



22 November 2024

The Director, Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

BY EMAIL:
investigations2@adcommission.gov.au

Dear Director,

Review of Anti-dumping Measures No. 642 (REV 642) concerning Hot Rolled Structural Steel Sections (HRSS) exported from Japan, Korea, Taiwan and Thailand

**AUSTRALIAN INDUSTRY SUBMISSION ON
ACCURACY OF EXPORT PRICE DETERMINATION AND FORM OF MEASURES FOR
HYUNDAI STEEL COMPANY**

The sole member of the Australian industry producing like goods to the goods subject to this review, OneSteel Manufacturing Pty Limited (**Liberty Primary Steel**), makes the following submission in relation to:

- the accuracy of the Commission's export price determination for Hyundai Steel Company (**Hyundai**); and
- the most appropriate method of interim duty calculation (**form of measures**) for the commodity product here under consideration.

At the outset, Liberty Primary Steel submits that the combination of fixed and variable duty method of interim duty calculation (**combination method**) is preferable to the *ad valorem* duty method recently applied by the Minister¹ following the recommendation of the Acting Commissioner² in *Final Report No. 637 (REP 637)*³. The key reason arises from the Acting Commissioner's findings concerning

¹ Minister for Industry and Science.

² Acting Commissioner of the Anti-dumping Commission.

³ Concerning *Hot Rolled Structural Steel Sections exported from Japan, The Republic of Korea, Taiwan (except by Feng Hsin Steel Co Ltd, T S Steel Co., Ltd and Tung Ho Steel Enterprise Corporation) and The Kingdom of Thailand*

Hyundai's terms of export sales and the Acting Commissioner's determination of Hyundai's export price under paragraph 269TAB(1)(c).⁴

In summary, the fact that Hyundai's sales are on Delivered Duty Paid (DDP) Incoterms, and that sales by Hyundai, as exporter, to itself, as importer, means that the *ad valorem* duty method is not suitable according to the Commission's *Guidelines on the application of forms of dumping duty*⁵:

*"A combination duty [c.f. ad valorem 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."*⁶

...

*"It [Floor price duty method] 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."*⁷

As Hyundai is both the exporter and importer of the goods, the invoice price declared on import entries to Australian Border Force as the 'dumping export price' (DXP) will seldom, if ever, be the same as the export price ascertained by the Commission in any investigation, review, inquiry or duty assessment, as it will differ following a calculation under paragraph 269TAB(1)(c), having regard "to all the circumstances of the exportation". Irrespective of any intentional manipulation of the price, the calculation of an amount of interim duty, based on Hyundai's 'self-declared' export price (i.e. the DXP) is unsound and unsatisfactory. To reduce the risk of avoidance of the effect of the measures, the Acting Commissioner ought to recommend the combination duty method of interim duty calculation to the Minister.

Hyundai's export sales and accuracy of the export price calculation

In REP 637, the Acting Commissioner concluded, in relevant part, that:

*"The commission considers that for the minor volume of Australian export sales on FOB terms, Hyundai Steel's Australian customer is the importer of the goods."*⁸

⁴ All legislative references are to the *Customs Act 1901* unless otherwise specified.

⁵ November 2013 (*Guidelines*).

⁶ *Guidelines*, p. 7.

⁷ *Guidelines*, p. 8.

⁸ REP 637, p. 45.

“For Hyundai Steel’s sales at DDP terms, Hyundai Steel acts as both the exporter and the importer.”⁹ (emphasis added)

For the purpose of ascertaining Hyundai’s export price in *Continuation Inquiry No. 637 (CON 637)*, the Acting Commissioner determined:

“As sections 269TAB(1)(a) and 269TAB(1)(b) do not apply, the commission has determined Hyundai Steel’s export price for DDP sales under section 269TAB(1)(c) – having regard to all the circumstances of the exportation. Specifically, the commission has determined the export price at FOB terms, based on the commercial invoice price less:

- *ocean freight*
- *marine insurance (where applicable)*
- *Australian Customs brokerage charges*
- *IDD or final duty payable (where applicable).¹⁰” (emphasis added)*

Initially, a question arises with respect to which “commercial invoice price” regard was had as the starting point of the ‘deductive’ price determination. Was it the “commercial invoice price” to the first arms length purchaser of the goods from the importer? If not, then there is an apparent error in the Commission’s methodology for export price determination. In fact, unless regard was had to the first arms length sale of the imported goods, then we are potentially dealing with an entirely contrived ‘export price’ between Hyundai (as exporter), dealing with itself, as importer.

Secondly, assuming that regard was had to the first arms length sale from the importer, what were the terms of that sale? Delivered to customer? If so, what deductions were made to the “commercial invoice price” for the post-clearance charges, including inland freight cost to the customer in Australia? No deductions appear to have been made in CON 637 from the extract cited immediately above.

Clearly, given that the export price ultimately ‘ascertained’ by the Minister under paragraph 269TAB(1)(c) will differ from the DXP used at the point of import declaration; and the basis on which an *ad valorem* duty method will rely to calculate an amount of interim duty for payment on entry; then the risk of price manipulation and under collection may be mitigated by the combination duty method.

⁹ REP 637, p. 46.

¹⁰ REP 637, p. 46.

Were post-importation costs included (by way of deduction) in the calculation of Hyundai's export price under paragraph 269TAB(1)(c)? If so, are they current and verified?

A further matter that requires some consideration by the Commission in this review is what, if any, post-importation costs, were accounted for when calculating the export price under paragraph 269TAB(1)(c). We understand that the Commission did not send an importer questionnaire to Hyundai despite the Commission noting that “Hyundai Steel has been, and remains, one of the largest exporters to Australia”¹¹. As only “minor volumes”¹² of their sales were on FOB terms and Hyundai (as importer) was determined to be the importer for all their DDP sales, Hyundai (as importer) would necessarily also have been one of the largest importers for the inquiry period yet does not appear to have received, nor responded to, an importer questionnaire.

“The commission identified importers from the ABF import database that imported HRSS from the subject countries during the inquiry period. The commission sent a questionnaire to Southern Steel Trading Pty Ltd (Southern Steel).

“The commission also placed a copy of the importer questionnaire on the commission’s website for completion by other importers who were not contacted directly.

The commission did not receive any responses to the importer questionnaire.” (emphasis added)

There is a suggestion by the Acting Commissioner in REP 637; in the context of calculating the non-injurious price (NIP); that regard was had to the earlier *Review of measures No. 499 (REV 499)*:

“To arrive at the NIP, the commission has deducted verified post-exportation costs for Hyundai Steel from this inquiry, and post-importation costs and importer SG&A and profit from REV 499.

“As noted in section 2.4.1 the commission did not receive any responses to importer questionnaires. Accordingly, the commission does not have verified information on contemporary post-importation costs and importer SG&A and profit that would be relevant for the calculation of the NIP.

“In this circumstance, the commission considers that the best available information is the verified post-importation costs and importer SG&A and profit from REV 499.”¹³ (emphasis added)

¹¹ REP 637, p. 76.

¹² REP 637, p. 45.

¹³ REP 637, p. 98.

Firstly, although “*post-importation costs and importer SG&A and profit*” were derived from REV 499 for the purposes of ascertaining the NIP in CON 637, it is not clear that these ‘prescribed deductions’ as understood under subsection 269TAB(2) were applied in this case as “all the circumstances of the exportation” relevant to a consideration under paragraph 269TAB(1)(c) when determining an export price for Hyundai.

Secondly, the question arises whether “*verified post-importation costs and importer SG&A and profit from REV 499*”, can reasonably be considered “the best available information” for the following reasons:

1. It is information from a review period over six years old (i.e. 1 January 2018 to 31 December 2018);
2. The information relates to the verification of one importer, namely, Sanwa Pty Ltd (**Sanwa**);
3. The verified importer, Sanwa, dealt with a (ostensibly) arms length exporter, namely Tung Ho, from Taiwan;
4. Sanwa, represented “*Tung Ho on an exclusive basis for sales into the distributor market in Australia*”.¹⁴

For these reasons, Liberty Primary Steel submits that the Commission ought to use the opportunity afforded to it by this REV 642 to obtain current and verified post-importation costs for Hyundai (as importer) and properly apply them in the context of “all the circumstances of the exportation” relevant to a consideration under paragraph 269TB(1)(c) when determining an export price for Hyundai.

However, even if the Commission does not have current and verified post importation expenses for Hyundai (as importer), in the context of this REV 642 then we observe that Hyundai (as importer) has been an active applicant for duty assessment across the review period (1 April 2023 to 31 March 2024), specifically:

- DA0236 (importation period 20 November 2022 to 19 May 2023);¹⁵
- DA271 (importation period 20 May 2023 to 19 November 2023); and
- DA275 (importation period 20 November 2023 to 19 May 2024).

¹⁴ REP 637, p. 67.

¹⁵ Preliminary decision made.

Presumably, Hyundai's post importation costs, SG&A (as importer) and profit were collected and verified in the context of these duty assessment for testing the profitability of the sales of the imported goods, but also for export price determination under a paragraph 269TAB(1)(c) methodology.

Therefore, given the apparent gaps in the available information, the complexity of export price determination for the goods imported by Hyundai from itself (as exporter), the likely variation from the DXP declared at the time of import for the purposes of interim duty calculation, we do not consider the *ad valorem* duty method suitable.

Hyundai's past behaviour with the ad valorem form of measures

A relevant consideration under the *Guidelines* and *Dumping Duty Act*¹⁶ is the behaviour of the exporter and how that undermines the effectiveness of the measures.

The evidence before the Commission in relation to Hyundai's behaviour as an exporter of HRSS to Australia; dating back to 2014¹⁷ when measures were originally imposed; does not support Hyundai's view that changing from a combination duty method to an *ad valorem* method of interim duty calculation with respect to Hyundai's exports could in any way be considered as "*reasonable and low risk*"¹⁸. The primary consideration for the Minister when issuing his notice under subsection 8(5) of the *Dumping Duty Act* is to ensure that the anti-dumping measures imposed remain effective. In this regard, the ineffectiveness of the *ad valorem* method of interim duty calculation for Hyundai is beyond doubt – the exporter previously increased its dumping margin from 2.52%¹⁹ to 9.9%²⁰ when measures were calculated and collected by reference to an *ad valorem* rate. This risk is identified in the *Guidelines* document that warns the *ad valorem* form of duty "*has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty*"²¹.

It is further observed that Hyundai is an entity that is highly experienced in navigating Australia's anti-dumping framework and other jurisdictions including Canada and the United States of America in relation to several steel products that they export. During *Continuation Inquiry 505*, Hyundai

¹⁶ *Customs Tariff (Anti-Dumping) Act 1975*

¹⁷ Investigation 223

¹⁸ EPR Folio No. 637/021, p. 4.

¹⁹ ADN No. 2014/127

²⁰ ADN No. 2018/167

²¹ *Guidelines on the application of Forms of Dumping Duty*, Nov 13 – p11

appeared to have engaged the services of DKC Global Trade Consulting²² with the website reporting their services include:

- *pre-monitoring, pricing strategies, and antidumping margin assessments through profound analysis of the data; and*
- *dumping margin calculation toolkit, which considers various scenarios and comprehensive data processing in order to pinpoint the most approximate dumping margin rate.*

Assuming Hyundai continues to have access to such experienced advisors, then there is no reason why the combination method of interim dumping calculation should not be imposed, given that any variable amounts of duty collected cannot possibly be punitive or unforeseen. This is especially so with respect to their DDP sales to Australia, which they are capable of fully controlling, and their capacity to seek a repayment of any excess duty paid via the Final Duty Assessment process.

We note that for Australian exports of hot-rolled structural sections (HRSS), Hyundai has increased the proportion of sales made under DDP incoterms since the previous continuation inquiry. In SEF 505, “a small portion of sales [was] made during the review period by Hyundai to an Australian customer on duty paid terms”²³ while SEF 637 reports a “minor volume of Australian export sales on FOB terms”²⁴ indicating the majority of sales during CON 637 were on DDP terms. Hyundai is increasingly acting as both the exporter and importer for HRSS sales to Australia and remains a high-risk, highly motivated exporter with an “aggressive pricing strategy”²⁵ and a long-term proven record of injurious dumping of HRSS into the Australian market.

Liberty Primary Steel further asserts that the combination method for interim duty calculation is simply not punitive to an importer under any circumstance for commodity-type products (where there is limited price differentiation between models). Disclosure of the ascertained export price (relevant to setting the variable duty component) is known at the time of order placement, permitting an importer to make a preliminary interim duty calculation well in advance of order placement. Therefore, the idea proffered by Hyundai that the combination method should be preferred only where market conditions display rising prices, and the *ad valorem* method where market conditions are falling is not supported by the experience of Liberty Primary Steel with respect to HRSS.

²² EPR Folio No. 505/050.

²³ SEF 505, p. 2.

²⁴ SEF 637, p. 41.

²⁵ REP 637, p. 84.

The observable use by importers, such as Hyundai, of the Final Duty assessment process (across the review period)²⁶ ensures that where the amount of interim duty paid is greater than the amount of final duty payable, then the difference is repaid to the importer. On the other hand, if there is a shortfall in the amount of final duty payable, then that is not collected from the importer, in other words the interim duty calculation method is never punitive to the importer.

In contrast, where the interim duty calculation method fails to collect sufficient duty, i.e. in circumstances where the exporter increases the amounts of dumping (such as occurred between *Investigation No. 223* and *Review of Measures No. 465* in the case of exports from Hyundai), then Australia's anti-dumping system is ineffective and in fact punitive to the injured domestic industry member(s). As an effective measure, not only is the combination method never punitive to the importer, but it is always entirely efficient in the collection of the amount of final duty payable – thereby ensuring no shortfall of duty to the Commonwealth.

Conclusions

Liberty Primary Steel seeks that the Commission review its approach to determining the export price, and the accuracy and currency of the possible 'prescribed deductions' it applies to "*all the circumstances of the exportation*" under an export price determined pursuant to paragraph 269TAB(1)(c). It is unclear which "commercial invoice" is taken as the 'starting point' of the calculation. We consider this a potential source of material error in the review. Similarly, the accuracy, completeness and relevance of possible prescribed deductions is also an area of concern.

Furthermore, the idea that Hyundai (as exporter), selling to itself, as importer reduces the risk of manipulation, and further incentivises it to "benefit from a duty refund", is perplexing. In REP 637, the Acting Commissioner expressed this conclusion:

*"Further, given that Hyundai Steel is itself the importer, it is in Hyundai Steel's interest to maintain its export prices such that it receives the largest duty refund possible. This is a different circumstance to REV 465, when Hyundai Steel's duty method was first changed to the combination duty method. At that time Hyundai Steel was not the importer of the goods."*²⁷

Liberty Primary Steel will expect that a properly 'deduced' export price under paragraph 269TAB(1)(c) will be less than the DXP declared at the time of entry. Given this risk, especially in a falling market, then the combination duty method reduces the risk of duty under payment.

²⁶ Refer Duty Assessment Nos. 263, 271 and 275 (covering consecutive importation periods from 20 November 2022 to 19 May 2024).

²⁷ REP 637, p. 102.

FOR PUBLIC RECORD

Finally, Liberty Primary Steel observes; somewhat with concern; the following comment in REP 637:

“The commission considers that the advantages of an ad valorem duty method which includes simplicity outweigh the disadvantages of a combination duty method.”²⁸ (emphasis added)

Given the uncertainty surrounding “*all the circumstances of the exportation*” for the purpose of export price determination under paragraph 269TAB(1)(c), and the Commission’s apparent difficulty in obtaining current, verified post-importation expenses sufficient to support making any ‘prescribed deductions’ to the ‘commercial invoice price’, then we submit that the simplicity of the *ad valorem* duty method is entirely inappropriate for the complexity and uncertainty of Hyundai’s export sales to Australia

To discuss any aspect of this submission, please do not hesitate to contact your Liberty Primary Steel representative on record.

FOR AND ON BEHALF OF

Liberty Primary Steel

²⁸ REP 637, p. 103.