

15 September 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. We refer to One Steel Manufacturing Pty Ltd - Administrators Appointed (OSM) submission dated 7 September 2016.
2. The OSM submission asserts that our submission on behalf Tung Ho Steel Enterprise Corporation (THS) only proposed "*the imposition of a floor price based on the exporter's domestic normal value is an "unfair" or a "punitive" mechanism to prevent injury*". While we did propose this potential punitive outcome, and continue to do so, there were other issues raised in our submission dated 29 August 2016, which OSM chose not to address, including:-
 - a. ADC original assessment in Final Report No 223 regarding the cyclical nature of the HRS market and the appropriateness of the ad valorem duty method;
 - b. Our analysis of the Guidelines on the Application of Forms of Dumping Duty November 2013;
 - c. Lack of legal enforcement in Customs Tariff (Anti- Dumping) Regulation 2013, to exclude fixed and ad valorem duty methods where there is a negative dumping margin;
 - d. Technical concern regarding Section 269TAA(3); and
 - e. 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.
3. While difficult to comment on the "*Confidential Graph showing Taiwanese domestic prices for H Beams versus export prices for H beams to Australia*" due to its redaction, we do make the following observations:-
 - a. There is no identification of the source of data;
 - b. There is no detail of any model matching for accurate comparison;



- c. Given the lack of accuracy with previous domestic and export price information provided by OSM, including calculation of estimated dumping margin of 11.8%¹ in original investigation application, compared to final assessment of 2.2%, THS doubt the accuracy again; and
 - d. As ADC have actual verified data regarding THS domestic and export pricing for circa 31 months of the period the graph claims to demonstrate, ADC should use this data to verify accuracy, before considering this as any form of evidence of dumping, which THS staunchly denies.
4. OSM made the following observation:-

“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.”

We note OSM only highlight the outcomes of a rising market in relation to the floor price duty method (opportunistically ignoring the impact in a falling market), however the above actually indicates a falling market, i.e. the export price in review period is lower than average since 1 October 2012. Nevertheless, citing the well-used investment disclaimer, “past performance is not an indication of future performance” should be applicable.

5. OSM made the following observation:-

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

- a. Rather than being disingenuous, our submission highlighted the following further level of complexity and potential punitive outcome to an Australian importer:-
 - THS export to Australia in USD;
 - Floor price is established in NTD (unlike an AEP which generally would be established in currency of export, USD);
 - Price is established at order in USD, with reference to floor price converted to USD at FX rate at date of order, to ascertain whether dumping duty should be costed by importer;

¹ Page 36 <http://adcommission.gov.au/cases/Documents/001-Application-AustralianIndustry-OneSteelManufacturingPtyLtd.pdf>



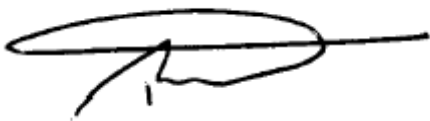
- Should the NTD devalue in relation to USD between order and shipment the floor price will decrease in USD terms (a positive outcome), however if the NTD improves the floor price will rise (a negative outcome), with potentially dumping duty payable that was not factored into the importer's pricing; and
- While we agree with OSM that "*daily foreign exchanges fluctuations are a normal element of trading and competitive conditions*", we are unaware of any hedging strategy that an importer could employ that would mitigate this exposure.

6. Conclusion (as per our response to SEF dated 29 August 2016)

- 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.

7. Should you require any additional information, please contact the writer.

Yours faithfully



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