Received: 29 August 2016

SANWA PTY LTD. ABN 96 000 904 987 SUITE 201, 2ND FLOOR, 100 NEW SOUTH HEAD ROAD, EDGECLIFF NSW 2027 AUSTRALIA
LOCKED MAIL BAG 362, EDGECLIFF NSW 2027 AUSTRALIA TEL: 61 2 9362 4088 FAX: 61 2 9362 3622 WWW.SANWA.COM.AU

The Director – Operations 5
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Dear Belinda,

**Regarding REVIEW OF ANTI-DUMPING MEASURES APPLYING TO CERTAIN HOT ROLLED STRUCTURAL STEEL SECTIONS EXPORTED FROM TAIWAN BY TUNG HO STEEL ENTERPRISE CORPORATION (ADC 345 -Statement of Essential Facts of 8th August 2016)**

In Section 2.5 of the SEF related to Case 345 as above it is noted that *"Interested parties are invited to lodge written submissions in response to this SEF no later than the close of business on **29 August 2016**"*. Sanwa is an interested party and makes this written submission in response to the SEF.

It is noted that

> *The Commissioner finds that the variable factors relevant to the taking of anti-dumping measures in relation to HRS exported to Australia by Tung Ho Steel have changed.*
>
> *The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to Tung Ho Steel as if different variable factors, the export price and the normal value, had been ascertained.*

In relation to the dumping margin it is further noted that

> *The Commission compared the quarterly weighted average of export prices over the whole of the review period with the quarterly weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a) of the Act.*
>
> *The Commission finds that HRS exported to Australia by Tung Ho Steel in the review period was not dumped.*

Sanwa's position,, on advice, is that the Minister does not have power to change the basis on which interim dumping duties are imposed in a review. The manner of collection of duties is dealt with under the Customs Tariff (Anti-Dumping) Act 1975. The Minister's power at the end of a review is to alter a notice so that it provides for "fixed different variable factors in respect of that exporter". Both a notice and the variable factors for a notice come under the auspices of the Customs Act, not the Customs Tariff (Anti-Dumping) Act. Therefore our primary submission is to request that the Commission recognise that it is not in a position to make the proposed recommendation whether it wants to or not. The submissions that follow are without prejudice to this, and are made in an effort to convince you that the recommendation that you have proposed in the SEF is not the correct or preferable one, regardless of the legal situation.

In relation to Tung Ho's exports [redacted]

[redacted]

[redacted]

Also, during the review of measures investigation period of 1 January 2015 to 31 December 2015, Tung Ho dumping margin was assessed and verified by ADC at negative 8.4%.

Therefore, it is clear that Tung Ho is able to regularly price its exports at prices which exceed the domestic pricing on a month to month basis.

Despite this "clean bill of health" that Tung Ho has been given for the three consecutive half years and the very pronounced no-dumping margin for the POI in the review, the ADC has invited comment on a possible recommendation that

> *The Commissioner proposes to recommend that the ascertained normal values for HRS exported to Australia by Tung Ho Steel be set in accordance with the respective weighted average normal values used to calculate the dumping margin for the purposes of this review.*
>
> *The Commissioner also proposes to recommend that the ascertained export prices and ascertained NIP for HRS exported by Tung Ho Steel be set in accordance with the weighted average normal values calculated for the purposes of this review.*
>
> *Based on the information available at this stage of the review, the Commissioner proposes to recommend to the Parliamentary Secretary that the interim dumping duty payable is an amount which will be worked out in accordance with the floor price method pursuant to subsection 5(4) of the Dumping Duty Regulation. The dumping duty rate will be a specified (confidential) amount per tonne.*

The end result of the above findings and recommendations is that Tung Ho will find it impossible to export into the Australian market in spite of the fact that the review found them to have acted fully in accordance with WTO regulations in pricing their exports at prices in excess of their domestic levels.

It is clearly established in the Anti Dumping Commission's independent report of November 2013 titled *"Guidelines on the Application of forms of dumping duty"* that floor price duty mechanisms have a basic flaw in a volatile market. If the market prices move up then the floor price becomes irrelevant in serving its purpose of securing export pricing above the new domestic level. Alternately if the market price moves down then the floor price becomes a penalty which prevents business from being transacted by the imposition of a penalty which is so excessive as to remove any opportunity for the exporter to meet the lower levels at which new business is then being transacted.

To demonstrate the real effect of the form of dumping duty, whether it be floor price or *ad valorem* duty, an examination of the current circumstances and facts make our case most clearly and effectively.

Tung Ho successfully showed that it had been exporting at prices higher than it was selling locally over the relevant periods, so it would be reasonably anticipated that it would be in some way rewarded for playing by the books. Understand that the original anti dumping duties involved an ad valorem duty (only) on the import price of 2.2 percent. What has the reward been? Tung Ho has given Sanwa an indication that the proposed floor price [redacted] the current domestic level in Taiwan.

This [redacted] when it had a margin only slightly more than *de minimis* in the original investigation, [redacted] and has now more latterly been found to have an 8.5% no dumping margin over a full period of 12 months!!

What will it be next month? Well that depends if the world market price upon which the sales levels in Taiwan and Australia are based moves up or down in the meantime. If prices jump up around recent increases in prices in iron ore and scrap then the floor price could become

irrelevant. Our concern however is that in market conditions where any volatility exists the floor price very quickly loses its relevance as a valid mechanism to protect the interests of both local industry and importers/users in a balanced way.

It is possible to utilise one of the steel research organisations to demonstrate this volatility. The one I have chosen is Platts/Steel Business Briefing and in particular its Long Products / H-Beams / East Asia Import CFR $/Tonne pricing index. Platts is recognised in the industry as one of the pre-eminent independent research organisations in operation in steel since 2001.

Reviewing the statistics from their websites dating back to 2001 shows that of the 199 months with records available for East Asia H Beam prices, only 34 consecutive months have not resulted in a change in price. If you look at changes over 3 months then that number falls to 12. The graph below demonstrates the volatility.

There is not a second of doubt that market price volatility is the enemy of a floor price anti dumping mechanism. What the figures show is that in the steel markets including specifically the East Asian Import pricing, there is plenty of volatility. In any 6 month period you are likely to have prices not moving between months just once!

In theory Sanwa could request Tung Ho to price up the export price to the minimum level being the Normal Value Floor Price. If it sought a later export price rebate from Tung Ho as part of this over pricing it would fall immediately in breach of anti circumvention regulations. It would be unable to look for a duty refund because no AD duties were paid.

Can it be argued that an importer such as Sanwa working with a producer such as Tung Ho has other options available to it by way of paying dumping duties up front on the basis that its hands are clean and a subsequent refund application will be successful in recovering the AD duties paid? In other words, should Sanwa take the position that it should enter into prima facie loss making deals because of the up-front duty finally becoming profitable on hopeful later recovery of AD duties?

There are some problems with this course of action. It creates a great deal of uncertainty and risk for us. We would have to finance the additional cost in the form of the duties, with associated interest cost. Also [redacted] converting to Australian dollars. Therefore, we have an exposure between the time of order and the date of importation (when the relevant exchange rate [redacted] is utilised).

Further, it could perhaps be argued that our prima facie loss making business was not at arms length because duty recovery could possibly take place outside a 12 month period from when the duties were first paid. It would be hoped that this argument would not be successful.

**Conclusion**

Sanwa and Tung Ho have worked closely together to ensure that pricing is not below Taiwan domestic levels. In spite of the past small AD ad valorem duties payable it has remained competitive and in the market. It has been successful in obtaining refunds for the AD duties payable. Sanwa itself did not ask for the review to be initiated, and I might assume that Tung Ho would rather not have done so either if it realised that this could be the outcome. As a result Tung Ho may now consider that it is in a potentially worse position than before, despite its good behaviour and despite significant no-dumping margin in the POI for the review.

We do not understand the equity in a situation where, having "played by the books" we are further penalised and perhaps taken out of the market (dependent on the vagaries of the international steel markets). If Tung Ho is taken out of the market what this means is that a high quality supplier to the market for more than 15 years and who has invested substantially in obtaining ACRS certification (the first importer to do so) will no longer be able to sell into Australia. Whilst I concede that this will very definitely be in the best interests of OneSteel I cannot believe that there is anyone else who would think that a quality committed supply source, able to supply the full Australian size range should be eliminated from a "free" market in this way. This at a time when there is extreme conjecture about the long term viability of the Whyalla Structural Steel Plant.

What does this mean in dollars and cents? This is very hard to say but speaking from Sanwa perspective alone (not having discussed this with Tung Ho) .even a declaration that the initial AD notice would remain un-altered,under Section 269ZDB of the Act, with the continuation of the old 2.2 percent ad valorem duty, would from our perspective, be preferable to what is now being proposed. A floor price in the current market destroys our ability to compete and as much as I hate to pay a premium when we (Tung Ho/Sanwa) have abided by the rules, the old devil we knew, is starting to look much more attractive

Regards
David

**David Roberts**
General Manager / Trading Director
**SANWA Pty Ltd**
Suite 201, 100, New South Head Road, Edgecliff, NSW, 2027, Australia
Phone: +612 9362 4088 | Mobile: 0411 701 616 | Fax: +612 9362 3622
Email: droberts@sanwa.com.au
Website: www.sanwa.com.au

*** All pricing quotes and business closed is subject to final reconfirmation and incorporation of standard Sanwa offer and sales conditions. These are available on our website :
http://www.sanwa.com.au/terms_and_conditions.html