



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 6 July 2021 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application to the ADRP for review of a Ministerial decision.

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

Time

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

Conferences

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

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the ADRP website for more information.

¹ By the Senior Member of the Anti-Dumping Review Panel under s.269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

Withdrawal

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

Contact

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

PART A: APPLICANT INFORMATION

1. Applicant's details

There are two applicants.

Applicant's name: SSAB EMEA AB ("SSAB EMEA")
Address: SSAB EMEA AB, SE-613 80, Oxelösund Sweden
Type of entity (trade union, corporation, government etc.): Limited liability company registered in Sweden

Applicant's name: SSAB Swedish Steel Pty Ltd ("SSAB AU")
Address: Unit G1, 28 Balaclava Street, Woolloongabba, Queensland 4102, Australia
Type of entity (trade union, corporation, government etc.): Proprietary limited company registered in Australia

Collectively, they are referred to as the SSAB "companies" in this application.

2. Contact person for applicant

Full name: Daniel Moulis
Position: Partner Director, Moulis Legal
Email address: daniel.moulis@moulislegal.com
Telephone number: +61414221224

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

SSAB EMEA is directly concerned with the exportation into Australia of the goods the subject of the application under Section 269ZHB of the *Customs Act 1901* to which this application refers, and is directly concerned with the production of those goods.

SSAB AU is directly concerned with the importation into Australia of those goods.

4. Is the applicant represented?

Yes No

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

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

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

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

- | | |
|--|--|
| <input type="checkbox"/> Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice | <input type="checkbox"/> Subsection 269TL(1) – decision of the Minister not to publish duty notice |
| <input type="checkbox"/> Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice | <input type="checkbox"/> Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures |
| <input type="checkbox"/> Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice | <input type="checkbox"/> Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry |
| <input type="checkbox"/> Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice | <input checked="" type="checkbox"/> Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures |

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed.**

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

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

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

Tariff subheading	Statistical code	Description
7225		FLAT-ROLLED PRODUCTS OF OTHER ALLOY STEEL, OF A WIDTH OF 600 MM OR MORE:
7225.1		- Of silicon-electrical steel:
7225.40.00		- Other, not further worked than hot-rolled, not in coils, high alloy:
	21	<i>Quenched and tempered</i>
	22	<i>Other</i>
		- Other, not further worked than hot-rolled, not in coils, other:
	23	<i>Quenched and tempered</i>
	24	<i>Other</i>
7225.9		- Other:
7225.99.00	39	-- Other

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: 2024/064
Date ADN was published: 4 October 2024

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

See:

- **Appendix 1 – ADN 2024/64**
- **Appendix 2 - Report No 638 - Inquiry into the Continuation of Anti-Dumping Measures on Certain Quenched and Tempered Steel Plate Exported to Australia from the Republic of Finland, Japan and the Kingdom of Sweden (5 September 2024)**

PART C: GROUNDS FOR THE APPLICATION

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

Confidential or commercially sensitive information must be **highlighted in yellow**, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page.

Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

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

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

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

See separate document attached to this application.

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

See separate document attached to this application.

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

See separate document attached to this application.

- 12. Set out the reasons why the proposed decision provided in response to question 0 is materially different from the reviewable decision:**

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

See separate document attached to this application.

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

See separate document attached to this application.

PART D: DECLARATION

The applicant's authorised representative declares that:

- the applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- the information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:



Name: **Daniel Moulis**

Position: **Partner Director**

Organisation: **Moulis Legal**

Date: **4 November 2024**

PART E: AUTHORISED REPRESENTATIVE

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

Provide details of the applicant's authorised representative:

Full name of representative: Daniel Moulis
Organisation: Moulis Legal
Address: 6/2 Brindabella Circuit, Canberra International Airport, ACT 2609
Email address: daniel.moulis@moulislegal.com
Telephone number: +61414221224

Representative's authority to act

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

See:

- **Appendix 3 - letter of authority from SSAB EMEA**
- **Appendix 4 – letter of authority from SSAB AU**

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

Signature: (Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /



In the Anti-Dumping Review Panel

Application by SSAB companies for review concerning Minister’s decision in continuation inquiry 638

Quenched and tempered steel plate from Sweden

4 November 2024

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A Introduction

By way of notice published on 4 December 2023 the Commissioner of the Anti-Dumping Commission (“the Commissioner”) initiated an inquiry regarding the continuation of anti-dumping measures applying to certain quenched and tempered steel plate (“Q&T steel plate”) exported from Finland, Japan and Sweden (“Inquiry 683”).

Anti-dumping measures had originally been imposed on such Q&T steel plate on 5 November 2014, pursuant to Australian Dumping Notice 2014/123.

The initiation of Inquiry 683 was a consequence of an application lodged by Bisalloy Steels Pty Ltd (“Bisalloy”) which has been found by the Commissioner (“the Commission”), in this and prior investigations and inquiries concerning Q&T plate steel, to constitute the Australian industry producing like goods to those which are the subject of the measures.

The Commission recommended to the Minister that he secure the continuation of the measures on Q&T plate steel exported from Finland, Japan and Sweden, and that the dumping duty notice have effect as if different variable factors had been ascertained.

The Minister accepted the Commission’s recommendation, declaring on 4 October 2024 by way of notice made under Section 269ZHG(1) of the *Customs Act 1901* (“the Customs Act”) that he had “*decided to accept the recommendations and reasons for the recommendations, including all the material findings and law*” in the Final Report.¹

The SSAB companies,² being persons who are each an interested party in relation to the reviewable decision, seek review by the Anti-Dumping Review Panel (“ADRP”) of that decision under Sections 269ZZA(1)(d) and 269ZZC of the Customs Act with respect to exports by SSAB EMEA from Sweden.³

B Grounds of review

1 First ground – unsound price comparison basis for recommendation that the measures be continued

<p>9 Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision</p>
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The Commission can only recommend 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.⁴ This satisfaction must be achieved on the basis of probability. It must be based on positive evidence upon which reasoned and adequate conclusions are drawn.

SSAB believes that the Commission did not arrive at a reasoned and adequate conclusion with respect to the conclusion in the Final Report 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.

With respect to the first ground, this occurred because the Commission failed to appreciate the significance of order contract information that was provided to it with respect to the centrepiece of its “continue the measures” narrative, as we now explain.

The Commission’s recommendation is contained in a long and wordy 114 page report. Ultimately, however, the Commission was required to state its case, and support it with relevant evidence. In

¹ *Report No 638 - Inquiry into the Continuation of Anti-Dumping Measures on Certain Quenched and Tempered Steel Plate Exported to Australia from the Republic of Finland, Japan and the Kingdom of Sweden* (5 September 2024) (“the Final Report”).

² “SSAB EMEA” and “SSAB AU”, as per the Review Panel’s *Application for review of a Ministerial decision* form which accompanies this document.

³ For greater clarity, this application seeks a declaration by the Minister that although the notice continues in force after the expiry day, it ceases to apply in relation to SSAB EMEA as a “particular exporter” in the terms of Section 269ZHG(4)(a)(ii) of the Customs Act.

⁴ To be clear, the test under Section 269ZHF(2) of the Customs Act is not about whether dumping is likely, nor is it about the simple occurrence of dumping now or in the future. It is about the continuation or recurrence of material injury that the anti-dumping measure is intended to prevent. The anti-dumping measures with respect to exports by SSAB EMEA are based on a non-injurious price. Thus, it is not injury caused by “dumping” that is the relevant focus, rather it is that part of any dumping that exists below the non-injurious price. In this case the anti-dumping measure with respect to Sweden has always recognised (i.e. has always “intended”) to act against injurious dumping, and not to extract a dumping duty equal to the full margin of dumping. The SSAB companies maintain that they always observed non-injurious pricing with respect to Australian sales. See Attachments C5, C6 and C7.

Section 7.1 of the Final Report, in explaining its findings on the continuation or recurrence of material injury, the Commission states:

...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 market⁵

The “satisfaction[s]” that the Commission cites 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 founded on that finding. This is:

- (a) because, in the immediately following open-circle dot point, the Commission refers to *“the price advantage that SSAB AU currently maintains on wear grade plate”* – obviously, if there is no such current price advantage, there can be no satisfaction for whatever conclusion it is that the Commission seeks to draw from such an advantage; and
- (b) because, in the next open circle dot point the Commission refers again to *“SSAB AU's price advantage”* – again, if the price advantage is not evidenced, materially or at all, a conclusion that the Commission attempts to base on such an advantage cannot stand.

The Final Report offers 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”* are offered. The recommendation is based on the finding of price undercutting.

The belief that SSAB undercut Bisalloy's prices for wear plate is based on two charts in the Final Report.

The first of these is the following:⁶



⁵ Final Report, page 52, first open-circle dot point relating to the Commission's explanation of its findings on the continuation or recurrence of material injury.

⁶ Final Report, page 73.

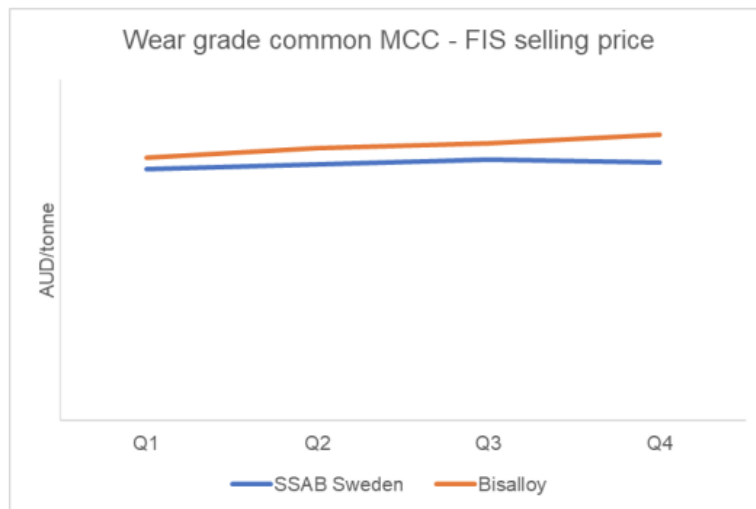
This is said to be an “[a]ggregate [quarterly] price comparison between Bisalloy and SSAB AU’s Swedish sourced... wear grades”. The Commission concludes from this chart that:

...Bisalloy had on aggregate a higher price for wear plate with undercutting by SSAB AU of up to 5%.¹⁰⁶

The commission considers that this analysis demonstrates that Bisalloy’s prices are undercut with respect to wear grade plate...

¹⁰⁶ Confidential Attachment 12.

The second is the following:⁷



This is said to be a “[p]rice comparison between Bisalloy and SSAB AU for common MCCs of wear grade”. The Commission arrives at the following conclusions, evidently believing them to be damning of SSAB’s participation in the Australian market:

In relation to SSAB AU’s 2 highest volume wear grade MCCs price undercutting ranged between 8% and 19%.¹⁰⁸ The commission considers this demonstrates that SSAB AU is prepared to price more aggressively where direct competition exists within the wear grade category.

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, indicates 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.¹⁰⁹ This does not support SSAB’s contention that its prices are consistently higher.

¹⁰⁸ Confidential Attachment 12.

¹⁰⁹ In its submission of 13 June 2024 (EPR 638, document no 22, page 3), SSAB stated that at relevant times, it has applied an ‘origin-agnostic sales policy’.

Thus, Confidential Attachment 12, how it has been constructed, and the accuracy of the information underlying it, was fundamental to the view formed by the Commission when it made its recommendation to the Minister at the conclusion of its inquiry. If it is wrong and does not establish the wear plate

⁷ Final Report, page 74.

proposition that the Commission trumpets in the Final Report, 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.

The SSAB companies and other companies in the group have demonstrated their *bona fides* with respect to Australia’s anti-dumping system time and time again.⁸ Over the course of two original investigations, one of which (with respect to US exports) was shown to be deficient and was terminated, a circumvention inquiry that was revoked, ten successive and successful duty assessments, and now two continuation inquiries, the SSAB companies have been fully cooperative. They have never been found to be deficient in their collaboration with the Commission. The evidence the companies has provided has been meticulous. Their compliance with Australia’s anti-dumping system has been first rate. 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 dumping⁹ - has been embedded in SSAB AU’s Australian market sales policy. At all times SSAB has intended to compete in the Australian market fairly, by continuing to make its premium Q&T plate steel 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.

Two hundred and 14 days after the initiation of the continuation inquiry to which this application relates, the Commission placed its Statement of Essential Facts (“SEF”) on the public record. It was at that time that the Commission first made known to SSAB that it intended to reach an adverse conclusion, and outlined the reason that was said to support that conclusion. The outcome relating to SSAB’s wear plate pricing was not tested with SSAB before that “essential fact” was reported. Proper inquiry would suggest that it should have been, given that the price undercutting proposition was 180 degrees opposed to the SSAB companies’ submissions and expectations.

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 Commission 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 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.

Accordingly, the SSAB companies doubled down on their pricing submissions. 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.¹⁰

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. That

⁸ See Attachment C3, for example.

⁹ Customs Act, Section 269TAE(2A) refers.

¹⁰ See letter from Moulis Legal to the Commission dated 25 July 2024.

information was provided to the Commission in the SSAB companies' submission in response to the SEF which was lodged within 20 days after the placing of the SEF on the public record.¹¹

In its Final Report, the Commission states that “SSAB has not provided any explanation of the relevance of the forward orders to the calculation of the export price”.¹² That was not the case. The information provided was described as “[f]urther information about pricing”. 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. SSAB does not accept that the submission or its implications were not understood by the Commission, and notes that no effort was made by the Commission to clarify any aspect of same.

The Commission's opinion that the information was incomplete or unreliable, presumably so it could be rejected, is regrettable. SSAB has always been fully cooperative with the Commission. The purchase orders and their dates are all clear evidence of what they say. There is nothing unreliable about them at all. The Commission was familiar with and had already accepted purchase orders in the same form from the same companies as “reliable” evidence at and following the SSAB AU verification. Those orders were all sales made before the inquiry period. 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. The Commission's criticism that SSAB “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.

Moreover, that there can be a prolonged period over which goods exported to Australia by SSAB EMEA are stored in warehouses was recognised by the Commission in the Final Report for one purpose (its export price determination)¹³ but we suspect has not been recognised by the Commission for this purpose (its price comparisons). The basis of those price comparisons was not revealed to the SSAB companies, and we are still unsure about how it has been compiled and how the outcomes have been calculated.

In summary, the Commission published an SEF without testing its central assumption with SSAB; gave SSAB only 20 days to respond; left SSAB to guess what the reason might be for the adverse comparison with Bisalloy's prices; failed to appreciate the meaning and importance of SSAB's submission and the use to which the information should have been put (which in our opinion is remarkable); and dismissed our client's purchase order information as being “unreliable”.

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

We have tracked-through the justification offered by the Commission for its conclusion that “the dumping will likely lead to a continuation or recurrence of material injury to the Australian industry”. Those tracks all start at and rely upon the finding “that SSAB AU is prepared to price aggressively and undercut Bisalloy's prices”.¹⁴

¹¹ See Attachments PR7, C27, C28 and C29.

¹² See Final Report, page 45.

¹³ See Final Report, page 44.

¹⁴ See Final Report, page 74.

SSAB expects 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. For example, in accordance with its intention not to find itself in a position of being accused of injuring the Australian industry, and consistent with its premium product offering, SSAB AU raised the prices in its internal price guides of its staple Hardox 450 and Strenx 700E products between 1 October 2021 (the earliest month date of the purchase orders provided to the Commission was August 2021) and 30 September 2023 (the last month of the inquiry period) by █% and █% respectively. These indicative price rises far exceed the “5%”, “8%”, and “19%” price undercutting accusations in the Final Report.

The time between order contract and domestic invoicing of the sales that we expect may have caused the appearance of price undercutting in Attachment 12 was extensive. This is because they were mill orders, and not sales from stock. It is also notable that some of the orders were placed by the customers considered prior to the Russia-Ukraine conflict that flared up on 24 February 2022. 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.

If our 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.

With no evidence of “aggressive” price undercutting of Bisalloy’s prices by Q&T plate steel exported by SSAB EMEA from Sweden, the decision to secure the continuation of the measures would fall over. The foundation of the decision, based on the reasoning in the Final Report, will have been removed, and it will be shown not to have been the “correct or preferable decision”. Instead, 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 Section 269ZHG(4)(a)(ii) of the Customs Act.¹⁵

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

Please refer to our responses to questions 9 and 10 with respect to this ground of review, in particular the paragraph in our response to question 9 which refers, inelegantly, to the “satisfaction[s]” that the Commission cites for its conclusion that “the dumping will likely lead to a continuation or recurrence of material injury to the Australian industry” and their sole dependency on the Commission’s finding of “aggressive[]” undercutting of Bisalloy’s wear plate prices by SSAB AU.

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

We expect this question is largely posed for different circumstances than the reversal of a decision to secure the continuation of measures against a particular exporter, which is self-evidently materially different to the non-reversal of such a decision.

¹⁵ Customs Act Sections 269ZHG(1)(b) and 269ZHG(4)(a)(ii) refer.

2 Second ground – “likelihood” finding infected by misappreciation of market dynamics

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

As outlined when explaining the first ground of this application, a decision about the probable likelihood of material injury being caused by dumped imports must have a basis in facts that are observable in the present. It is a sound conclusion drawn from those facts that could support a decision to secure the continuation of measures. The Commission realises this, which is why its wear plate finding, the singular basis for its recommendation, is so heavily promoted in the Final Report.

If the ADRP agrees that Confidential Attachment 12 of the Final Report, properly constructed and excluding pre-inquiry period sales, does not support the “aggressive” price undercutting proposition then the Final Report and its recommendation must fall over, because the first ground of this application will be proven to be irresistible. Nonetheless SSAB does wish to advance this second ground, as now explained, 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.

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 plate steel into the market in large quantities, including from Bisalloy’s China Co-Operative Joint Venture (“CJV”), “Bisalloy Shangang” (referred to as Shandong Steel Plate Co., Ltd on the Bisalloy website);¹⁶ 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.¹⁷

Prices have rocketed over the past five years:

*The commission 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.*¹⁸

Bisalloy’s profit has also rocketed over the past five years, as clearly demonstrated by data placed on the public record by the SSAB companies.¹⁹ Thus, the “ebb and flow of business” has been kind to Bisalloy. It may not be kind to Bisalloy in the future, or the market might turn for the worse for all participants, or

¹⁶ The SSAB companies provided evidence of third party arrangements which very strongly suggested that “Bisalloy” Q&T plate steel has been imported from Bisalloy’s China CJV by parties unrelated to Bisalloy. This would be a significant distribution arrangement entered into by the Australian industry with high relevance for the inquiry. The degree of attention paid to this matter by the Commission is not known to the SSAB companies. See Attachment C2, Slide 16.

¹⁷ The Commission’s statement that: “the... key drivers of demand, and distribution arrangements have not changed from those observed in the original investigation and last continuation inquiry” (see Final Report, page 28) is either wrong or confined to definitions of “demand” and “distribution” that are different to ours. New entrants, Bisalloy’s China JV exports of products from China (sold here with well-advertised technical quality credentials), COVID impacts, shipping freight availability, unsolicited price offers by SMS, and massive discounting from Chinese suppliers, have significantly impacted and changed market dynamics.

¹⁸ See Final Report, page 29.

¹⁹ See EPR Doc 11 Slide 8, “Bisalloy financial metrics 2”.

competition may intensify because of the actions of one or more of them. 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".²⁰

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. 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. 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.

The market activities and prices of exporters, importers and distributors selling cheaper Q&T plate steel that is not subject to measures in the Australian market will not cease with the expiry of the measures with respect to Sweden. 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.

SSAB submits that the Commission glossed over this reality. The market is awash with non-subject country imports. 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.²¹

The interplay between market suppliers and customers is not limited to SSAB and Bisalloy supplying common and uncommon customers. The Commission recognises this, and Bisalloy openly claims that it is competitive pressure from imports "from Sweden, the US and China",²² that hold back its prices. We note these references to the openness of competition in the Australian market and its effects that are on the public record:

- (a) the Commission supports its "likelihood of material injury finding" with this factor:

...there is a significant overlap among all suppliers in the Australian market in terms of supplying the same or common customers and therefore SSAB AU and Bisalloy compete in the same market for the same customers²³ [emphasis added]

- (b) the Commission finds that:

Bisalloy and importers sell Q&T steel plate to common customers and on similar commercial terms or conditions.²⁴ [emphasis added]

- (c) the Commission states that:

The commission notes an increasing volume of imports from China was either offered to or sold to some common customers of both the Australian industry and SSAB AU.¹⁴⁴

²⁰ See ADN 2012/24 - New Ministerial Direction on Material Injury (1 June 2012).

²¹ 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. See Attachments PR5 and C25, footnotes 7 and 8.

²² Emphasis added.

²³ See Final Report, page 10.

²⁴ See Final Report, page 25.

144 Confidential Attachment 14. [emphasis added]

(d) the Commission's Australian industry verification report records this interchange:

The verification team queried why Bisalloy did not increase its prices commensurate with the increase in costs observed in the inquiry period (indicative of price suppression in the inquiry period). Bisalloy claimed that it did not increase prices because of competitive pressure from imports from Sweden, the US and China.²⁵ [emphasis added]

There are 575 occurrences of the word "SSAB" in the Final Report. "Bisalloy" and "Australian industry" collectively achieve 474 hits. The words "other exporters" are mentioned only 16 times. The relevance of other exporters and their lower priced suppliers in the market has about the same proportional relevance to the Commission's likelihood recommendation as these numbers suggest.

SSAB made submissions and provided price and market behaviour evidence about exporters, importers and distributors such as BlueScope Distribution, Dillinger, Southern Steel, Impact Steel, Nisco, and Bisalloy SD Steel (China), named those parties on the public record, and provided non-confidential summaries of the information provided. SSAB advised the Commission 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.²⁶

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. Despite that relevance, the Final Report does not engage in an earnest consideration of these submissions and of the accompanying information. In the main there is no mention of them at all.²⁷ The proposition that any holding-back of the profitability of the Australian industry is attributable to non-subject country volumes and low prices of 32% of the market²⁸ and not the high priced subject country practices of 6% of the market, is not explored at all.²⁹

Further, the Final Report contains no clear indication as to whether the Commission 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. For example, the Commission could have sought submissions from interested parties about these matters, based on the reasonable assumption that the information provided by SSAB was at least

²⁵ See EPR Doc 15, page 22.

²⁶ See Attachments C2, C4, C9, C10, C11, C12, C13, C14, C15, C16, C17, C18, C19, C20, C22, C23, C24, C25, C29.

²⁷ The Final Report uses the words "*no evidence*" to dismiss relevant information provided by SSAB in circumstances where only the Commission could obtain the entirety of the evidence or additional information it might have required to form a complete opinion. This occurs on pages 35 (with respect to market shares) and 84 (with respect to import volumes and prices). SSAB could not possibly have the entirety of such evidence. Conversely, we note that the Commission uses a "*found no evidence*" defence in its own favour to support an assumption ("*the Commission considers*") that certain customers would "*continue to purchase SSAB's and Bisalloy's Q&T steel plate regardless of the availability of cheaper Chinese plate*". It is not indicated whether it made inquiries of those customers, and given that this was an assumption ("*the Commission considers*") one must conclude that it did not (see Final Report, footnote 145).

²⁸ Market share of "China" and "All Other Countries" according to measurement of Commission's statistics (see Final Report, Figure 4, page 34).

²⁹ Market share of "Sweden" according to measurement of Commission's statistics (ibid.), which is likely to have been overstated by reason of the sales timing issue that is the basis of the first ground.

evidence of what it said, and that key issues raised by that information deserved further inquiry. It could have done this by way of placing a File Note or Issues Paper on the public record but did not do so.

In short, the record suggests that the Commission has 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.

By way of letter dated 16 May 2024, SSAB politely addressed its concerns about the lack (or paucity, we cannot be sure) of market inquiries by the Commission, stating:

We have provided a wealth of direct evidence of market price offers, price simulations, price comparisons, and business practices relevant to the inquiry period, to the extent we have been allowed to do so by the commercial parties who have provided that evidence. The Commission's recommendations must be based on judgements about future probabilities. Demonstrated commercial behaviours relating to an inquiry period are essential pointers in determining what would be more likely or less likely to happen in that future.

SSAB requests the Commission to use its own powers and discretions to seek data and opinions that substantiate the findings on which the recommendations are to be based. It is open to the Commission to do so by encouraging and questioning parties other than the main protagonists. SSAB believes that it would assist the Commission greatly if it were to extend its inquiries to a wider group of interested parties, who may wish to come forward and to provide their own data and opinions, confidentially or otherwise. In saying this we do recognise that broader inquiries may be time consuming, and that resources are limited.³⁰

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 remains relevant to the continuation decision. 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. Bisalloy admits to pricing its Q&T plate steel in light of competitive pressures from imports from three countries, being Sweden, the US and China. The Commission'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 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). In SSAB's opinion, this is an illogical postulation.

We repeat - 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.

In summary, and should the ADRP reach this second ground, SSAB asks the ADRP to review the extensive information provided by SSAB about prices of Q&T plate steel 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 plate steel will be likely to cause a recurrence of material injury to an industry still facing the same low and high priced competition as before.

³⁰ See EPR Doc 17, page 1.

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

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 Section 269ZHG(4)(a)(ii) of the Customs Act.³¹

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

Due to the market stasis and highly profitable condition in which the Australian industry finds itself,³² 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. 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.

The dumping measures against Sweden have successfully delivered a competitive market outcome, unaffected by injurious dumping from Sweden. Bisalloy may not like that, but that is the situation that the Commission 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.

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

We expect this question is largely posed for different circumstances than the reversal of a decision to secure the continuation of measures against a particular exporter, which is self-evidently materially different to the non-reversal of such a decision.

C Conclusion and request

The Minister’s decision to which this application refers is a reviewable decision under s 269ZZA of the Act.

The SSAB companies are interested parties in relation to the reviewable decision.

The SSAB companies’ application is in the prescribed form and has otherwise been lodged in accordance with the Act.

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

³¹ Customs Act, Sections 269ZHG(1)(b) and 269ZHG(4)(a)(ii) refer.

³² See Attachment C8.

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

Daniel Moulis
Partner Director

Schedule 1 – SSAB ADRP Public Record Attachments

No.	Date lodged with Commission	Type/identification
PR1	5 April 2024	Letter [PR1 638_-_11_-_submission_-_exporter_-_ssab_-_submissions_from_ssab_ema_ab_verification]
PR2	23 April 2024	Letter [PR2 638_-_13_-_submission_-_exporter_-_ssab_-_additional_slides_to_submission_of_8_april_2024]
PR3	7 May 2024	Letter [PR3 638_-_16_-_submission_-_exporter_-_ssab_-_additional_slides_to_submission_placed_on_epr_08_april_2024]
PR4	16 May 2024	Letter [PR4 638_-_17_-_submission_-_exporter_-_ssab_-_response_to_bisalloy_submission_of_3_may_2024]
PR5	13 June 2024	Letter [PR5 - 638 - 22 - submission - exporter - ssab - key_points_for_formulation_of_the_sef]
PR6	25 July 2024	Letter [PR6 638_-_27_-_submission_-_exporter_-_ssab_-_submission_in_response_to_sef_638]

Schedule 2 – SSAB ADRP Confidential Attachments

No.	Date lodged with Commission	Type/identification
C1	2 April 2024	Email [CON 638 – presentation of supporting evidence]
C2	8 April 2024	Document [Item 57 – CON 638 Australian market and industry situation – Stockholm confidential final (3)]
C3	8 April 2024	Document [Item 58 – Closing comments at SSAB EMEA verification re injury considerations (2)]
C4	9 April 2024	Email [RE:CON 638 – presentation of supporting evidence]
C5	9 April 2024	Document [Slide 5 SSAB historical unit price calculation vs Bisalloy USP]
C6	9 April 2024	Document [Slide 5 Platts code steel plate TSMBQ03]
C7	9 April 2024	Document [Slide 5 2019-2023 Plate CFR East Asia]
C8	9 April 2024	Document [Slide 8 Bisalloy profit and revenue data collection]
C9	10 April 2024	Email [RE: CON 638 – presentation of supporting evidence]
C10	10 April 2024	Document [Slide 10 Email from [REDACTED] to [REDACTED] dated [REDACTED]]
C11	10 April 2024	Document [Slide 10 SSAB National Australia Price Guide – April 2023]
C12	11 April 2024	Email [RE: CON 638 – presentation of supporting evidence]
C13	11 April 2024	Document [Slide 14 [REDACTED] offer of [REDACTED] product – [REDACTED]]
C14	11 April 2024	Document [Slide 14 SSAB Australia National Price Guide – March 2024]
C15	11 April 2024	Email [RE: SSAB Australia anti-dumping]
C16	11 April 2024	Document [REDACTED] – [REDACTED]
C17	19 April 2024	Email [RE: CON 638 Presentation of supporting evidence]
C18	19 April 2024	Document [SSAB National Australia Price Guide – June 2023]
C19	23 April 2024	Email [RE: CON 638 – presentation of supporting evidence]
C20	23 April 2024	Document [Slide 14 Item 57 Additional Slides 14A and 14B]
C21	7 May 2024	Email [RE: CON 638 – presentation of supporting evidence]
C22	7 May 2024	Document [Slide 14 Item 57 Additional Slides 14C and 14D]
C23	7 May 2024	Document [Slide 14C [REDACTED] Material data sheet, edition April 2016]

C24	7 May 2024	Document [Slide 14 SSAB National Australia Price Guide – April 2024]
C25	13 June 2024	Letter [ltr to Commission re considerations for SEF 638 – confidential]
C26	25 July 2024	Letter [Letter to Commission re SSAB submission on SEF 638 – confidential]
C27	25 July 2024	Document [SSAB AU – Forward Order 13 POs compiled]
C28	25 July 2024	Document [638 – SSAB AU C-2 Sales listing – Forward order information]
C29	25 July 2024	Document [Further Comparative pricing examples A and B pricing (and volume) example C]



ANTI-DUMPING NOTICE NO 2024/064

Customs Act 1901 – Part XVB

Findings of Continuation Inquiry No 638 into Anti-Dumping Measures applying to Quenched and Tempered Steel Plate

Exported from the Republic of Finland, Japan and the Kingdom of Sweden

***Public notice under section 269ZHG(1) of the Customs Act 1901 and under
section 8(5) of the Customs Tariff (Anti-Dumping) Act 1975***

The Acting Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 4 December 2023, into whether the continuation of the anti-dumping measures in the form of a dumping duty notice applying to quenched and tempered (Q&T) steel plate exported to Australia from the Republic of Finland (Finland), Japan and the Kingdom of Sweden (Sweden) is justified.

The Commissioner's recommendations from the inquiry, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No 638* (REP 638).

I, ED HUSIC, the Minister for Industry and Science, have considered REP 638 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of fact and law therein.

Under section 269ZHG(1)(b) of the *Customs Act 1901* (the Act), I **declare** that I have decided to secure the continuation of the anti-dumping measures currently applying to Q&T steel plate exported to Australia from Finland, Japan and Sweden.

I **determine** that pursuant to section 269ZHG(4)(a)(iii) of the Act, the dumping duty notice continues in force after 5 November 2024 (the specified expiry day), but that, after that day, the 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.

I **determine** that in accordance with sections 8(5) and 8(5BB) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), and the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Regulation), the interim dumping duty payable on Q&T steel plate exported to Australia from Finland, Japan and Sweden is an amount worked out in accordance with the *ad valorem* duty method prescribed in section 5(7) of the Regulation.

Pursuant to section 8(5B) of the Dumping Duty Act, I have had regard to the desirability of specifying a method such that the sum of:

- (i) the export price of goods of that kind as so ascertained or last ascertained, and
- (ii) the interim dumping duty payable on the goods

does not exceed the non-injurious price of goods of that kind as ascertained, or last ascertained, for the purpose of the notice.

Particulars of the effective rates of duty in respect of Q&T steel plate exported to Australia from Finland, Japan and Sweden are set out in the following table.

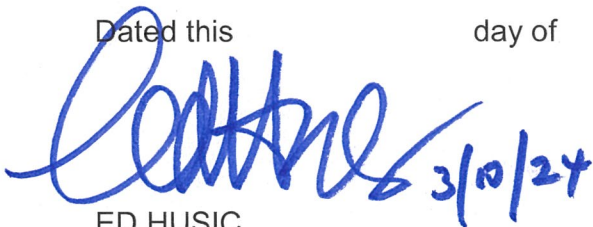
Country	Exporter	Duty method	Effective rate of interim dumping duty (%)
Finland	All exporters	<i>Ad valorem</i> duty method	8.6
Japan	All exporters	<i>Ad valorem</i> duty method	5.2
Sweden	SSAB EMEA AB	<i>Ad valorem</i> duty method	8.6
	All other exporters	<i>Ad valorem</i> duty method	8.6

REP 638 has been placed on the public record and is available at www.adcommission.gov.au.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2424 or email to investigations2@adcommission.gov.au.

Dated this _____ day of _____



ED HUSIC
Minister for Industry and Science