



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

***CUSTOMS ACT 1901 - PART XVB***

**ANTI-DUMPING COMMISSION  
REPORT NO. 345**

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

**20 September 2016**

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**ABBREVIATIONS**

ABF	Australian Border Force
the Act	The <i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Tung Ho Steel Enterprise Corporation or Tung Ho Steel
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to manufacture
CTMS	Cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Dumping Duty Regulation	<i>Customs Tariff (Anti- Dumping) Regulation 2013</i>
EPR	Electronic Public Record
the goods	the goods the subject of the application (also referred to as the goods under consideration)
HRS	Hot rolled structural steel sections
OneSteel	OneSteel Manufacturing Pty Ltd
NIP	Non-injurious price
the Parliamentary Secretary <sup>1</sup>	The Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 223	Anti-Dumping Commission Report No. 223
Review period	1 January 2015 to 31 December 2015
SEF	Statement of Essential Facts
SG&A	Selling, general and administrative costs

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<sup>1</sup> The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

# 1 SUMMARY

## 1.1 Introduction

This review of measures is in response to an application from Tung Ho Steel Enterprise Corporation (referred to as the applicant or Tung Ho Steel) for a review of the anti-dumping measures (in the form of a dumping duty notice) applying to hot rolled structural steel sections (HRS) exported to Australia from Taiwan in so far as the anti-dumping measures affect the applicant.

This report sets out the Commissioner of the Anti-Dumping Commission (the Commissioner's) recommendations to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) in relation to this review.

## 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>2</sup> enables affected parties to apply for a review of anti-dumping measures. The division, among other matters:

- sets out the circumstances in which applications for the review of anti-dumping measures can be brought;
- sets out the procedure to be followed by the Commissioner in dealing with such applications or requests and preparing reports for the Parliamentary Secretary; and
- empowers the Parliamentary Secretary, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate.

The Commissioner must, after conducting a review of the variable factors relevant to the taking of the anti-dumping measures, give the Parliamentary Secretary a report recommending that:

- (i) the dumping duty notice remain unaltered; or
- (ii) the dumping duty notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

## 1.3 Findings

The Commissioner finds that, in relation to exports of HRS to Australia from Taiwan by Tung Ho Steel during the review period (1 January 2015 to 31 December 2015):

- the ascertained export price has changed; and
- the ascertained normal value has changed.

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<sup>2</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

## **1.4 Recommendation**

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice have effect in relation to Tung Ho Steel as if different variable factors had been ascertained.

## **2 BACKGROUND**

### **2.1 Application and initiation of review**

On 21 March 2016, Tung Ho Steel lodged an application requesting a review of the anti-dumping measures as they apply to its exports of HRS to Australia from Taiwan. In its application, Tung Ho Steel claimed that the variable factors relevant to the taking of the anti-dumping measures have changed.

Following consideration of the application, the Commissioner decided not to reject the application and initiated a review of the anti-dumping measures applying to HRS exported to Australia from Taiwan in so far as the anti-dumping measures affect the applicant.

Notification of the initiation of the review was made in Anti-Dumping Notice (ADN) No. 2016/43, which was published on the Anti-Dumping Commission's (the Commission's) website on 18 April 2016.

Consideration Report No. 345 (CON 345) was published on the Commission's website detailing the Commissioner's reasons for not rejecting the application.

### **2.2 Existing measures**

On 24 October 2013, the Commissioner initiated a dumping investigation into HRS exported to Australia from Japan, the Republic of Korea (Korea), Taiwan and the Kingdom of Thailand (Thailand) following an application lodged by OneSteel Manufacturing Pty Ltd (OneSteel), a manufacturer of HRS in Australia.

In that investigation (Investigation 223), and as outlined in Report No. 223 (REP 223),<sup>3</sup> it was found that:

- the goods exported to Australia from Japan, Korea, Taiwan and Thailand were dumped, with margins ranging from 2.20 to 19.48 per cent;
- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

Particulars of the dumping margins established for each of the exporters, and the effective rates of duty for that investigation, are set out in the following table:

Country	Manufacturer/ exporter	Dumping margin and effective rate of duty	Duty Method	Method to establish dumping margin
Japan	JFE Bars and Shapes Corporation	12.15%	Ad valorem	Weighted average export prices were compared with corresponding normal values over the
	Uncooperative Exporters	12.23%	Ad valorem	
Korea	Hyundai Steel Company	2.52%	Ad valorem	
	Uncooperative Exporters	3.24%	Ad valorem	

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<sup>3</sup> Electronic Public Record (EPR), document number 223/098 refers.

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Taiwan	TS Steel Co Ltd	4.68%	Ad valorem	investigation period in terms of s.269TACB(2)(a) of the <i>Customs Act 1901</i> .
	Tung Ho Steel Enterprise Corporation	2.20%	Ad valorem	
	Uncooperative Exporters	7.89%	Ad valorem	
Thailand	Siam Yamato Steel Co Ltd	18.00% <sup>4</sup>	Ad valorem	
	Uncooperative Exporters	19.48%	Ad valorem	

**Table 1 – dumping margins**

The findings and recommendations in REP 223 were provided to the then Parliamentary Secretary to the Minister for Industry (the then Parliamentary Secretary), recommending the publication of a dumping duty notice in respect of the goods. Notice of the then Parliamentary Secretary's decision to accept the recommendations in REP 223 was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette*.<sup>5</sup> Interested parties were also advised of this outcome in Anti-Dumping Notice No. 2014/127 on 20 November 2014.

For the purposes of this review, the current notice is the dumping duty notice published on 20 November 2014.

### 2.3 Concurrent review of measures relating to HRS

On 23 March 2016, the Commission received an application for a review of measures on HRS exported from Thailand by Siam Yamato Steel Co. Ltd (SYS).<sup>6</sup> Following consideration of the application, the Commissioner decided not to reject the application and initiated a review of the anti-dumping measures applying to HRS exported to Australia from Thailand in so far as the anti-dumping measures affect SYS (EPR 346 refers).

On 8 August 2016, the Commissioner placed on the public record a statement of facts (SEF 346) on which the Commissioner proposed to base his recommendations to the Parliamentary Secretary in relation to the review of measures.

Interested parties were invited to make submissions to the Commissioner in response to SEF 346 by 29 August 2015 (20 days after the SEF was placed on the public record).

The final report for review 346 is due to be provided to the Parliamentary Secretary on 20 September 2016.

### 2.4 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter

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<sup>4</sup> As varied by the then Parliamentary Secretary to the Minister for Industry and Science on 7 August 2015, following the recommendation of the Anti-Dumping Review Panel. See <http://www.adreviewpanel.gov.au/CurrentReviews/Documents/HRSSS%20Parliamentary%20Secretary%27s%20Decision.pdf>

<sup>5</sup> Available at <https://www.legislation.gov.au/Details/C2014G01905>. The investigation as it related to HRS exported by Feng Hsin Iron & Steel Co Ltd from Taiwan (FHS) was terminated on 31 October 2014. As such the anti-dumping measures do not apply to HRS exported by FHS.

<sup>6</sup> Notice of the initiation of this review was made in Anti-Dumping Notice No. 2016/43.

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or exporters generally. Accordingly, the affected party may apply for,<sup>7</sup> or the Parliamentary Secretary may request that the Commissioner conduct,<sup>8</sup> a review of those measures if one or more of the variable factors has changed.

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review and report to the Parliamentary Secretary on the review of the anti-dumping measures.<sup>9</sup>

Within 110 days of the initiation of a review, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record a SEF on which he proposes to base his recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.<sup>10</sup>

In making recommendations in this final report to the Parliamentary Secretary, the Commissioner must have regard to:<sup>11</sup>

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the review.<sup>12</sup>

At the conclusion of the review, in respect of the dumping duty notice, the Commissioner must provide a final report. In his final report he must make a recommendation to the Parliamentary Secretary that the dumping duty notice:<sup>13</sup>

- remains unaltered; or
- have effect as if different variable factors had been ascertained.

The Parliamentary Secretary must make a declaration under subsection 269ZDB(1) within 30 days after receiving the report or, if the Parliamentary Secretary considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Parliamentary Secretary considers appropriate.

Following the Parliamentary Secretary's decision, the Parliamentary Secretary must give notice of the decision.<sup>14</sup>

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<sup>7</sup> Subsection 269ZA(1).

<sup>8</sup> Subsection 269ZA(3).

<sup>9</sup> Subsection 269ZDA(1).

<sup>10</sup> Subsection 269ZD(1).

<sup>11</sup> Subsection 269ZDA(3)(a).

<sup>12</sup> Subsection 269ZDA(3)(b).

<sup>13</sup> Subsection 269ZDA(1)(a).

<sup>14</sup> Subsection 269ZDB(1).



## **2.5 Statement of Essential Facts (SEF) 345**

On 8 August 2016, the Commissioner placed on the public record the SEF in relation to this review of measures (SEF 345), which sets out the essential facts on which the Commissioner proposed to base his final recommendations to the Parliamentary Secretary.

### **2.5.1 Submissions considered as part of SEF 345**

The Commissioner had regard, for the purpose of formulating the SEF, to the following submissions.

<b>Interested party</b>	<b>Public record item no.</b>
OneSteel Manufacturing Pty Ltd	4
Tung Ho Steel Enterprise Corporation	5

### **2.5.2 Submissions received in response to SEF 345**

Interested parties were invited to make submissions to the Commissioner in response to SEF 345 by 29 August 2016 (20 days after the SEF was placed on the public record).

The Commissioner received the following submissions in response to SEF 345 within the requested timeframe.

<b>Interested party</b>	<b>Public record item no.</b>
Sanwa Pty Ltd	8
Tung Ho Steel Enterprise Corporation	9

**Table 2: Submissions received in response to SEF 345**

The Commissioner also received the following submissions after the deadline of 29 August 2016.

<b>Interested party</b>	<b>Public record item no.</b>
OneSteel Manufacturing Pty Ltd	10
Tung Ho Steel Enterprise Corporation	11

Non-confidential versions of these submissions are available on the Commission's website.

The Commissioner has had regard to these submissions for the purposes of the recommendations made to the Parliamentary Secretary in this report. Details of submissions received, and the Commissioner's response to these submissions, are included in section seven of this report.

## 3 THE GOODS AND LIKE GOODS

### 3.1 Findings

The Commissioner finds that HRS manufactured by the Australian industry are 'like' goods as defined in subsection 269T(1).

### 3.2 Legislative framework

The Commissioner must be satisfied that 'like' goods to the goods the subject of the anti-dumping measures are produced in Australia.

In making this assessment, the Commissioner must first determine that the goods produced by the Australian industry are "like" to the imported goods. Subsection 269T(1) defines like goods as:

*"...means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration."*

Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with subsection 269T(3), for goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of those goods must be carried out in Australia.

### 3.3 The goods subject to the anti-dumping measures

The goods to which the current anti-dumping measures apply (the goods) are:

*Hot rolled structural steel sections in the following shapes and sizes, whether or not containing alloys:*

- *universal beams (I sections), of a height greater than 130mm and less than 650mm;*
- *universal columns and universal bearing piles (H sections), of a height greater than 130mm and less than 650mm;*
- *channels (U sections and C sections) of a height greater than 130mm and less than 400mm; and*
- *equal and unequal angles (L sections), with a combined leg length of greater than 200mm.*

*Sections and/or shapes in the dimensions described above, that have minimal processing, such as cutting, drilling or painting do not exclude the goods from coverage of the investigation.*

The measures do not apply to the following goods:

- *hot rolled 'T' shaped sections, sheet pile sections and hot rolled merchant bar shaped sections, such as rounds, squares, flats, hexagons, sleepers and rails; and*
- *sections manufactured from welded plate (e.g. welded beams and welded columns).*

### **3.4 Tariff classification**

Goods identified as hot rolled non-alloy steel sections (meeting the specified shapes and sizes set out above) are currently classified to the tariff subheading in Schedule 3 of the *Customs Tariff Act 1995*:

- 7216.31.00 statistical code 30;
- 7216.32.00 statistical code 31;
- 7216.33.00 statistical code 32; and
- 7216.40.00 statistical code 33.

For the tariff subheadings outlined above, the general rate of duty varies. Imports from Korea and Thailand are duty free. The general rate for imports from Japan is 2 per cent and for Taiwan 5 per cent.

Goods identified as hot rolled other alloy steel sections (meeting the specified shapes and sizes set out above) are classified to tariff subheading 7228.70.00 in Schedule 3 of the *Customs Tariff Act 1995*. The applicable duty rate for imports from Taiwan is 5 per cent. Imports from Japan, Korea and Thailand are duty free.

### **3.5 Like goods produced by Australian industry**

During Investigation 223, the then Australian Customs and Border Protection Service found that:

- there was an Australian industry producing like goods;
- a substantial process of manufacture was carried out in Australia in producing the like goods; and
- there was an Australian industry consisting of eight companies that produce like goods in Australia.

The Commission did not find any evidence to suggest that these findings had changed.

### **3.6 Like goods produced and sold in Taiwan by Tung Ho Steel**

Based on the information provided by Tung Ho Steel in its response to the exporter questionnaire and in the course of on-site verification, the Commission is satisfied that the HRS sold on the domestic market by Tung Ho Steel possess similar physical characteristics, has similar uses, and has similar manufacturing processes to the HRS subject to the dumping duty notice.

## 4 EXPORTER INFORMATION

### 4.1 Findings

The Commissioner is satisfied that the information provided by Tung Ho Steel for the purposes of this review is accurate, relevant and complete.

### 4.2 Exporter questionnaire

The Commission provided Tung Ho Steel with an exporter questionnaire to complete.

Tung Ho Steel provided detailed information and data in its response to the exporter questionnaire, including data relating to its export and domestic sales and cost to make and sell. Tung Ho Steel has also provided additional information when requested.

The Commission is satisfied that the information provided by Tung Ho Steel is sufficient to determine an export price and a normal value for the purposes of the review.

### 4.3 Accuracy, relevance and completeness of information supplied by Tung Ho Steel

The Commission conducted an on-site verification of the information and data provided in Tung Ho Steel's response to the exporter questionnaire.

The Commission is satisfied as to the accuracy, relevance and completeness of the data provided by Tung Ho Steel during this verification visit upon which the findings of this review are based.

The visit report contains further information on these matters. A copy of the visit report is available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

The Commission also compared the information provided by Tung Ho Steel during the review to the information provided and verified in the original investigation and data provided as part of two duty assessment applications covering over 10 months of the review period.

### 4.4 Australian Border Force Database

The Commission compared Tung Ho Steel's export sales information to the data in the Australian Border force's (ABF's) import database. The Commission noted a small variance in the total quantity of shipments recorded in the information supplied by Tung Ho Steel with the data in the ABF database. The variance was considered to be immaterial.

## 5 VARIABLE FACTORS – DUMPING DUTY NOTICE

### 5.1 Findings

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 recommends 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.

### 5.2 Export price

The Commission followed the same methodology as in the original investigation to ensure a consistent approach to ascertaining the variable factors.

The Commission considers that:

- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter; and
- the purchases of the goods by the importer were arms length transactions.

As such, export prices were established pursuant to subsection 269TAB(1)(a), using Tung Ho Steel's export invoice prices, excluding any part of that price that related to post-exportation charges.

The resulting ascertained export price for HRS exported by Tung Ho Steel has changed since the original investigation.

Details of export price calculations for Tung Ho Steel are at **Confidential Appendix 1**.

### 5.3 Normal value

Normal values were established in accordance with subsection 269TAC(1), using Tung Ho Steel's domestic invoice prices for like goods, by grade, shape and size, sold in the ordinary course of trade in arms length transactions.

As one model exported to Australia did not have enough domestic sales volume to meet the sufficiency test,<sup>15</sup> the visit team used the normal value of a model of similar size and shape with a very similar CTMS.

Adjustments to the normal value were made under subsection 269TAC(8) to ensure fair comparison with the export price. Adjustments made for the review of measures were consistent with the approach undertaken in respect of Tung Ho Steel at the time of the original dumping investigation.

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<sup>15</sup> As per subsection 269TAC(14) of the Act.

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The resulting ascertained normal value for HRS exported by Tung Ho Steel has changed since the original investigation.

Details of normal value calculations for Tung Ho Steel are at **Confidential Appendix 2.**

### **5.4 Dumping margin**

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.

Details of dumping margin calculations for HRS are at **Confidential Appendix 3.**

## 6 NON-INJURIOUS PRICE

### 6.1 General

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause material injury to an Australian industry producing like goods. The level of dumping duty imposed cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

Under section 8 of the *Customs Tariff (Anti-Dumping) Act 1975*,<sup>16</sup> the Parliamentary Secretary must have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury or a recurrence of the injury. Subsection 269TACA(a) of the Act identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to derive a NIP that is expressed in similar delivery terms to export price and normal value (e.g. FOB).

In the context of determining interim dumping duty, where the NIP is lower than the normal value, the Parliamentary Secretary must have regard to the desirability of applying the lesser duty rule.

### 6.2 Original investigation

In Investigation 223, the Commission considered that there was no suitable method of determining the USP and so considered an alternative approach to establishing the NIP.

The Commission expressed the view that in a market unaffected by dumping, it is reasonable to expect that OneSteel would continue to set its prices with regard to benchmarked import prices. As the price of imports would be higher at least by the dumping margins found, it would be expected that OneSteel's prices would also be higher by at least the percentage of the dumping margin's found.

It was on this basis that the Commission considered that the NIP for each exporter, including Tung Ho Steel, would be a price equal to the respective normal value. As such, the Parliamentary Secretary was not required to consider the lesser duty rule.

### 6.3 Assessment of the NIP

The Australian industry and the applicant have not made submissions on the NIP during the course of the current review inquiry.

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<sup>16</sup> Subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*.

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The Commission considers that the approach to determining the NIP in REP 223 remains valid for the purpose of this review.



## 7 SUBMISSIONS

### 7.1 Submissions regarding model matching

#### 7.1.1 Australian industry submission regarding model matching prior to SEF 345

Prior to the publication of the SEF, OneSteel submitted, in relation to this review (and the concurrent review of measures of exports of HRS from SYS), that:

- the Commission should carefully reassess its model matching of steel grades; and
- if the Commission is to maintain a position of using test certificates rather than assessing the standards that goods are produced to then “it is incumbent that the Commission compare all test certificates” for domestic and export goods sold during the review period.

#### 7.1.2 The Commission’s approach to model matching in SEF 345

In Investigation 223, the Commission considered that standards governing the production of HRS may be an influential factor in demonstrating physical comparability of the goods. In order to take into account the different circumstances in each exporter’s domestic production and sales, the Commission took into account a number of model-matching factors and considered them on an exporter-by-exporter basis. The Commission considered that the actual physical specifications of products were more determinative in establishing physical likeness for like goods and consequently, normal values.<sup>17</sup> The Commission therefore relied on a sampling methodology of mill test certificates (test certifications) as part of the verification process.

For the purposes of this review and consistent with Investigation 223, the Commission examined a number of test certificates pertaining to Tung Ho Steel’s export and domestic sales. These test certificates contain evidence of the mechanical properties and chemical composition of the goods, which establish the actual physical specifications to which the goods are produced and sold. The Commission has also had regard to a number of other model-matching factors including production processes, in particular, whether goods were produced from the same semi-finished product, for example blooms, and cost and selling price information.

#### 7.1.3 Submissions received post SEF 345 regarding model matching

No submissions were received by the Commission post SEF regarding this issue.

### 7.2 Submissions regarding form of measures

#### 7.2.1 Australian industry submission regarding form of measures prior to SEF 345

Prior to the publication of the SEF OneSteel submitted that:

- the internal controls put in place by Tung Ho Steel to ensure that the export price remains above the domestic price for like goods demonstrates that the measures

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<sup>17</sup> REP 223, page 35.

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have been important and effective in preventing the injurious effects of dumping previously caused;

- the fact that Tung Ho Steel only implemented these internal controls after measures were imposed demonstrates the need for ongoing measures to apply; and
- if the Commission determines a *de minimis* dumping margin, it must impose a variable rate of duty based on the ascertained export price of the goods used to calculate the *de minimis* dumping margin.

### 7.2.2 The Commission's approach and proposed recommendation regarding form of duty at SEF 345

The forms of duty available to the Parliamentary Secretary when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti- Dumping) Regulation 2013* (the Dumping Duty Regulation) and are as follows:

- combination of fixed and variable duty method ('combination duty');
- fixed duty method;
- floor price duty method; and
- ad valorem duty method.<sup>18</sup>

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others.

In considering which form of duty to recommend to the Parliamentary Secretary, the Commissioner has had regard to its published *Guidelines on the Application of Forms of Dumping Duty November 2013*<sup>19</sup> (the Guidelines), relevant factors in the HRS market and the particular circumstances of this review.

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 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.<sup>20</sup>

The Commission notes OneSteel's submission that, if Tung Ho Steel is found to have a *de minimis* dumping margin, a variable rate of duty be imposed based on the ascertained export price of the goods.

The combination duty method comprises two elements: the "fixed" duty element and the "variable" duty element. The variable component of the combination duty is set by

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<sup>18</sup> Section 5 of the *Customs Tariff (Anti- Dumping) Regulation 2013*.

<sup>19</sup> Available at <http://adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Guidelineformsdumpingduty-November2013.pdf>

<sup>20</sup> In order to impose a fixed or ad valorem duty method, a positive dumping margin must be determined.

reference to the ascertained export price. However, it would be inappropriate to impose a duty for exports that fall below the ascertained export price where the ascertained normal value is less than the ascertained export price (a situation of no dumping). To do so would lead to a situation where duties would be collected on exports that are not dumped. Furthermore, as the non-injurious price is set at the ascertained normal value, the lesser duty rule would prevent the imposition of measures above the non-injurious price.<sup>21</sup>

The floor price duty method sets a 'floor' – for example a normal value of \$100 per tonne – and duty is collected when the actual export price is less than that normal value of \$100 per tonne. The floor price is either the normal value or the non-injurious price, whichever becomes applicable under the duty collection system. This duty method does not use an ascertained export price as a 'floor price'.<sup>22</sup>

### **7.2.3 Submissions post SEF 345 regarding form of duty**

Sanwa Pty Ltd (Sanwa)<sup>23</sup> in response to SEF 345 submitted that:

- the Minister does not have the power to change the basis on which interim duties are imposed in a review;
- the Commission's proposed findings and recommendations will make it impossible for Tung Ho Steel to export into the Australian market in spite of the fact that the Commission has found that Tung Ho Steel has not been dumping for the review period;
- a floor price is flawed in a volatile market. If the market prices move up then the floor price becomes irrelevant and if the market price moves down the floor price becomes punitive;
- the volatility of HRS prices is demonstrated by various steel indexes. This volatility creates uncertainty and risk for Sanwa, including exchange rate exposure between the time of order and the date of importation;
- Sanwa has worked closely with Tung Ho Steel to ensure that the HRS being imported is not dumped;
- Tung Ho Steel is potentially in a worse position than before despite its good behaviour and despite a significant negative dumping margin for the review;
- the form of duty recommended risks a high quality supplier who was the first importer to obtain ACRS certification<sup>24</sup> and is able to supply the full Australian size range being eliminated when there are doubts about the long term viability of the Whyalla Structural Steel Plant; and
- a declaration that the initial anti-dumping notice continue unaltered in respect of Tung Ho Steel would be preferable to a floor price from Sanwa's perspective.

Tung Ho Steel in response to SEF 345 submitted that:

- it does not agree with the recommendation in the SEF to change the form of duty from the existing ad valorem duty method to the floor price duty method;

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<sup>21</sup> See section 7.1 below.

<sup>22</sup> See section 5(4) and 5(5) of the Customs Tariff (Anti-Dumping) Regulation 2013.

<sup>23</sup> Sanwa is an importer of HRS from Tung Ho Steel.

<sup>24</sup> Certification from the Australasian Certification Authority for Reinforcing and Structural Steels.

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- the Commission itself noted in Investigation 223 that the cyclical nature of the HRS market lends itself to an ad valorem duty, and the HRS market remains cyclical in nature;
- a review of the Guidelines suggests that the most appropriate form of duty is the ad valorem method not the floor price method. Specifically, there is no evidence or history of price manipulation by Tung Ho Steel, the HRS market is volatile and there are various models of HRS;
- it has reviewed the Dumping Duty Regulation and can find no legal direction to support the statement that in order to impose a fixed or ad valorem duty method a positive dumping margin must be determined;
- a zero per cent ad valorem duty can be effective and is the only fair and reasonable measure to implement;
- a floor price denoted in New Taiwanese dollars will expose Tung Ho Steel to currency fluctuations;
- a floor price may result in issues in recovering duty through the duty assessment process if the importer is forced to sell at a loss to meet competitive market pricing; and
- Article 9.3 of the World Trade Organization Anti-Dumping Agreement requires that the amount of dumping duty shall not exceed the margin of dumping.

OneSteel, in response to Sanwa and Tung Ho Steel's submissions post SEF stated that:

- the Minister has the power to change the basis on which interim duties are imposed in a review. Further, when making a notice to determine the interim duty, the Minister is obliged to specify a method by which the amount of interim dumping duty can be worked out;
- prior to Investigation 223, Tung Ho Steel was dumping in the Australian market. From the period March 2014 – December 2015 this behaviour changed, however, since April 2016 Tung Ho Steel appears to have recommenced dumping into the Australian market. As such, an effective form of measures is still warranted;
- the floor price will be set at a significantly lower level than the average price of Tung Ho Steel's HRS for the last four years. Further, if interim dumping duty is collected a dumping duty assessment may be sought; and
- exchange rate fluctuations are a normal element of trading and competitive conditions.

Tung Ho Steel in response to OneSteel's post SEF submission reiterated its previous submission and stated that:

- it staunchly denies claims by OneSteel that it has recommenced dumping; and
- it has been verified by the Commission not to be dumping since the implementation of measures on 20 May 2014.

### **7.2.4 The Commission's final recommendation regarding form of duty**

In considering which form of duty to recommend to the Parliamentary Secretary, the Commissioner has had regard to submissions from interested parties, the Guidelines, relevant factors in the HRS market and the particular circumstances of this review. The Commissioner remains of the view that the most appropriate form of duty in this case is a floor price.

## 8 FINDINGS AND EFFECT OF REVIEW

### 8.1 Findings

The Commissioner finds that, in relation to exports of HRS to Australia from Taiwan by Tung Ho Steel during the review period:

- the ascertained export price has changed; and
- the ascertained normal value has changed.

### 8.2 Effect of the review

If the Parliamentary Secretary accepts the Commissioner's recommendations Tung Ho Steel's exports of HRS will not attract interim duty as long as its export prices are at or above the floor price established by reference to the ascertained normal value during the review period. The interim dumping duty will be payable if the actual export price falls below the ascertained normal value.

A summary of the variable factors as they apply to Tung Ho Steel accompanies the notice at **Non-Confidential Attachment 1**.

## 9 RECOMMENDATION

The Commissioner recommends that the Parliamentary Secretary considers this report, and if agreed, sign the attached notice (**Non-Confidential Attachment 1**) and sign the attached schedules (**Confidential Attachment 2**) to DECLARE that:

- under subsection 269ZDB(1)(a)(iii) of the Act, that, with effect from the date of signature of the determination, that the Act and the Dumping Duty Act have effect as if the current dumping duty notice applies Tung Ho Steel as though different variable factors had been fixed in respect of this exporter relevant to the determination of duty.

The Commissioner recommends that the Parliamentary Secretary DETERMINE that:

- in accordance with subsection 269TAB(1)(a) of the Act, the ascertained export price for HRS exported to Australia from Taiwan by Tung Ho Steel for the review period has been established using the price paid or payable for the goods by the importer; and
- in accordance with subsection 269TAC(1) of the Act, the ascertained normal value for HRS exported to Australia from Taiwan by Tung Ho Steel for the review period has been established using the price paid for like goods sold by Tung Ho Steel for home consumption in Taowam in the ordinary course of trade in arms length transactions;
- pursuant to section 8(5) of the Dumping Duty Act, that the interim dumping duty payable on HRS exported to Australia by Tung Ho Steel is an amount that has been worked out in accordance with the floor price duty method pursuant to subsections 5(4) and (5) of the Dumping Duty Regulation with effect from the date of signature of the determination.

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**LIST OF APPENDICES AND ATTACHMENTS**

Confidential Appendix 1	Export price calculation
Confidential Appendix 2	Normal value calculation
Confidential Appendix 3	Dumping margin calculation
Non-Confidential Attachment 1	Anti-Dumping Notice No. 2016/98
Confidential Attachment 2	Schedule of Determinations