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7 November 2018

The Director
Investigations 3
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria 3000

By email

Dear Director

Hyundai Steel Company Review 465 – further comment on the form of measures

As you know we act for Hyundai Steel Company (“Hyundai Steel”) in this review.

We welcome this opportunity to provide further comments concerning the issue of the form of measures that might now be introduced, at the conclusion of this review. We take notice of Liberty OneSteel’s (“LOS”) latest submission on this issue, published on 31 October 2018. The submission once again requests that the duty collection method be changed from the *ad valorem method* to a combination duty method. The request is made on the basis of the increased dumping margin, high volume of imports, and what LOS claims to be an issue involving “*under collection of Commonwealth revenue*” and its claimed “*price injury impact to LOS’s profitability*”.

Hyundai Steel has already addressed issues concerning the dumping margin and the volume of the imports, in the context of the duty collection method, in its recent submission dated 23 October 2018. We now address the other two points raised in LOS’ submission.

First of all, the alleged “*under collection of Commonwealth revenue*” has no basis in either fact or law. Any Commonwealth revenue pertaining to the anti-dumping duties payable for imports of the HRSS from Hyundai Steel has been lawfully collected based on the dumping duty measures established pursuant to the Parliamentary Secretary’s decision to publish a notice under Section 269TG(2) of the *Customs Act 1901* (“the Act”) on 20 November 2014. That notice sets out the anti-dumping duty rate and the collection method. Subject to any subsequent procedures to finalise the dumping duty, and as long as duties were paid and collected according to that notice and the normal customs requirements, there is no over collection or under collection of Commonwealth revenue. The allegation of a situation of under collection of Commonwealth revenue is therefore plainly false.

Dumping duty collected during a review period might not reflect the spontaneous dumping margin of the same period. This may involve the duty paid being either more or less than the duty payable if based on a contemporary, actual dumping margin for the same time period. However, such a situation

may exist regardless of the form of measure adopted. Dumping duties collected are always somewhat “outdated”, in the sense that the dumping margins are always determined based on historical data. The legislation provides two ways of addressing the gap between a duty measure as imposed upon importation and the contemporary dumping margin. One of these is the duty assessment procedure, the other is the variable factors review procedure. This latter option has been taken up by LOS through its application for the current review.

Contrary to LOS’s submission, the form of measure, specifically the combination duty method, is not intended as a pathway to address the contemporaneity of dumping duty or dumping margins. As noted in the Commission’s *Guidelines On The Application Of Forms Of Dumping Duty* (“the Guidelines”):

A combination duty can be suitable for cases where the Commission considers that there is a likelihood of price manipulation because of complex related party company structures, or a proven case of price manipulation.

Further:

In a falling market the duty collected can become punitive under a combination measure... While an applicant industry may be attracted to this form of duty for this reason the fact there can be such negative effects on other industries in a falling market is something the Commission and the Minister may have to consider. User industries are likely to have an interest and may wish to make submissions to the Commission on these effects.

There is no indication that any of the concerns that a combination duty is designed to address is relevant to Hyundai Steel’s Australian sales. LOS’s submission therefore falls squarely into the category of a self-serving request to which an applicant industry might be attracted, as anticipated in the Guidelines.

The Commission correctly considered the situation and the broader Australian industries affected by the dumping duty when it was put in place in the original investigation:

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.¹

SEF 465 correctly notes that this reasoning remains valid in the current review and should be upheld:

This form of measures was imposed on the basis that an ad valorem rate is more appropriate in view of the cyclical nature of the HRS market observed, which involves price fluctuations.²

The Commission is correct to determine that combination duty is unsuitable for the cyclical nature of the HRSS market. A combination duty is unjustly punitive in a downward price cycle, preventing importation at a market price, whilst not being any more effective as an *ad valorem* measure in a rising market.

¹ Report 223 at page 89

² SEF 465, at page 21.

Secondly, we note that LOS's submission attempts to address the clear flaw in its request and the unjustified punitive effect of a combination duty for the GUC with the following:

The combination method does not disadvantage importers as they have the option of applying for a duty assessment and obtaining a refund if it is found that the goods sold at the lower price were not dumped.³

Such a comment is disingenuous at best. Clearly the sole purpose of LOS's request for a combination duty is to prevent import prices from fluctuation both up and down, as a cyclical nature market would require. The LOS submission itself notes:

The strength of the combination method lies in the use of the variable duty element which acts as a floor price to capture additional interim dumping duty if the exporter further reduces the price.

LOS' suggestion that an upfront cash payment of duty which "takes hostage" of the importer's business by fixing its costs of import at a high level "does not disadvantage importers" defies basic commercial common sense. Such an upfront payment makes pricing inflexible and unfairly prevents the importer from competing in a falling market. In addition to the upfront cost burden, an importer can only start to *apply* for a refund for the duty overpaid as late as six months afterwards. Even if the importer's application successfully led to the initiation of an assessment, the duty assessment period can easily take another six months to complete, with further expenses and costs needing to be invested by both the importer and the exporter to cooperate in such a duty assessment, and with an additional waiting time for the refund payment to be processed. LOS cannot seriously claim that none of these factors would disadvantage importers.

Thirdly, we would like to comment on LOS' submission on the so called "price injury impact to LOS's profitability" said to have been caused by Hyundai Steel's increased dumping rate. The first thing we would say is that the Commission has not conducted an injury analysis in this review. Such a review is outside the scope of a variable factors review, without it being extended to also consider revocation. Accordingly any such "injury" claim could neither be verified nor is relevant for such a review. The second thing we would like to mention is to remind LOS of its substantive contribution in importing the GUC from Hyundai Steel during the review period, at the so-called increased dumping rate prices. If there has been any issue with Hyundai Steel's prices being "too low" then LOS has been the direct beneficiary of such import prices, and would have most certainly enjoyed greater profitability, rather than being injured. LOS's baseless claims must again be dismissed and disregarded.

Lastly, we would like to point out Hyundai Steel's consistent record of cooperation with Australian anti-dumping investigations, reviews and inquiries, which have concluded with either no-dumping/*de minimis* margins or with only very low dumping margins, over the last six years. Hyundai Steel has proven itself to be a long term and responsible supplier of quality product at fair prices to its customers in Australia, including LOS. The risk of a sharply increased dumping margin following a review is disruptive enough to Hyundai Steel's interest in being a reliable long term supplier in such market. Accordingly Hyundai Steel is not in a position to and has no intention to supply the Australian market at dumped price level or to somehow "take advantage" of an *ad valorem* measure by exporting at an increased dumping margin.

³ See Doc 022 at page 2.

Hyundai Steel respectfully submits that the *ad valorem* method should continue to be applied as a result of this review.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Charles Zhan', with a large, stylized initial 'C'.

Charles Zhan
Senior Associate