measures with respect to Sweden expired. The ADC stated that it observed that the proportion of imports from other countries increased following the imposition of the measures in 2014. In particular, the ADC found that the share of the total volume of Q&T steel plate imported from the US and China increased following the continuation of the measures in 2019.[171]

190. The ADC stated that it also observed that SSAB AU's pricing structure had changed since the measures were last continued (in 2019), with its structural grade pricing increasing relative to Australian industry and wear grade pricing decreasing. The ADC stated that it therefore sought to further understand how this change to SSAB

[168] See [47] of the ADC's s 269ZZJ submission, 8–9 where reference was made to Section 7.7.1 of REP 638, 70.
[169] Reference was made to REP 638, 66.
[170] See [48]–[51] of the ADC's s 269ZZJ submission, 9.
[171] See [53]–[54] of the ADC's s 269ZZJ submission, 9–10 where reference was made to Section 7.5.1 of REP 638, 57–58.

AU's pricing structure had affected the Australian market. In particular, the ADC stated that it sought to understand the impact of the change on sales volumes and market share since the measures were last continued, as well as the likely effect on sales volumes should measures expire. The ADC stated that it analysed changes to sales volumes across the Australian market over the period YE Sept 2018 to YE Sept 2023 and its findings were as follows:

a. despite the growth in the total size of the Australian market for Q&T steel plate since Inquiry 506, Bisalloy has not achieved growth in its aggregate sales volume, and SSAB AU has suffered a reduction in its aggregate sales volume,

b. 'imports from other countries, notably China, had captured additional sales volume,

c. despite overall stagnant growth, Bisalloy has grown its structural grade sales volume, while its wear grade volume has been in decline,

d. 'despite a decline in its total sales volume, SSAB AU has grown its wear grade sales volume.

191. Based on this analysis, the ADC found that the change to SSAB AU's pricing structure had 'resulted in a redistribution of sales volumes between Bisalloy and SSAB AU'.[172]

192. The ADC further stated that it had factored the increasing influence of imports from other countries, most notably China, into its likelihood finding, referring to the following statement from REP 638:

> *The commission however considers that given SSAB AU has increased its sales volume of wear grade Q&T steel plate coincident with the rise in the volume of imports from other countries, while Bisalloy's sales volume of wear grade decreased, Bisalloy has experienced volume injury in respect of its sales of wear grade plate, and that injury has been caused by both dumped*

[172] See [55]–[58] of the ADC's s 269ZZJ submission, 10 where reference was made to REP 638, 82. Also see Table 14 of REP 638 on page 82, which the ADC stated reflected its findings in index form.

goods from Sweden as well as imports from other countries that have undercut Bisalloy's prices.[173] [emphasis added by the ADC]

Pricing of other imports over injury analysis period

193. The ADC stated that it also examined import pricing across the Australian market over the injury analysis period. These findings were used to assess the likely effect of imports from other countries which were then factored into the Commissioner's likelihood finding - that material price injury was likely to continue or recur if the measures on goods exported from Sweden were to expire.

194. The ADC referred to its analysis of landed import prices in REP 638 over the period from YE September 2011 to YE September 2023 and stated that while prices from China have historically been among the lowest of the identified countries, they broadly followed a similar trend to the prices of goods imported from other countries up until 2019. In 2019, prices from China began to diverge from prices of other imports and from YE September 2021 prices of all other imports increased to a significantly greater extent than prices from China. The ADC stated that it observed that the divergence in prices from China from 2019 coincided with an increasing volume of imports from China and increasing market share for imports from China. The ADC stated that it also observed that the increased market share of imports from China coincided with a decline in market share for both the Australian industry and SSAB AU.[174]

Effect of other imports factored into likelihood finding

195. The ADC stated in its s 269ZZJ submission that having concluded that lower priced imports from China were likely a source of injury to the Australian industry in the inquiry period, it then considered how this finding (as to the injurious effect of Chinese imports) impacted its analysis of whether material injury was likely to continue or recur if the measures on exports from Sweden did not continue.

196. The ADC stated that it found that although Chinese imports would likely continue to be a source of injury to the Australian industry, this did not alter its conclusion that in the absence of measures, it was likely that exports from Sweden would continue to

[173] See [59] of the ADC's s 269ZZJ submission, 10–11 where reference was made to REP 638, 82.
[174] See [60]-[63] of the ADC's s 269ZZJ submission, 11, where reference also made Section 7.7.2 and to Figure 13 of REP 638, 77.

cause material injury to the Australian industry. The ADC stated that it maintained this conclusion based on the following findings:

a. 'SSAB remains the main competitor to Bisalloy, particularly in relation to supply to large users of Q&T steel plate',

b. 'large customers are concerned about the quality and reliability of the steel plate used in their respective applications that require technical support for their specific requirements, which both Bisalloy and SSAB can provide',

c. 'these customers will continue to purchase SSAB's and Bisalloy's Q&T steel plate regardless of the availability of cheaper Chinese plate',

d. 'SSAB AU is prepared to price aggressively and undercut Bisalloy's prices for the same models sold to the same large users of Q&T steel plate'.[175]

197. The ADC submitted that with respect to imports sourced from the US, it found that if the measures on Sweden were to expire, it was likely that SSAB AU would switch or substitute supply from the US with supply from Sweden. The ADC stated that this finding was based on its consideration of different factors influencing the comparative benefits and costs of sourcing from Sweden relative to the US, such as the relative production capacities, range of products, dependence on export markets and shipping costs associated with sourcing from Sweden as opposed to the US.[176]

The ADC appropriately sought and properly considered information

198. The ADC submitted in its s 269ZZJ submission that the inquiry appropriately sought information from other interested parties and that all submissions and information submitted by the Applicants were thoroughly considered in the inquiry.

The ADC sought participation of interested parties

199. The ADC outlined in its s 269ZZJ submission how it sought participation from interested parties. In this regard, the ADC outlined the detailed processes and procedure that it followed in seeking the participation of interested parties, in line

[175] See Paragraphs [64]-[65] of the ADC's s 269ZZJ submission, 11–12. Reference was made to Section 7.7.5 of REP 638.
[176] See [66] of the ADC's s 269ZZJ submission, 12 which referred to REP 638, 58–60.

with the legislative framework for Division 6A inquiries. This included: the public notification of the initiation of the inquiry, inviting interested parties to lodge written submissions, seeking specific information from exporters and importers, identifying and contacting exporters and importers and sending them questionnaires as well as placing copies of the exporter and importers questionnaire on the website for completion by those not contacted directly.[177]

200. The ADC stated that it received submissions in response to the inquiry from the Applicants, the European Commission and Bisalloy. The ADC further stated that in line with the legislative framework for Division 6A inquiries, the ADC followed the required processes and considered all available evidence gathered throughout the inquiry and otherwise available to it. The ADC further stated that its recommendations were based on factual findings and supported by the available evidence.[178]

201. The ADC stated that it received submissions in response to the inquiry into the continuation of the measures on Swedish exports from SSAB, the European Commission and Bisalloy. The ADC submitted that in line with the legislative framework for Division 6A inquiries, it followed the required processes and considered all available evidence gathered throughout the inquiry and otherwise available to it and that its recommendations were based on factual findings and supported by the available evidence.[179]

ADC properly considered information provided by the Applicants

202. The ADC submitted in its s 269ZZJ submission that it thoroughly examined and considered all information provided and submissions made by the Applicants to the Inquiry. The ADC referred to Section 2.6.2 of REP 638 stating that it had had regard to all eight submissions made by the Applicants to the Inquiry, with Tables 4 and 5 of REP 638 identifying where the ADC referenced those submissions in REP 638.[180]

[177] For more details of the processes and procedures of the ADC in this regard, see [68]-[69] of the ADC's s 269ZZJ submission, 12 which referred to Document #02 of EPR 638 and Section 2.6.1 of REP 638.
[178] For more details of the processes and procedures of the ADC in this regard as well as the various parties involved, see [70–[73] of the ADC's s 269ZZJ submission, 12.
[179] See [72]–[74] of the ADC's s 269ZZJ submission, 12–13.
[180] See [75]–[76] of the ADC's s 269ZZJ submission, 13 which referred to REP 638, 19–21.

203. The ADC submitted that in terms of assessing whether there was price undercutting in the inquiry period, it appropriately considered all evidence available to the inquiry including:

    a. The ADC's analysis of the price data set out in SSAB AU and Bisalloy's verified sales listings,

    b. Internal price guides and price lists submitted by SSAB AU, and

    c. Examples submitted of SSAB AU's customers being approached by distributors offering to supply Q&T steel plate at prices purportedly lower than SSAB's prices.[181]

204. The ADC submitted that, as set out above, the verified sales listings provided sound evidence of actual prices in the market across a twelve-month period and the ADC's analysis of those prices provided reliable evidence of the interactions of market participants across a twelve-month period. The ADC accepted that price lists and guides have evidentiary value, however, it submitted that this information does 'not evidence the prices or sales quoted or realised [by market participants]'. The ADC further submitted that price offers and negotiations between individual suppliers and customers may provide evidence of competitive interaction between those participants, however, pricing analysis based on verified data will be more accurate in evidencing actual prices.[182]

Legislative context and evidentiary threshold under section 269ZHF(2)

205. The ADC stated that Division 6A of the Act sets out the procedures the Commissioner must follow when considering an application for measures to continue and submitted that, consistent with Division 6A and as set out in REP 638, the Commissioner applied the legislative test in s 269ZHF(2) in making the recommendation to the Minister to continue measures. The ADC submitted that in accordance with the task required under s 269ZHF(2), the Commissioner must make findings of fact as to whether there is a relationship between the expiry of measures and the continuation or recurrence of dumping and injury, such that the former would be likely to lead to the latter. The ADC submitted that s 269ZHF(2),

[181] See [77] of the ADC's s 269ZZJ submission, 13 which referred to REP 638, 75 and 88.
[182] See [78]–[79] of the ADC's s 269ZZJ submission, 13 which referred to REP 638, 88, footnote 148.

consistent with Article 11.3 of the Anti-Dumping Agreement, does not provide for or mandate any particular methodology for undertaking the assessment as to whether measures should be continued. The ADC submitted that, consistent with WTO jurisprudence, the Commissioner must arrive at a reasoned conclusion based on positive evidence.[183]

206. The ADC submitted that having regard to the evidentiary threshold as articulated in s 269ZHF(2) of the Act, the Commissioner ought not be reasonably satisfied that measures should be continued solely on the assumption that removal of the measures would be likely to result in a recurrence of dumping and injury. Further the ADC submitted that the correct legal standard which must be applied in a continuation inquiry involves an assessment of 'likely' under s 269ZHF(2), which requires the Commissioner to consider whether the expiry of the measures would more probably than not lead to the continuation or recurrence of dumping and material injury. The ADC submitted that, additionally, the likelihood assessment under s 269ZHF(2) requires a reasoned and adequate explanation with a positive factual basis. The ADC noted that the Review Panel has previously observed that any determination in relation to the measures must rest on a sufficient factual basis allowing the Commissioner to draw reasoned and adequate explanations and conclusions for the likelihood assessment under s 269ZHF(2).[184]

Reviewable Decision was the correct and preferable decision

207. The ADC submitted that throughout continuation inquiry 638, it conducted its inquiry consistent with the statutory procedures and tests of the Act. The ADC further submitted that during the inquiry, it undertook extensive engagement with the Australian industry, importers and exporters and made relevant findings based on the information before it. The ADC stated that this included information provided by the Applicants and verified information.[185]

208. The ADC submitted that the evidence before it resulted in the Commissioner making positive findings of fact in respect of the legislative obligation outlined in s 269ZHF(2) of the Act and in discharging this obligation, the Commissioner made

[183] See [80]–[82] of the ADC's s 269ZZJ submission, 13–14 which referred to Section 2.2.1 of REP 638 and WTO jurisprudence in Footnote 35.
[184] ADC's s 269ZZJ submission, 14 [83]–[85].
[185] Ibid [86]-[87].

an assessment as to the likelihood of future dumping and material injury should the measures expire. The ADC submitted that in making the recommendation to the Minister, the Commissioner provided a reasoned and adequate explanation of the positive findings of fact made in REP 638.[186]

Bisalloy's position

209. In the Bisalloy Addendum, Bisalloy stated that it rejected the Applicants' assertion that its application for the continuation of the Q&T steel plate measures is an attempt to force higher prices for premium wear plate steel, such that Bisalloy is subsidised to maintain lower prices to compete against non-subject country exports. Bisalloy stated that the applicants repeated this assertion, "presumably to reinforce with the Panel Member its speculative and biased views of Bisalloy's ongoing engagement in the Australian trade remedies system". Bisalloy submitted that this view was not only categorically incorrect, but called into question the Applicants' credibility in regard to this review.[187]

210. Bisalloy referred the Applicants' claims that the ADC failed to recognise the impact of non-subject country Q&T steel plate imports on Australian selling prices. Bisalloy submitted that at each juncture of these arguments during the continuation inquiry, Bisalloy countered with evidence that its main competitive sources in the Australian market are the subject countries.[188] Bisalloy referred to Confidential Attachments 1, 2 and 3 of the Bisalloy Addendum for the details of these counter-arguments.[189]

211. Bisalloy referred to the ADC's landed import price analysis from REP 638 as being relevant and reproduced the relevant extract from REP 638 including Figure 13 (showing the landed price of imports from China, Finland, Japan, Sweden, the US and all other countries) in the Bisalloy Addendum. In the analysis of Figure 13 in REP 638, the ADC stated that notwithstanding the increasing volume of imports from China and an increasing market share for imports from China at the expense of both the Australian industry and SSAB AU, its analysis of price and volume effects indicated "that SSAB AU remains Bisalloy's main competitor in the Australian

[186] ADC's s 269ZZJ submission, 14 [88].
[187] See Section 4 of the Bisalloy Addendum, 6.
[188] Reference was made to the ADC's reference to these submissions at 84–85 of REP 638.
[189] See Section 4 of the Bisalloy Addendum, 6. The non-confidential versions of Attachments 1, 2 and 3 of the Bisalloy Addendum are EPR Documents #009; #014 and #018, respectively.

market, particularly in relation to supply to large users of Q&T steel plate that are concerned about the quality and reliability of the steel plate used in their respective applications". The ADC stated that it considered that these customers would continue to purchase SSAB's and Bisalloy's Q&T steel plate regardless of the availability of cheaper Chinese plate and stated that its price analysis further showed that dumped exports from Sweden had undercut the Australian industry's prices during the inquiry period and would likely continue to do so should the measures expire. In the reproduced extract from REP 638 the ADC concluded:

> *As such, while the Australian industry may be vulnerable to the injurious effects of lower priced imports from China to some extent, the commission considers that in the absence of the measures, dumped exports from the subject countries would likely gain a significant price advantage in a price sensitive market. The commission considers that this would likely lead to price depression and/or price suppression should the Australian industry seek to compete on price against these lower priced dumped exports.*

212. Bisalloy stated in the Bisalloy Addendum that the above analysis from REP 638 was omitted from the Applicants' application for review but submitted that it is a highly relevant assessment, and one that is, in Bisalloy's view is correct and preferable.[190]

Legislation and WTO Provisions relating to Applicable Legal standard relevant to Ground 2

213. Section 269ZHF(2) of the Act states:

> *The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping 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.*

[190] See Section 4 of the Bisalloy Addendum, 6–7, with reference being made to and extract reproduced from REP 638, 77–78.

214. Article 11.3 of the Anti-Dumping Agreement in respect of which s 269ZHF(2) of the Act gives effect to Australia's obligations, provides that:

> *...any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition... unless the authorities determine, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.*

Analysis and Consideration of Ground 2

215. The Applicants contended that that the likelihood of injury finding was 'infected' by misappreciation of market dynamics. The Applicants' main contention was that the ADC did not properly consider the effects of the market penetration of the low-priced imports from countries not subject to measures and contended that it was not credible to attribute future material injury to higher priced Swedish imports when there was so much lower-price competition in the market from countries not subject to measures.

216. The Applicants also contended that the ADC had not appreciated the significance of its submissions and the provision of price and market behaviour evidence about exporters, importers and distributors selling cheaper Q&T steel plate not subject to measures, which was submitted to be information that was highly relevant to the inquiry. The Applicants submitted that despite the relevance, REP 638 did not engage in an earnest consideration of these submissions and of the accompanying information.

217. The ADC in its s 269ZZJ submission submitted that the Commissioner's 'likelihood' finding was sound and that it properly considered the submissions of all interested parties and all relevant factors including the market dynamics in the Australian market and the likely effect of imports from other countries not subject to the measures.

218. At this point, it is important to once again refer to the legal standard applicable to continuation inquiries articulated in s 269ZHF(2) of the Act, which gives effect Article 11.3 of the Anti-Dumping Agreement. Section 269ZHF(2) requires the Commissioner to consider whether the expiry of the measures would, more probably than not, lead to the continuation or recurrence of dumping and material injury. It has been well-accepted in WTO jurisprudence that Article 11.3 does not

require investigating authorities to establish the existence of a "causal link" between likely dumping and likely injury:

> *Instead, by its terms, Article 11.3 requires investigating authorities to determine whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. Thus, in order to continue the duty, there must be a nexus between the "expiry of the duty", on the one hand, and "continuation or recurrence of dumping and injury", on the other hand, such that the former "would be likely to lead to" the latter. This nexus must be clearly demonstrated* [Footnote omitted].[191]

219. Further, and of significance for Ground 2, the AB has also stated:

> *Therefore, what is essential for an affirmative determination under Article 11.3 is proof of likelihood of continuation or recurrence of dumping and injury, if the duty expires. The nature and extent of the evidence required for such proof will vary with the facts and circumstances of the case under review. Furthermore, as the Appellate Body has emphasized previously, determinations under Article 11.3 must rest on a "sufficient factual basis" that allows the investigating authority to draw "reasoned and adequate conclusions"* [Footnote omitted].[192]

220. It should be noted, as articulated by Rares J in *Siam Polyethylene Co Ltd v Minister of State for Home Affairs and Another* (2009) 258 ALR 481 ('*Siam* case'):

> …*although decisions of the WTO Appellate Body are not binding on Australian courts, ordinarily, they should be given substantial weight in selecting the appropriate construction to be given to the provisions of Pt XVB where the language chosen by the Parliament permits*.[193]

221. Significantly, it is also important to bear in mind, as has been discussed in other parts of this report, the Act does not set out any particular methodology for undertaking the likelihood assessment, consistent with the position under Article 11.3 of the Anti-Dumping Agreement. Neither does Article 11.3 identify any particular factors that authorities must take into account in making such a likelihood

[191] AB, *US – Anti-Dumping Measures on Oil Country Tubular Goods*, [108].
[192] See supra, [123].
[193] *Siam* case, [66].

determination.[194] However, it is clear the Commissioner must arrive at reasoned conclusions on the basis of positive evidence.

222. I turn now to considering the Applicants' claims and the details of the ADC's analysis and reasoning, relating to its likelihood of material injury finding, to determine whether the ADC complied with the applicable legal standards, and if it was the correct or preferable decision.

223. I will firstly consider the Applicants' main substantive contention that the ADC did not properly consider the market dynamics and the effects of the market penetration of the low-priced imports from countries not subject to measures. I will thereafter consider the Applicants' contention that the ADC did not properly consider the significance of the Applicants submissions and the provision of price and market behaviour evidence.

Market dynamics and effects of low-priced imports from countries not subject to measures

224. The ADC in its s 269ZZJ submission set out the process and structure of how it formulated its analysis and came to its conclusions in REP 638, summarised as follows:

    a. The ADC generally outlined the likelihood of material injury finding that material injury was likely to continue or recur if the measures with respect to Sweden expired, and then referred to relevant discussions of its analysis in Chapter 7 of REP 638:

        (i) the significant factors on which the finding was based;

        (ii) the ADC's consideration of submissions of all parties concerning the dynamics of the market and how those market dynamics factored into the assessment;

        (iii) the ADC's proper consideration of the likely effect of imports from other countries not subject to the measures; and

[194] See, for example, AB Report, US – Sunset Review of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina, WT/DS268/AB/R, [281].

(iv) the sections in Chapter 7 of REP 638 that supported the likelihood finding that were relevant to the ground of review.

b. The ADC then outlined and explained each stage of this analysis, as follows:

(i) The ADC outlined its assessment of the effects of imports (volume and market share) from other countries on the Australian market and how these effects were factored into the likelihood of material injury assessment. The ADC found that the change to SSAB AU's pricing structure had 'resulted in a redistribution of sales volumes between Bisalloy and SSAB AU'.

(ii) The ADC then examined import pricing across the Australian market over the inquiry period and the findings were used to assess the likely effect of imports from other countries, which were then factored into the ADC's likelihood finding that material price injury was likely to continue or recur if the measures on goods exported from Sweden were to expire.

(iii) Having concluded that lower priced imports from China were likely a source of injury to the Australian industry in the inquiry period, the ADC then considered how this finding (as to the injurious effect of Chinese imports) impacted its analysis of whether material injury was likely to continue or recur if the measures on exports from Sweden did not continue. The ADC was able to identify and focus on the specific identified area of injury to Bisalloy in respect of wear grade plate sales to large users of Q&T steel plate and common customers, concerned about the quality and reliability of the steel plate. The ADC also examined the likely impact of the expiry of the measures on imports sourced from the United States.

225. I noted the logical structure of the ADC's explanation of the process of its analysis as set out in its s 269ZZJ submission. I then examined each of the stages of the analysis described in the ADC's s 269ZZJ submission with reference to Chapter 7 of REP 638, other relevant documents and submissions and the application for review.

226. First, in considering the effects of imports from other countries on the Australian market, the ADC found that the proportion of imports from other countries increased following the imposition of the measures in 2014, and in particular, found that the share of the total volume of imports from the United States and China increased following the continuation of the measures in 2019. The ADC also observed that SSAB AU's pricing structure had changed since the measures were last continued in 2019, with its structural grade pricing increasing relative to Australian industry and wear grade pricing decreasing.[195]

227. The ADC then sought to further understand how this change to SSAB AU's pricing structure had affected the Australian market and sought to understand the impact of the change on sales volumes and market share, as well as the likely effect on sales volumes should measures expire. On analysing the changes to sales volumes across the Australian market over the period YE Sept 2018 to YE Sept 2023, the ADC found:

    a. despite the growth in the total size of the Australian market, Bisalloy had not achieved growth in its aggregate sales volume, and SSAB AU has suffered a reduction in its aggregate sales volume.

    b. imports from other countries, notably China, captured additional sales volume.

    c. despite overall stagnant growth, Bisalloy had grown its structural grade sales volume, while its wear grade volume has been in decline' and 'despite a decline in its total sales volume, SSAB AU has grown its wear grade sales volume.

228. Based on this analysis, the ADC stated that it found that the change to SSAB AU's pricing structure had 'resulted in a redistribution of sales volumes between Bisalloy and SSAB AU'.[196] The ADC referred to the following statement in REP 638 that

[195] In this regard, the ADC's detailed analysis of import volumes from subject countries and from the United States, China and all other countries, are set out in Section 7.5 1 of REP 638 and Figure 8: 'Proportion of total import volumes of Q&T steel plate', [57]–[58].
[196] In this regard, the ADC's detailed analysis is in Section 7.7.4 of REP 638 with the findings presented in index form in Table 14, 82.

indicated that it factored the increasing influence (volume) of imports from other countries, most notably China into its likelihood finding:

> *The commission however considers that given SSAB AU has increased its sales volume of wear grade Q&T steel plate coincident with the rise in the volume of imports from other countries, while Bisalloy's sales volume of wear grade decreased, Bisalloy has experienced volume injury in respect of its sales of wear grade plate, and that injury has been caused by both dumped goods from Sweden as well as imports from other countries that have undercut Bisalloy's prices.*[197] [emphasis added by the ADC]

229. The ADC stated that it then also examined import pricing from YE September 2011 to YE September 2023 to assess the likely effect of imports from other countries, which effects were then factored into the Commissioner's likelihood finding.

    a. The ADC found that import prices from China had historically been among the lowest of the identified countries but broadly followed a similar trend to prices of other imports until 2019. In 2019 when prices from China began to diverge from other imports and from YE September 2021 prices of all other imports increased to a significantly greater extent than prices from China. The ADC stated that it observed that the divergence in prices from China from 2019 coincided with an increasing volume of imports from China and increasing market share for imports from China. The ADC also observed that the increased market share of imports from China coincided with a decline in market share for both the Australian industry and SSAB AU.[198]

    b. The ADC stated that having concluded that lower priced imports from China were likely a source of injury to the Australian industry in the inquiry period, the ADC then considered how this finding (as to the injurious effect of Chinese imports) impacted its analysis of whether material injury was likely to continue or recur if the measures on exports from Sweden did not continue. The ADC stated that it found that although Chinese imports would likely continue to be a source of injury to the Australian industry, this did not alter its

[197] REP 638, 82.

[198] In this regard, the ADC's analysis of landed prices of imports are set out in Section 7.7.2 of REP 638 and Figure 13:'Landed price of imports (AUD/tonne), 77. See also Confidential Attachment 14 to REP 638.

conclusion that in the absence of measures, it was likely that exports from Sweden would continue to cause material injury to the Australian industry. The ADC stated that it maintained this conclusion based on the following findings:

(i) SSAB AU remains the main competitor to Bisalloy, particularly in relation to supply to large users of Q&T steel plate.

(ii) large customers are concerned about the quality and reliability of the steel plate used in their respective applications that require technical support for their specific requirements, which both Bisalloy and SSAB can provide.

(iii) these customers will continue to purchase SSAB AU's and Bisalloy's Q&T steel plate regardless of the availability of cheaper Chinese plate.

(iv) SSAB AU is prepared to price aggressively and undercut Bisalloy's prices for the same models sold to the same large users of Q&T steel plate.[199]

c. With respect to imports sourced from the US, the ADC stated that it found that if the measures on Sweden were to expire, it was likely that SSAB AU would switch or substitute supply from the US with supply from Sweden. The ADC stated that this finding was based on the ADC's consideration of different factors influencing the comparative benefits and costs of sourcing from Sweden relative to the US, such as the relative production capacities, range of products, dependence on export markets and shipping costs associated with sourcing from Sweden as opposed to the US.[200]

230. It is apparent from the ADC's detailed description of its assessments of each of the different stages of the likelihood of material injury analysis, discussed above, that the imports from countries not subject to the measures, and particularly the low-priced imports from China, formed a major part of the ADC's analysis. The ADC assessed the effects of imports on the Australian market in the inquiry period, first in

[199] In this regard the ADC's consideration of this finding in Section 7.7.2 of REP 638, 77–78.
[200] In this regard the ADC's consideration of this finding is in Section 7.5.1 of REP 638, 58–60.

terms of volume (and market share) and then in terms of pricing, and found that the lower priced imports from China were likely a source of injury to the Australian industry in the inquiry period. Significantly, the ADC also found that following a change to SSAB AU's pricing structure since the measures were last continued (in 2019), its structural grade pricing increased relative to Australian industry and wear grade pricing decreased. It was this redistribution of sales volume between Bisalloy and SSAB AU, coincident with the rise in the volume of imports from other countries, that the ADC then focussed on in its analysis. This led to the ADC isolating and focussing on the specific volume injury that Bisalloy experienced in respect of its sales of wear grade plate. The ADC then found that although Chinese imports would likely continue to be a source of injury to the Australian industry, this did not alter the ADC's conclusion that in the absence of measures, it was likely that exports from Sweden would continue to cause material injury to the Australian industry. The ADC maintained this conclusion based on the findings that SSAB AU remained the main competitor to Bisalloy particularly in relation to supply to common customers that were large users of Q&T steel plate, concerned about the quality, reliability and technical support, which both Bisalloy and SSAB can provide. Significantly, the ADC found that these customers will continue to purchase SSAB's and Bisalloy's Q&T steel plate regardless of the availability of cheaper Chinese plate, and significantly also found (arising out of the price undercutting analysis) that SSAB AU is prepared to price aggressively and undercut Bisalloy's prices where direct competition exists within the wear grade category.

231. I consider the ADC's analysis to be well-structured and most comprehensive, based on substantial positive evidence with reasoned explanations of how the evidence and data supported all the findings at the different stages of the analysis and the ultimate conclusion that the expiry of the measures would lead to the continuation or recurrence of material injury. Further, I consider that the Commissioner's 'likelihood' finding properly considered the dynamics of the Australian Q&T steel plate market and appropriately considered the effect of other imports on the Australian industry. I also consider that the ADC's conclusion that the expiry of the measures would likely lead to the continuation or recurrence of dumping and material injury, met the legal standard applicable to continuation inquiries articulated in s 269ZHF(2) of the Act.

232. I am not persuaded by the Applicants' arguments, and it has not been demonstrated that the ADC's likelihood of material injury finding was affected by a misappreciation

of the market dynamics or that the ADC did not consider the effects of the market penetration of the low-priced imports from countries not subject to measures.

233. I agree with the ADC's comprehensive analysis and ultimate conclusion that the expiry of the measures would lead to the continuation or recurrence of material injury. I consider that it is the correct or preferable decision.

ADC's consideration of Applicants' submissions and the price and market behaviour evidence that was submitted

234. The ADC in its s 269ZZJ submission submitted that it appropriately sought and properly considered information from all interested parties and that all submissions and information submitted by the Applicants were thoroughly considered in the inquiry.

235. In this regard, in its s 269ZZJ submission, the ADC outlined the detailed processes and procedure that it followed in seeking the participation of interested parties, in line with the legislative framework for Division 6A inquiries. This included: the public notification of the initiation of the inquiry, inviting interested parties to lodge written submissions, seeking specific information from exporters and importers, identifying and contacting exporters and importers and sending them questionnaires as well as placing copies of the exporter and importers questionnaire on the website for completion by those not contacted directly. I consider that the ADC's adherences to these processes and procedures were appropriately reflected in REP 638.

236. The ADC stated that it received submissions in response to the inquiry from the Applicants, the European Commission and Bisalloy. The ADC further stated that in line with the legislative framework for Division 6A inquiries, the ADC followed the required processes and considered all available evidence gathered throughout the inquiry and otherwise available to it. The ADC further stated that its recommendations were based on factual findings and supported by the available evidence. In this regard, I consider that REP 638 appropriately reflected and summarised parties' submissions, wherever relevant. I consider that each finding and conclusion of the ADC's analysis was based on factual findings and supported by evidence, with well-reasoned explanations for each finding or conclusion.

237. The ADC in its s 269ZZJ submission submitted that it thoroughly examined and considered all information provided and submissions made by the Applicants.

including details of how it considered all the evidence. In this regard, the ADC referred to the section in REP 638 that outlined all eight submissions of the Applicants that the Commissioner had regard to in the inquiry, as well as to the tables identifying where in REP 638 the ADC had referenced those submissions.[201]

238. The ADC stated in its s 269ZZJ submission that when assessing whether there was price undercutting in the inquiry period, it appropriately considered all evidence available to the inquiry including:

    a. The ADC's analysis of the price data set out in SSAB AU and Bisalloy's verified sales listings,

    b. Internal price guides and price lists submitted by SSAB AU, and

    c. Examples submitted of SSAB AU's customers being approached by distributors offering to supply Q&T steel plate at prices purportedly lower than SSAB's prices.[202]

239. The ADC further stated in its s 269ZZJ submission that its verified sales listings provide sound evidence of actual prices in the market across a twelve-month period and that the ADC's analysis of those prices provided reliable evidence of the interactions of market participants across a twelve-month period. The ADC further stated that while it accepted that price lists and guides have evidentiary value, this information did "not evidence the prices or sales quoted or realised [by market participants]'.[203] The ADC submitted further that price offers and negotiations between individual suppliers and customers may provide evidence of competitive interaction between those participants, however, pricing analysis based on verified data will be more accurate in evidencing actual prices.

240. It is apparent from the above discussion of the ADC's processes and procedures in Inquiry 638, that the ADC considered all of the Applicants' submissions and evidence provided, relating to the market dynamics and the impact on the market of low-priced imports from non-subject countries. The ADC documented its

[201] See Section 2.6.2 of REP 638 and Tables 4 and 5, 19–21.
[202] See REP 638, 75 and 88 where the ADC referenced its consideration of comparative pricing examples provided by SSAB AU.
[203] In this regard, reference was made to Footnote 148 of REP 638, 88 where the ADC specifically made this point.

engagement and consideration of these submissions and evidence in REP 638, where relevant. More significantly, it is apparent from the ADC's comprehensive and structured analysis in REP 638 and discussed in detail above, that the ADC properly assessed the market dynamics and impact of low-priced imports from non-subject countries on the Australian market and factored it into its likelihood of injury analysis.

241. It is my view that the ADC properly considered all the submissions of the Applicants and the evidence they provided, relating to the market dynamics and the impact of low-priced imports from non-subject countries on the Australian market. I am not persuaded by the Applicants arguments, and it has not been demonstrated that the ADC did not properly consider the Applicants' submissions and evidence provided in this regard.

Conclusion in respect of Ground 2

242. I consider that the Commissioner's 'likelihood of material injury' finding properly considered the dynamics of the Australian Q&T steel plate market and the effects of other imports on the Australian industry. I also consider that the ADC properly considered all the submissions of the Applicants and the evidence it provided, relating to the market dynamics and the impact of low-priced imports from non-subject countries on the Australian market.

243. I reject this ground of review.

Recommendation

244. Based on my consideration of the reviewable grounds and for the reasons given above, I consider that the Reviewable Decision was the correct or preferable decision.

245. Pursuant to s 269ZZK(1) of the Act, I recommend that the Minister affirm the Reviewable Decision.

Leora Blumberg
Panel Member
Anti-Dumping Review Panel
18 August 2025

Appendix A

Conferences

Date of conference	Participants	Purpose of conference	Abbreviation
16 December 2024	Legal Representative of SSAB EMEA and SSAB AU	To obtain further information in relation to the application	First Conference
24 January 2025	ADC	To obtain further information in relation to the review	Second Conference
19 February 2025	Legal Representative of SSAB EMEA and SSAB AU	To obtain further information in relation to the review	Third Conference
10 July 2025	Bisalloy	To obtain further information in relation to the review	Fourth Conference
25 July 2025	ADC	To obtain further information in relation to the review	Fifth Conference
28 July 2025	Legal Representatives of SSAB EMEA and SSAB AU	To obtain further information in relation to the review	Sixth Conference