



19 December 2024

The Director, Investigations 3  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

**BY EMAIL:**  
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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**

**SUBMISSION OF THE AUSTRALIAN INDUSTRY  
IN RESPONSE TO STATEMENT OF ESSENTIAL FACTS**

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 response to *Statement of Essential Facts No. 642 (SEF 642)* published on 29 November 2024.

Specifically, we comment on:

- the accuracy of the Commission's export price determination for Hyundai Steel Company (**Hyundai**);
- the accuracy of the Commission's normal value determination for Hyundai given a potentially flawed ordinary course of trade analysis based on incorrect cost to produce or manufacture information;
- inadequate disclosures of Taiwanese standards and grades to permit a proper comparison to the goods exported to Australia;
- the determination of the export price for Dragon Steel based on outdated information would not be the preferable decision of the Minister;
- updated sales information for the Thai domestic market for like goods; and
- the most appropriate method of interim duty calculation (**form of measures**) for the commodity product here under consideration.

For ease of reference, Liberty Primary Steel has applied the same headings below as those appearing in SEF 642.

#### 4.3.2 Hyundai Steel - Export Price

Liberty Primary Steel refers to and repeats the questions and queries it raised in its submission in response to the *Exporter Verification Report* for Hyundai,<sup>1</sup> in so far as it seeks to understand the nature of the DDP (Delivered Duty Paid) sales to Australia, in particular a reasonable understanding of the nature of the delivery terms and its proximity to the first arms length transaction.

For example, if Liberty Primary Steel were to assume that the delivery place was 'alongside wharf', then it remains unclear whether the post clearance expenses were accounted for as '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. For example, without limiting the scope of such expenses, have any demurrage or detention charges been accounted for? On the other hand, if the delivery terms were to the importer's customer's location, then have; at a minimum; freight expenses been accounted for?

More broadly, 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*"<sup>2</sup>. As only "minor volumes"<sup>3</sup> 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)*:

<sup>1</sup> EPR Folio No. 642/009.

<sup>2</sup> REP 637, p. 76.

<sup>3</sup> REP 637, p. 45.

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*“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.”<sup>4</sup> (emphasis added)*

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*”.<sup>5</sup>

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”

<sup>4</sup> REP 637, p. 98.

<sup>5</sup> REP 637, p. 67.

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);<sup>6</sup>
- DA271 (importation period 20 May 2023 to 19 November 2023); and
- DA275 (importation period 20 November 2023 to 19 May 2024).

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.

Deduction of "interim dumping duty or final duty payable"

The Commission is correct to deduct "interim dumping duty or final duty payable" from the first arms length transaction when calculating an FOB export price under subsection 269TAB(1)(c). This question was considered and resolved by the Anti-dumping Review Panel in *Report No. 120*.<sup>7</sup> In that case, Panel Member Fisher decided that "the IDD would still be deducted to establish an export price at the FOB level" either under an export price determined pursuant to paragraphs (a) or (c) of 269TAB(1). After deciding that a deduction of IDD or final duty payable is allowable under paragraph 269TAB(1)(b),<sup>8</sup> continued to decide:

*"I also considered the outcome of the alternate scenario presented by Hyundai regarding if determining the export price pursuant to s.269TAB(1)(c) of the Act would preclude the deduction of the IDD. As discussed above, the amount of the export price would more likely than not be identical regardless of whether determined pursuant to s.269TAB(1)(a) or TAB(1)(c) as the IDD would still be deducted to establish an export price at the FOB level. I note that the ADC and OneSteel also made this observation."*<sup>9</sup>

<sup>6</sup> Preliminary decision made.

<sup>7</sup> ADRP Report No. 120, *Hot Rolled Structural Steel Sections exported from Japan, the Republic of Korea, Taiwan (except for exported by Feng Hsin Steel Co Ltd) and the Kingdom of Thailand* (15 February 2021) at [111] to [123].

<sup>8</sup> ADRP Report No. 120, at [114].

<sup>9</sup> ADRP Report No. 120 at [121].

#### 4.3.2 Hyundai Steel – Normal Value

A matter that goes to the question of the ordinary course of trade test relevant to an assessment of the normal value under subsection 269TAC(1), is a “material revision” to Hyundai’s cost to make and sell the goods sold domestically and exported.

In Hyundai’s *Exporter Verification Report*,<sup>10</sup> the visit team recorded the following “material revision”:

*“The quarterly CTM in the domestic CTM G-3 and Australian CTM G-5 were calculated for each MCC using the cost from the accounting system by product codes, without regard to whether the product code was sold domestically or exported to Australia. The verification team suggested that G-3 and G-5 could be more accurate if only the product codes sold in the domestic market and exported to Australia respectively were used to calculate the respective CTM.*

...

*“Hyundai agreed that this would result in a more accurate domestic and Australian CTM and updated G-3 and G-5 accordingly.”<sup>11</sup>*

A problem with this “material revision” is that it fails to account for timing differences between when costs are incurred to produce the goods for export to Australia, and the goods for sale into the domestic market, that is to say that the costs incurred for goods exported to Australia may not arise at the same time as the costs incurred to produce the goods for domestic sale. This difference may be significantly pronounced when the costs are incurred in different fiscal quarters to the sales.

Furthermore, subsection 43(1) of the *Customs (International Obligations) Regulation 2015*, requires that for the purpose of assessing of whether the domestic sales are in the ordinary course of trade under subsection 269TAAD(5), the Minister must, for the purpose of paragraph 269TAAD(4)(a), “work out an amount to be the cost of production or manufacture of like goods in a country of export”. It is not clear from the Hyundai’s *Exporter Verification Report* and SEF 642 whether the Commission has for the purpose of subsection 269TAAD(5) compared the domestic sales of *like* goods in the country of export to the cost of production or manufacture of the goods *exported* to Australia, or the like goods sold *domestically*. If the former, then there may be an error in the Commission’s assessment of Hyundai’s normal value by reason of a flaw in the ordinary course of trade test.

#### 4.3.4 Dragon Steel

The Commission observed that although it did not conduct a verification of Dragon Steel’s REQ, it considered that the information was sufficient to determine Dragon Steel’s export price and normal value because Dragon Steel provided, in relevant part, “information (including the relevant standards) that would allow the commission to apply model matching criteria”.<sup>12</sup>

<sup>10</sup> EPR Folio No. 642/010.

<sup>11</sup> EPR Folio No. 642/010, p. 24.

<sup>12</sup> SEF 642, p. 27.

Liberty Primary Steel is concerned that without public record disclosure of the Taiwanese Standard grades that the Commission has deemed to be most alike to the grades exported to Australia, then it will be impossible to for interested parties with technical industry knowledge to be satisfied ensure a correct comparison has been made.

Further, interested parties' comprehension of the exporter's claims are not assisted by the exporter's failure to include extracts of "Public Exhibits" with its REQ (response to exporter questionnaire). For example, at one point, Dragon Steel advises:

*"Please see pages 36, 37, and 52 of Public Exhibit A-2.11 product catalogue for technical details and physical property of the goods that DSC can offer for AS/NZS 3679.1."*<sup>13</sup>

Public record disclosure of this exhibit should also be made

#### **4.3.4 Dragon Steel – Export price**

The Commission has determined Dragon Steel's export price under section 269TAB(3), advising that:

*"Specifically, the commission has used Dragon Steel's export price from REV 499 with a timing adjustment to make it contemporary to the review period."*<sup>14</sup>

The Commission explains that it applied this approach because of an absence of exports during the review period. It is observed that Dragon Steel did provide in its REQ, third-country sales information.<sup>15</sup> Although primarily collected to assist in an assessment of an exporter's normal value under paragraph 269TAC(2)(d), this information is an entirely permissible source of relevant information under subsection 269TAB(3) for the Minister to have regard to for the purpose of determining Dragon Steel's export price. Indeed, it is preferable to the approach proposed by the Acting Commissioner, as it is contemporary information and capable of verification. Reference to an export price determined for a review period, five years older than the current review period cannot be a reliable indicator of market conditions, especially given that the intervening period was punctuated by a global pandemic.

#### **4.3.6 Uncooperative and all exporters from Thailand – Normal Value**

We observe from the Commission's summary that for REV 642, it departed from the approach adopted in CON 637. In that case, the Commission provisionally estimated the normal value for all exporters from Thailand by using information provided by Liberty Primary in its application to that inquiry. At the time, the Commission noted in CON 637 that this was the best available information relating to the normal value for Thailand at the time.

Although not available at the time of making its application for this review of measures, Liberty Primary Steel has now obtained updated domestic price data for like goods sold in the Thai domestic market for the current

<sup>13</sup> EPR Folio No. 642/007, p. 20.

<sup>14</sup> SEF 642, p. 27.

<sup>15</sup> EPR Folio No. 642/007, pp. 31-32.

review period.<sup>16</sup> A summary of domestic prices for the like goods across the review period is contained in CONFIDENTIAL ATTACHMENT 1.

In the absence of cooperation from Thai exporters, Liberty Primary Steel considers this the most relevant information.

### **6.3 Duty methods and effective rates of duty**

#### Hyundai Steel

Liberty Primary Steel repeats its earlier submission concerning the recommendation that the *ad valorem* method of interim duty calculation be applied to Hyundai Steel.<sup>17</sup> 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.

#### SYS and Uncooperative and all other exporters from Thailand

We acknowledge the submission of SYS concerning their request that the *ad valorem* method of duty calculation also apply to them.<sup>18</sup>

At the outset, we observe that SYS did not cooperate in this review of measures, and as such is now considered an uncooperative exporter as part of this review. We also observe that by reason of SYS' lack of cooperation, the Commission was unable to ascertain a normal value based on verified, contemporary exporter own sales and/or costs information. Instead, a normal value was determined under subsection 269TAC(6) relying on values last ascertained in 2018, and adjusted by reference to cost benchmarks. This is not ideal, and the Australian industry is gravely concerned that the normal value may be understated, and as a consequence the dumping margin underestimated.

On the other hand, although not verified, the Commission was able to estimate the export price of Thai exporters (including SYS) based on declared entry values on the Australian Border Force import database.

The variable component of the combination method of interim duty calculation proposed by the Commission is likely based on a floor price determined from the ascertained export price. This is a

<sup>16</sup> [https://\[REDACTED\]/en/product\\_categories/hot-rolled-structural-steel](https://[REDACTED]/en/product_categories/hot-rolled-structural-steel) (accessed 17 December 2024)

<sup>17</sup> EPR Folio No. 642/011.

<sup>18</sup> EPR Folio No. 642/011.

variable factor that the Australian industry has confidence in its accuracy, and will provide a guarantee against the fixed component of the combination method of interim duty calculation, namely an *ad valorem* rate, being based on a possibly underestimated dumping margin.

Therefore, in the face of uncooperative exporters, it is entirely appropriate for the Commission to recommend that interim duties be calculated using the combination method which in this case will ensure that even if the *ad valorem* rate is insufficient to capture the full, actual, margin of dumping, then the floor price (based on Border Force data), will interact to capture any shortfall.

### **Conclusions**

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.

Liberty Primary Steel is also concerned with the method of export price determination for Hyundai and Dragon Steel, and submits that the Commission’s approaches need to be reviewed prior to making its final report.

Furthermore, in the case of Dragon Steel, insufficient disclosure has been made of the Taiwanese Standards and grades used for the purpose of making comparison to the goods exported to Australia, and indeed, the export price methodology under subsection 269TAB(3) has more contemporary and relevant sources of information available to it, then adjustments to values last determined in 2018.

In the case of determining a normal value for “*Uncooperative and all other exporters from Thailand*”, Liberty Primary Steel has obtained updated Thai domestic sales information suitable for determining a contemporary normal value for this class of exporters from Thailand.

Furthermore, given that all exporters from Thailand were deemed to be uncooperative for this review, with the risks in assessing the variable factors in those circumstances, then the combination method of interim duty calculation should remain in place.

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**