



House of Representatives Standing Committee
On Agriculture and Industry
PO Box 6021
Parliament House
CANBERRA ACT 2600

Via Email: agind.reps@aph.gov.au

28 November 2014

Dear Sir/Madam

Bisalloy Steel Group Pty Ltd Submission to the House of Representatives Standing Committee on Agriculture and Industry - Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures

Please find attached a submission Bisalloy Steel Group Limited concerning the Standing Committee on Agriculture and Industry's Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures.

Bisalloy looks forward to discussing the attached submission further with the Committee.

If you have any questions concerning the attached submission, please do not hesitate to contact me

Yours faithfully

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Bisalloy Steel Group Ltd.

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Standing Committee on Agriculture and Industry - Inquiry into Australia's anti-
circumvention framework in relation to anti-dumping measures**

Inquiry

Bisalloy Steel Group Pty Ltd ("Bisalloy") is a small to medium enterprise (SME) that specializes in the production of high-tensile and abrasion-resistant Quenched and Tempered ("Q&T") Steel Plate at its Unanderra New South Wales production facility. As an SME that has recently participated in an anti-dumping investigation involving exports of Q&T steel plate from Finland, Japan and Sweden, Bisalloy welcomes this opportunity to highlight with the Inquiry key limitations with Australia's Anti-Dumping System due to the circumvention activities of exporters and importers.

Executive Summary

The circumvention of anti-dumping measures is an increasing problem that reduces Australian industry's confidence in the Anti-Dumping System. Bisalloy has experienced the circumvention of measures as follows:

- further reductions in export prices following the application of provisional measures; and
- the exporter commencing exports from an affiliated supplier in another country not the subject of measures.

Bisalloy is also concerned that circumvention of the measures could occur via:

- the absorption of the anti-dumping measures by the importer so that prices on the Australian market do not change following the measures; and
- the slight modification of the goods the subject of the measures that could potentially result in a change in classification of the goods so that measures do not apply.

Bisalloy has also identified further areas for consideration to improve the effectiveness of the Anti-Dumping System. These include:

- the removal of the lesser duty rule in investigations involving SMEs;
- limiting the application of *ad valorem* dumping measures only where this is supported by the applicant industry;
- requiring the publication of a Preliminary Affirmative Determination ("PAD") and provisional measures as close to Day 60 as possible (certainly no later than Day 75).

1. Introduction

Bisalloy Steel Group Limited (“Bisalloy”) is Australia’s only manufacturer of high strength, wear-resistant and armour grade steel plate produced by the continuous roller quenching and tempering process. Quenching and tempering changes the microstructure of the steel and improves the strength, hardness and toughness of the materials being treated.

The principal applications for Q&T steel plate are in mining equipment, transport, telescopic cranes, materials handling equipment, high-rise construction and forestry. High hardness grades offer improved wear life making it ideal for applications such as liners for chutes, buckets, dump trucks, etc. BISPLATE® armour grades are suitable for armoured personnel carriers and ballistic protection of military and civilian fixed plant and transport equipment.

BISPLATE® grades can be readily cut, welded, formed and drilled using similar techniques to mild steel.

The capacity, quality and versatility of the Bisalloy heat treatment enables Bisalloy to compete in both domestic and international markets including North and South America, Asia, New Zealand and Africa.

Bisalloy employs approximately 65 personnel at its Unanderra, NSW site. The company qualifies as a Small to Medium Sized Enterprise (“SME”).

In 2013, Bisalloy experienced severe price undercutting from imports of Q&T steel plate from Finland, Japan and Sweden. Bisalloy considered that the goods exported from these countries were at dumped prices. In late 2013, Bisalloy made an application for anti-dumping measures on Q&T steel plate exported from Finland, Japan and Sweden.

In January 2014 the Anti-Dumping Commission (“the Commission”) commenced an investigation into Bisalloy’s claims that it has experienced material injury from dumping during 2013. In May 2013, the Commission published a Preliminary Affirmative Determination (“PAD”) and imposed provisional measures on imports of Q&T steel plate from Finland, Japan and Sweden.

The preliminary dumping margins assessed by the Commission for the purposes of the PAD were as follows:

- Finland – 28.9 per cent;
- Japan – 18 – 26.1 per cent; and
- Sweden – 39.8 per cent.

Due to the application of the “Lesser Duty Rule” the effective rate of provisional measures applied by the Commission were as follows:

Country	Exporter/Manufacturer	Effective Rate of Measure
Finland	All Exporters	15.4 per cent
Japan	JFE Steel Corporation	18.0 per cent
	Uncooperative Exporters	26.1 per cent
Sweden	All Exporters	13.6 per cent

The provisional measures were reduced from the full dumping margin so that the effective measure was only sufficient so as to remove the injurious effects of

dumping. Bisalloy is opposed to the application of the “Lesser Duty Rule” as it represents a purely speculative measure that further retards the Australian industry at a time when it is susceptible to injury from dumping.

As an SME, Bisalloy is well positioned to provide commentary on the circumvention practices of exporters and importers following the imposition of measures, as well as providing insight into areas for further reform to improve the operation of the Anti-Dumping System.

2. Scope, Prevalence and Impact of Circumvention practices of exporters and importers

It was Bisalloy’s expectation that following the PAD and imposition of provisional measures in May 2013 that there would be some relief from the dumped exports. However, as at date of this submission, Bisalloy is experiencing competition from imports at prices lower than the levels identified throughout the investigation period. It should be noted that the Australian dollar has depreciated over this period and it was reasonable to expect that import prices should have increased.

Bisalloy attributes the further reductions in export prices to:

- the absorption of the penalties by the nominated exporters ; and
- the change in the source of supply to a third country (from Sweden).

(i) Absorption of penalties by the exporter/importer

The provisional measures initially imposed on imported Q&T Steel Plate from Finland, Japan and Sweden had minimal impact. Bisalloy encountered selling prices for the dumped Q&T Steel Plate at prices similar to, or below, those prior to the measures. Some months later – in October and November 2014 – import prices remained at suppressed levels. It was Bisalloy’s view that the exporters appeared to have reduced prices by the amount of the provisional measures determined.

Bisalloy was concerned that the Commission applied provisional measures on an *ad valorem* basis (for exports from Finland and Japan). *Ad valorem* measures enable the exporter to further reduce export prices without penalty, resulting in a reduced proportion of the measure being levied.

The measure applicable to exports from Sweden was based upon the combination method (i.e. a fixed and variable component). It appeared that despite this, the importer was able to absorb the duties levied and continue to offer the same or reduced prices as pre-measures.

It was evident to Bisalloy that following the imposition of provisional measures, the exporters reduced export prices further and certain importers appear to have absorbed some (or all) of the measure imposed in the final selling prices.

(ii) Change in source of supply

With the release of the September and October 2014 import clearance data by the Australian Bureau of Statistics (“ABS”) it has become clear to Bisalloy that the Swedish exporter has switched supply sources to a country not the subject of the measures (i.e. USA). It is understood that the exporter has associated companies that produce the goods in the third country.

Australia's Anti-Dumping provisions do not have an immediate remedy to address "country-hopping". The change in source of supply aids the Australian importer in maintaining reduced selling prices for the dumped and injurious goods.

Country-hopping activities can be achieved through the actions of either the exporter or the Australian importer. In situations where the exporter is a multi-national, affiliated companies in third countries can commence the exportation of the goods to Australia. The multi-national organization therefore continues to supply the Australian market from third countries not the subject of measures.

The Australian importer can also be involved in country-hopping activities. Following the imposition of measures on exports from its original supply source, the importer can seek-out new suppliers in third countries for the supply of goods. The importer does not have to have a prior association with the new supplier. The activities of the Australian importer confirm its objective to remain as a supplier of goods to the Australian market.

Bisalloy considers that country-hopping activities can be employed by either the exporter to which the measures apply or, the Australian importer that is disadvantaged by the imposition of measures on its preferred source of supply (thereby motivating the importer to turn to alternative sources of supply).

Country-hopping activities can be discouraged through the available remedies that exist within Australia's Anti-Dumping System. Where country-hopping emerges, the onus of seeking measures on the new source of supply rests with the Australian industry. Following an application for measures against exports from the newly-emerged source, the Commission can move rapidly to formally initiate an investigation into the allegation of dumping. The Commission can publish a PAD at Day 60 of the new investigation (with the earlier investigation confirming material injury and causal link) and apply provisional measures effective immediately. The Commission also has available the retrospective measures provisions contained in *s.269TN of the Customs Act* to apply measures on a retrospective basis from day one of the investigation.

The Commission's role in swiftly commencing an investigation into exports that are viewed as circumventing the original measures (i.e. a country-hopping activity) in conjunction with the publication of a PAD and the application of provisional measures at Day 60 and/or the application of retrospective measures, is critical. Where the Commission acts swiftly and in accordance with the provisions, it is considered that the available provisions have an adequate impact to deter exporters and/or importers from engaging in country-hopping activities.

In the recent investigation into Q&T Steel Plate exported from Finland, Japan and Sweden, the impact of the combined circumvention activities of duty absorption and country hopping have contributed to market selling prices for Q&T Steel Plate remaining at suppressed (and injurious) levels. The recent inclusion of Division 5A may be able to address the duty absorption issue (although the provisions remain untested at this time). In respect of country-hopping, it is Bisalloy's view that certain limited policy and procedural changes can be adopted by the Commission to adequately deter exporters and/or importers from engaging in this circumvention activity.

(iii) *Minor modification to "goods"*

Bisalloy is aware of the circumvention activities of some exporters in the steel industry that have made minor modifications of goods exported to Australia to avoid the measures that would normally apply. It is understood that the practice of adding a low-cost alloy in the steel production process qualifies the goods to be termed "of

alloy” and thereby altering the tariff classification of the goods. The alloyed good is re-classified to a sub-heading to which the measures do not apply.

Bisalloy does not consider that the addition of a low-cost alloy alters the essential characteristics of the goods or the end-use application of the goods. The alloyed products are sold via the same distribution channels, to the same end-use customers, and are used in the same end-use applications as non-alloyed products. The addition of the low-cost alloy is sufficient motivation to avoid the payment of measures that exceed the measures imposed on non-alloyed goods.

Bisalloy is concerned that the Commission has not addressed this growing circumvention activity. There is little dispute that the alloyed goods are “alike” in all respect to the goods the subject of the measures. The Commission can administratively determine that the addition of the low-cost alloy does not disqualify the goods as being alike to the goods the subject of the measures. The Commission’s inactivity in failing to respond to this circumvention activity weakens the intent of the Anti-Dumping System to effectively address injurious imports.

Administrations in other jurisdictions (see below) address minor modification activities as a circumvention activity. Amendment to broaden Division 5A to include minor modification of goods and extend the coverage of measures is supported by Bisalloy. However, where there is a minor modification of the goods and the essential characteristics of the slightly modified goods are similar to the goods the subject of the measures, it is Bisalloy’s view that the Commission can exercise its discretion define the goods as “alike” and subject to the measures.

It is important to ensure that anti-circumvention activities associated with the description of the goods are not unnecessarily subjected to the lengthy and costly formal investigation process. As the Commission is the administrator of the Anti-Dumping System it is authorized to decide on goods the goods coverage as defined in the goods description. Where there is dispute, normal appeal channels are available to aggrieved parties.

3. Operation of the Anti-Circumvention Framework

The *Division 5A of the Customs Act* anti-circumvention provisions were introduced to address concerns that exporters could avoid anti-dumping measures. Only one anti-circumvention investigation has commenced following the commencement of the provisions in mid-2013¹. As the anti-circumvention investigation is incomplete and outcomes are unknown, it is premature to conclude whether the provision(s) are effective or otherwise.

It is Bisalloy’s view that of the anti-circumvention activities identified in s.269ZDBB, the circumstance of current relevance is where the Australian importer’s selling price has not increased commensurate with the inclusion of the amount of the anti-dumping measure. However, the threshold of providing an adequate level of evidence to substantiate an allegation that the importer has not raised the selling price sufficiently could prove prohibitive.

It is noted that the existence of the anti-circumvention provisions of Division 5A should offer some level of confidence to Australian industry that mechanisms do exist to deter exporters and importers from engaging in circumvention activities. From Bisalloy’s perspective, the provisions can be enhanced with effective procedural actions adopted by the Commission in acting in a rapid and timely manner to the concerns of interested parties.

¹ Aluminium extrusions exported from P R China – Sales at a Loss, Investigation No. 241.

4. Practices administered in other jurisdictions

Anti-circumvention activities are contained in the legislative provisions of the European Union ("EU") and the United States ("US"). The EU's provisions address imports from third countries, slightly modified goods, the sub-assembly of goods, etc. There is a particular anti-circumvention indicator that enables interested parties to demonstrate circumvention has occurred *where the intended effect of the measures has been avoided*.

With the exceptions of exports from third countries and the minor modification of goods circumvention activities, Division 5A appears to reflect the intent of the EU provisions.

The US provisions are more detailed than the EU Circumvention Regulation 13. US provisions permit the administering agency to conduct "Scope Determination" assessments and formal inquiries. The administration is charged with the power to decide on whether goods fall within the scope of the goods description. Where there is doubt as to whether certain goods are not covered by the goods description, the administration may conduct a formal investigation and seek the views of interested parties.

The US anti-circumvention provisions also extend to the assembly of goods either in the US or a third country, minor modifications to goods, later-developed goods, and are requirement to refer matters to the International Trade Commission ("ITC") for injury consideration where it is recommended that the scope of measures is to be extended.

The Division 5A anti-circumvention activities do not reflect the full ambit of identified activities in the EU and US jurisdictions, most notably the minor modification provisions and exports from third countries (i.e. country-hopping) provisions. Bisalloy encourages the Committee to recommend that the Division 5A anti-circumvention activities be widened to reflect these further activities that currently undermine the effectiveness of final measures imposed by the Minister.

5. Areas for further development and improvement to the effectiveness of anti-dumping measures

Bisalloy's recent involvement with the Anti-Dumping System has provided it with valuable insight with regard to the impact of the process on an SME. Following lodgment of an application for measures, Bisalloy had anticipated that it would be able to access relief mechanisms in a timely manner. This was not the case. As an SME that had encountered price undercutting from dumped imports Bisalloy erroneously viewed provisional measures as a panacea to the injurious imports.

The delays throughout the investigation process compounded the material injury already experienced by Bisalloy. The injury has continued following the imposition of interim dumping duties by the Parliamentary Secretary – raising concerns about the effectiveness of the Anti-Dumping System and the measures imposed.

Bisalloy has identified three key areas that it considers have influenced the outcome in the recent Q&T Steel Plate investigation in which Bisalloy was the applicant industry. These factors have cumulatively contributed to a less than acceptable outcome for Bisalloy, as evidenced by the continued export to Australia of goods at injurious prices from the countries involved in the investigation. The three areas requiring review and improvement are:

- the removal of the lesser duty rule in investigations involving SMEs;

- limiting the application of *ad valorem* dumping measures only where this is supported by the applicant industry;
- requiring the publication of a Preliminary Affirmative Determination (“PAD”) and provisional measures as close to Day 60 as possible (certainly no later than Day 75).

Bisalloy will examine each item below.

(i) the removal of the lesser duty rule in investigations involving SMEs

Bisalloy is an SME that employs 65 persons at its Unanderra manufacturing facility in NSW. In the 2013 investigation period, Bisalloy’s profit was completely eroded due to the impact of dumped and injurious exports of Q&T Steel Plate from Finland, Japan and Sweden.

In May 2014, Bisalloy was compelled to address the ongoing injury position in the Q&T Steel Plate business and reduced its workforce by approximately 20 per cent. For an SME, a decision of this magnitude was difficult, but necessary. At the same time, the Commission published a PAD that indicated preliminary dumping margins in the range of 18 to 39.8 per cent from the exporting countries.

When the Statement of Essential Facts (“SEF”) published in September 2014, the dumping margins were re-confirmed by the Commission. However, the SEF notified that the effective rate of measures would be reduced by the application of the Lesser Duty Rule. The impact of applying the Lesser Duty Rule was the reduction in the effective measures from the full margins of dumping of between 32 per cent and 39.8 per cent respectively, to 15.4 per cent and 13.6 per cent, respectively.

The Lesser Duty Rule is a concept in Anti-Dumping parlance that results in the limitation of a dumping measure that is *sufficient to remove the injurious effects of dumping*. The Lesser Duty Rule is based upon a notional price that in Bisalloy’s case reflected its production and selling costs in 2013, plus an amount for profit that was achieved in a period unaffected by dumping (i.e. based on the three years prior to the investigation period). This price is coined a “Non-Injurious Price”.

This so-called non-injurious price is anything but what it is termed by the legislative provisions. The Commission itself considered this to be the case in SEF No. 234 when it assessed injury to the Australian industry at the full margin of dumping.

From 1 January 2014, a new policy directive was introduced where the use of the Lesser Duty Rule would be discretionary for investigations involving SMEs where there are “two or more” SMEs operating as the Australian industry.

As Bisalloy is the sole Australian manufacturer of Q&T Steel Plate, the discretion to not apply the lesser duty rule was not available to the Parliamentary Secretary.

As an SME, Bisalloy is strongly opposed to this flawed policy.

As Bisalloy understands it, the pre-condition for two SMEs in the Australian industry is based upon concerns that the sole SME could exploit some form of influence on pricing on the Australian market. Bisalloy struggles to understand this viewpoint. Bisalloy holds less than 40 per cent market share in the Australian Q&T Steel Plate market, and has been subjected to severe profit reductions from unfairly priced imports (i.e. at dumped prices) in 2013 (and continuing in 2014).

Bisalloy contends that the policy on the discretionary use of the Lesser Duty Rules in cases involving SMEs should not be restricted to industries where there is at least two SMEs. The determined “effective rate” of the measures is less than desirable in

eliminating injury from dumping in Q&T Steel Plate industry. In order for Bisalloy's profit to return to acceptable levels, anti-dumping measures at the full margin of dumping from each of the exporting countries is required.

Bisalloy considers it has been unjustly and unfairly treated with the selective use of the discretion to apply the Lesser Duty Rule. The most reasonable and non-discriminatory policy involves the discretion to not apply the Lesser Duty Rule in all cases involving SMEs.

Bisalloy requests the Committee to recommend extending the policy on the discretionary use of the Lesser Duty Rule in all investigations involving SMEs.

(ii) *Ad valorem measures*

The provisional measures and interim dumping measures applied on exports of Q&T Steel Plate from two countries (i.e. Finland and Japan) are based upon the *ad valorem* duty method. This involves a percentage rate applied to the export price for all future exportations to Australia from the two exporting countries.

Bisalloy strongly opposed the measures being based upon the *ad valorem* method. Bisalloy's opposition was based upon concerns that where the exporter reduces export prices further, the measure collected also falls on a proportional basis.

Bisalloy made representations to the Commission in response to the SEF that exporters were reducing export prices with reduced measures also collected. The Commission did not agree. Bisalloy maintains this view and contends that it is supported by the existence of continued suppressed selling prices for dumped imports in Australia.

The Commission justified the recommendation for *ad valorem* measures on the basis that they are the most common form of measures used in other jurisdictions.

Bisalloy does not discount that other administrations may use *ad valorem* measures, however, in the circumstances of the Australian Q&T market, export prices have been further reduced following the imposition of the measures thereby negating the effect of the measures applied.

Bisalloy maintains its strongly held position that the most appropriate form of measure is that based upon the combination method (i.e. a fixed and variable component) that adequately addresses further reductions in export prices following the imposition of measures. Anti-Dumping measures based upon the *ad valorem* method permit exporters to avoid the intended effective level of duties required to recover from material injury.

(iii) *Imposition of PAD and provisional measures*

Bisalloy had anticipated that it would be able to access provisional measures from Day 60 of the investigation period. However delays in exporter questionnaire responses ("EQRs"), scheduling of exporter visits, the completion of importer and exporter visit reports, etc. contributed to delays in the PAD.

The Commission eventually published a PAD and provisional measures with effect from 19 May 2014 (approximately 134 days following commencement of the investigation). However, contrary to an the expectation of price recovery, prices for imported Q&T steel plate remained at suppressed levels and, in respect of exports from Sweden, declined further.

It is Bisalloy's experience that the Commission did not publish a PAD and impose provisional measures until it was completely satisfied as to the existence of the final dumping margins by the identified exporters. For an SME relying upon timely relief from the injurious dumping, the extended delay to remedies was unacceptable. In light of the delays experienced, Bisalloy recommends the Commission should not accept requests for extensions in time for exporters to complete EQRs, and could establish acceptable deadlines for the completion of exporter and importer visit reports.

A PAD and the imposition of provisional measures should be made as close to Day 60 as possible (and no later than Day 75) to ensure access to the measures has the desired effect of discouraging further dumping.

Summary of further improvements to the Anti-Dumping System

Bisalloy's recent experience in the Q&T Steel Plate investigation highlighted the need for reform on accessing remedies in a timely manner. Current delays are unacceptable, particularly for SMEs where extended injurious dumping can be catastrophic. Bisalloy proposes the following initiatives to tighten the operation of the Anti-Dumping System to deliver on its intended purpose of providing relief from the injurious effects of dumping, including:

- the abolition of the Lesser Duty Rule for investigations involving SMEs (including where only one SME operates);
- limiting the use of *ad valorem* measures to circumstances where the Australian industry is supportive; and
- imposing the PAD and provisional measures as close to Day 60 as practicable (and certainly no later than 75 days).