

29 August 2016

**Non-confidential -for Public Record**

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

Dear Director

**Review of anti-dumping measures applying to certain hot rolled structural sections exported from Taiwan by Tung Ho Steel Enterprise Corporation  
Statement of Essential Facts No. 345**

1. This submission is made on behalf of Tung Ho Steel Enterprise Corporation (THS) in response to above Statement of Essential Facts (SEF) uploaded to the Anti-Dumping Commission (ADC) Electronic Public Record No 345 on 8 August 2016.
2. THS disagrees with the proposed recommendation in the SEF to change the form of duty from the existing ad valorem duty method to the floor price duty method, on the following basis: -
  - a. In the Final Report No. 223, page 89 paragraph 12.3<sup>1</sup>, the commission's assessment was as follows: -
    - *"In this investigation, the Commission considers an ad valorem form of duty appropriate for removing the injurious effects of dumping. The Commission notes that the cyclical nature of the HRS market, which involves price fluctuations, lends itself to this form of duty, and that unlike other forms of duty, there is no 'effective rate' impact."*
  - b. The HRS market remains cyclical, involving price fluctuations, there has been no change in this market dynamic.
  - c. The following graph demonstrates monthly market fluctuations of export prices to Australia for the period 1 October 2012 to 31 July 2016 a period of 45 months. This period includes the following, which have all been verified by ADC: -
    - Original investigation period 1 October 2012 to 30 September 2013;
    - Duty assessment period 20 May 2014 to 19 November 2014;
    - Duty assessment period 20 November 2014 to 19 May 2015;
    - Duty assessment period 20 May 2015 to 19 November 2015; and
    - Review of measures period 1 January 2015 to 31 December 2015.

<sup>1</sup> <http://adcommission.gov.au/cases/Documents/096-FinalReport223.pdf>



**[Redacted graph containing confidential export prices of THS to Australia]**

- d. The bars highlighted in red represent the investigation period for the review of measures verification. From the above, the following observations are made regarding the continuing cyclical nature of the HRS market and price fluctuations: -
- The lowest monthly average export price is USD **XXX.XX** in **MONTH**; **[Redacted confidential export prices of THS to Australia]**
  - The highest monthly average export price is USD **XXX.XX** in **MONTH**, which is **XX.XX%** higher than the lowest; **[Redacted confidential export prices of THS to Australia]**
  - The average during the review of measures investigation period is USD **XXX.XX**; and **[Redacted confidential export prices of THS to Australia]**
  - The average during the whole period of 1 October 2012 and 31 July 2016 is USD **XXX.XX**, which is **XX.XX%** higher than average during the review of measures investigation period. **[Redacted confidential export prices of THS to Australia]**
- e. On review of Guidelines on the Application of Forms of Dumping Duty November 2013 (the Guidelines)<sup>2</sup>, we provide the following comments and observations: -
- **Floor price duty method – Regulation 5(4) - key considerations**
  - *“This duty method can limit the negative effect of price increases in the goods that are associated with an ad valorem duty method. This may be a factor relevant to the Minister when considering the effect of the duty on downstream industries, depending on the circumstances.”*
    - ✓ We don’t consider this a factor for applying the floor price duty method.
  - *“It acts to prevent price manipulation by the exporter such as where they artificially decrease their export price under an ad valorem duty method which would decrease the amount of duty paid.”*
    - ✓ There is no evidence or history of price manipulation by THS, and price is determined by competitive market forces.
  - *“A disadvantage is that a floor price can quickly become out-of-date and in a rising market become ineffective. In a falling market, as per a fixed or a combination duty method, this form of duty can become punitive.”*
    - ✓ This is highly applicable to HRS market as assessed by commission in Final Report No. 223 and above export price history information, the floor price method potentially provides an onerous punitive outcome for THS and Australian importers.

<sup>2</sup> <http://adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Guidelineformsofdumpingduty-November2013.pdf>



- **Ad valorem duty method – Regulation 5(7) – key considerations**
  
- *“The simplest and easiest form of duty to administer when delivering the intended protective effect.”*
  - ✓ Highly appropriate, if an exporter verified to be not dumping, how is a protective effect is required?
  
- *“It has an advantage where there are many models or types (it does not require an ascertained export price or ascertained floor which may not be meaningful where models show significant price variation).”*
  - ✓ This is appropriate as there is an average of **XX.XX%** variance between cheapest PCN model and dearest PCN model. **[Redacted confidential export prices of THS to Australia]**
  
- *“It has an advantage for goods which are subject to significant price variations over time because:  
a) the ad valorem duty method does not show the same variability in the ‘effective rate’ of the duty – as export prices fluctuate - that arises under the other methods; and  
b) the ad valorem duty method may require less frequent reviews than these other duty methods in this situation.”*
  - ✓ As identified by the commission in Final Report No. 223 and above export price history information, the HRS market is cyclical in nature and subject to price fluctuations. Applications for review of anti-dumping measures are still an option to the Minister or interested parties.
  
- *“It may not be the most appropriate duty method when applied to goods which may have high priced varieties or models of the goods, particularly where a particular variety of goods was not causing injury to the Australian industry.”*
  - ✓ This in not applicable.
  
- *“It has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty. That said, where such behaviour is observed when monitoring the measures an anti-circumvention inquiry can commence.”*
  - ✓ There is no evidence or history of price manipulation by THS, and price is determined by competitive market forces. In addition, as stated in the guidelines, monitoring and anti-circumvention provisions would remedy exposure to this issue.

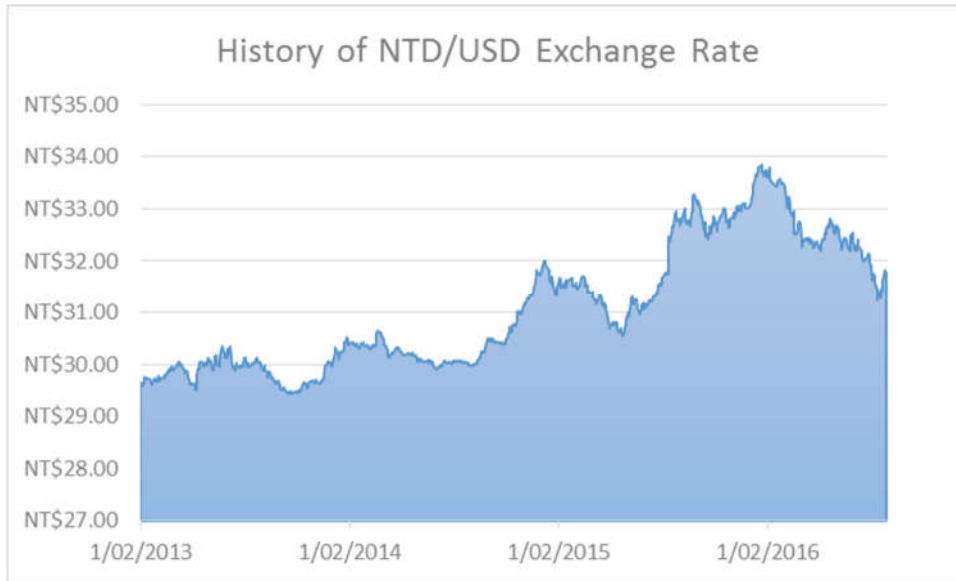


- g. We note on page 15 of SEF footnote 24 the following statement: -
- *“In order to impose a fixed or ad valorem duty method, a positive dumping margin must be determined.”*
- h. We have reviewed the Customs Tariff (Anti- Dumping) Regulation 2013 (the Dumping Duty Regulation)<sup>3</sup> and can find no legal direction in the regulations to enforce such a decision, nor can we find any direction in the guidelines.
- i. Page 15 of the SEF further states the following: -
- *“The fixed and ad valorem duty methods are operative where the ascertained export price and ascertained normal value result in a positive dumping margin calculation. As the Commission has preliminarily determined that the weighted average dumping margin for HRS exported to Australia by Tung Ho Steel in the review period was less than zero (a negative dumping calculation), the Commission views these forms of duty to be inappropriate in the present circumstances as they are unable to be implemented effectively.”*
- j. Why can't a 0% ad valorem rate be effective? As per paragraph 2c. above, the ADC have verified that THS have not dumped and determined dumping margins of less the zero. The only reasonable and fair measure is 0% ad valorem rate, with the Minister or any other interested party having the ability to lodge an application for a review of anti-dumping measures if they consider that one or more of the variable factors have subsequently changed.
- k. A further potentially punitive outcome of the floor price duty method is the floor price will be established with reference to the ascertained normal value, which is New Taiwan dollars, which exposes THS to foreign exchange fluctuations in addition to price variations.
- l. The following chart demonstrates the volatility of NTD/USD exchange rate since 1 February 2013 to date.

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<sup>3</sup> <https://www.legislation.gov.au/Series/F2013L00891>





m. In addition to the above, there is a further technical concern where market export price is below floor price and above normal value, the importer may be forced to sell at a loss, to meet competitive market pricing, and rely on subsequent duty assessment applications and refunds to bring sales back to profit. Not only does the cash flow impact of this provide a further punitive outcome, we have a technical concern regarding Section 269TAA(3) as follows: -

- Currently, duty assessments are for six month periods, with deadline for applications being 6 months after the end of each assessment period. The commission then has 155 days to process and make a recommendation to the Parliamentary Secretary, who has a further 30 days to give decision. As an example we provide the following: -
  - Assessment period = 20 May 2016 to 19 November 2016
  - Deadline for lodgement = 19 May 2017
  - 155 days for commission recommendation = 21 October 2017
  - 30 days for Parliamentary Secretary decision = 19 November 2017
- Then potentially costs (dumping duty) have not been recovered within 12 months, for some or all of the transactions. Will sales at a loss (due to dumping duty that will be recovered) be considered at arm's length?

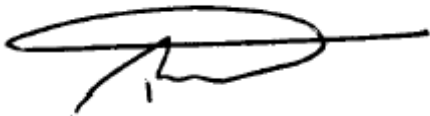
### 3. Conclusion

- a. THS have been verified by the ADC to not to be dumping and determined dumping margins of less the zero for an extended period subsequent to the implementation of measures since 20 May 2014, including refund of interim duties paid.
- b. The application of the floor price duty method provides an unnecessary potentially punitive outcome to THS and the Australian downstream companies and consumers.



- c. Article 9.3 of the World Trade Organization (WTO) Anti-Dumping Agreement (ADA) requires that the amount of dumping duty shall not exceed the margin of dumping.
  - d. The application of the ad valorem duty method at a rate of 0% is the only fair and reasonable duty applicable to THS exports to Australia to ensure fair trade and competitive pricing for the Australian market.
4. Should you require any additional information, please contact the writer.

Yours faithfully



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