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7 September 2016

Director
Operations 5
Anti-Dumping Commission
Level 35, Collins St
Melbourne Vic 3000

BY EMAIL operations5@adcommission.gov.au

Dear Director,

REVIEW OF ANTI-DUMPING MEASURES APPLYING TO CERTAIN HOT ROLLED STRUCTURAL STEEL SECTIONS EXPORTED FROM TAIWAN BY TUNG HO STEEL ENTERPRISE CORPORATION

OneSteel supports the Commission's proposed recommendation in Statement of Essential Facts 345 (**SEF**) 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.*[1]

It is central to the integrity of the Anti-Dumping system that when measures are imposed they are effective in removing the injurious effects of dumping. The circumstances of this Review of Measures are such that an *ad valorem* rate of zero percent would not prevent future dumping by the exporter, Tung Ho Steel (**THS**). OneSteel supports the Commission's view that the floor price method of interim dumping duty calculation is appropriate.

OneSteel also seeks to refute the claims contained in the submissions of the importer Sanwa and Mobile Business Consultants on behalf of THS that were uploaded to the EPR on the 2 September 2016. The two main propositions put forward by Sanwa and THS appear to be that:

- the Minister does not have the power to change the basis on which interim dumping duties are imposed; and
- the imposition of a floor price based on the exporter's domestic normal value is an "unfair" or a "punitive" mechanism to prevent future injury.

OneSteel disputes the arguments put forward by both Sanwa and THS and asserts that the evidence before the Commission supports its proposed recommendation to impose a method of interim duty calculation that is effective in preventing future dumping and material injury.

<u>Minister's Power to change the form of interim dumping duty calculation method</u>

In addressing the first matter we refer to the undated submission of Sanwa in which it asserts:

> *on advice, that …the Minister does not have power to change the basis on which interim dumping duties are imposed in a review.*[2]

[1] SEF Review of Measures - HRS exported from Taiwan by Tung Ho Steel Enterprise Corporation at p. 20.

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We submit, on advice, that Sanwa's assertion is without foundation.

Under s.269TG of the *Customs Act 1901* (**the *Act***) the Minister has the power to make declarations that s.8 of the *Customs Tariff (Anti-Dumping) Act 1975* (***Dumping Duty Act***) applies to like goods to be imported into Australia. Section 8(2) imposes dumping duties on such goods, if dumped, and s.8(3) of the *Dumping Duty Act* imposes interim dumping duties on such goods. Section 6 of the *Dumping Duty Act* states that the *Act* is incorporated and shall be read as one.

In addition to the declaratory powers and obligations attaching to the Minister in s.269TG of the *Act*, he is also obliged in a signed notice made under s.8(5) of the *Dumping Duty Act* to specify a method by which the amount of interim dumping duty can be worked out. While separate Acts of Parliament are involved to ensure compliance with the requirements of s.55 of the *Constitution*, the signed notice and the public notice under s.269TG of the Act form part of an incorporated statutory process.

There is nothing in the legislation to support a view that the Minister's power under s.8(5) of the *Dumping Duty Act* is limited to his original consideration of whether or not to publish a dumping duty notice. Indeed s.8(5D) of the *Dumping Duty Act*, by making reference to an "*earlier notice*", makes it clear that the various circumstances under Part XVB of the *Act* in which the Minister may reconsider the operation of a dumping duty notice in terms of, for example, fixing different variable factors, may also require the Minister to specify a different method of calculating interim dumping duty from that employed at the time of publication of the original dumping duty notice.

We contend that the present matter is just such a case.

In addition, even if the legislative scheme provided some support for Sanwa's assertion, s.33(3) of the *Acts Interpretation Act 1901* (***AI Act***) would empower the Minister to amend or vary the terms of a notice under s.8(5D) of the *Dumping Duty Act* previously applying to goods. Furthermore, it is clear in the present case that either of the interpretations contended for by OneSteel, when compared with Sanwa's assertion, draw further support from s.15AA of the *AI Act* because they best achieve the purposes of the legislative scheme.

<u>The Suitability of a Floor Price in a Review of Measures</u>

The claims by both Sanwa and THS that imposing a floor price based on the exporter's domestic price are "unfair" or "punitive" are baseless and do not align with the evidence before the Commission.

The confidential graph below shows the change in THS export pricing behavior relative to Taiwanese domestic prices both before and after measures were imposed, and following the specified Review Period.

Confidential Graph showing Taiwanese domestic prices for H Beams versus export prices for H beams to Australia.

[2] *EPR Folio No. 345/008* at p.1.

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The graph shows that:

1. Prior to the initiation of *Dumping Investigation No. 223* and the imposition of securities in March 2014, THS were dumping in the Australian market.

2. Following the imposition of preliminary securities in March 2014 and interim dumping duties in November 2014 , THS changed its export behaviour to more closely align with normal domestic prices up until the end of the Review Period in December 2015,

3. From April 2016, perhaps with the expectation that there would be no effective *ad valorem* measure operating, THS appear to have recommenced dumping into the Australian market. In the six months following the period of Review, Taiwanese export prices to Australia have fallen on average by 17%, whilst Taiwanese domestic prices have only reduced by 7%.

This evidence supports the Commission's position that an effective form of measure is still warranted. Without any form of effective measure it is likely that THS would revert to dumping and causing material injury to the Australian industry. OneSteel agrees with the Commission's view that an *ad valorem* method of duty calculation in these circumstances (ie. a zero percentage dumping duty rate) will not achieve the purpose of removing the injurious effects of dumping.

Claims by both Sanwa and THS that the floor price method in these circumstance are "unfair" or "punitive" are self-serving and baseless. Sanwa's claims that "Tung Ho will find it impossible to compete to export into the Australian market" or that a "floor price destroys their ability to compete" are factually not valid.

In a rising market Sanwa/THS will not be required to pay any interim dumping duty. THS's own submission indicates that floor price is likely to have been set at a significantly lower level than average price in the last four (4) years, which means that on average the interim dumping duties may not even be collected.

> *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.* [3]

Even if THS's normal value falls below the floor established during the review period, any interim dumping duties payable could not seriously be considered punitive as Sanwa/THS have demonstrated they can obtain refunds via the Final *Duty Assessment* process.

What would be *both* "punitive" and "unfair" would be a circumstance where an exporter (found to be dumping), is permitted to manipulate and 'game' the *ad valorem* form of measure via a Review of Measures inquiry. With no effective measures in place they would be able to dump in an unfettered manner into the Australian market causing material injury not only to the applicant and its up and downstream supply chain partners, but also to importers who have established sustainable international supply chains based on non-dumped goods.

It is also disingenuous of THS's consultant to claim that setting the floor price based on normal values in New Taiwan dollars unfairly exposes THS to foreign exchange fluctuations. During the Review Period, THS benefitted from a devaluation in Taiwanese currency which assisted them export at lower prices and reduce the risk of a dumping finding. To subsequently claim that they are disadvantaged if

[3] *EPR Folio No. 345/008* at p. 2.

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it falls, is simply not valid.
Daily foreign exchanges fluctuations are a normal element of trading and competitive conditions.

Please contact myself if you have any questions in relation to this submission.

Kind Regards

[redacted]
Manager Trade Development
OneSteel Manufacturing