

# STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459  
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## PUBLIC RECORD VERSION

March 12, 2019

The Director,  
Investigations 2,  
Anti-Dumping Commission,  
Canberra, ACT

By email; [investigations2@adcommission.gov.au](mailto:investigations2@adcommission.gov.au)

Case No 499-HRS ex Thailand  
Re: MCC sub category Yield Strength

Dear Director,

1. On behalf of the exporter SYS we are grateful for this opportunity to further address the issue of appropriate Model Control Codes (“MCC”) for this investigation.
2. Our primary position is that the Codes proposed by the applicant are wholly inappropriate and would either be contrary to WTO obligations or would call for wasteful adjustment calculations that would make their use meaningless.
3. We are aware that when an MCC system was first mooted, local manufacturers sensibly suggested that if an MCC process was to be introduced by ADC, the first step should be to determine what codes would be appropriate. That would naturally have the Applicant suggest Codes, other interested parties then having an opportunity to respond as required under the WTO ADA, and ADC resolving any conflict and determining the Codes it wishes to apply and only then having all parties do the calculations based on those Codes.
4. Instead, ADC has determined that responses to Questionnaires should be concurrent with such debate. We disagree strongly with that approach. The time-frames that concerned ADC in establishing this new methodology cannot cause it to adopt an inefficient and illogical methodology inconsistent with WTO obligations. There is no reason for all interested parties, both local and foreign, to have to do voluminous calculations before knowing ADC’s view as to disputed Codes, with those views only being determined after adequate opportunity for comment by interested parties. This is particularly disconcerting on this occasion as ADC has proposed [REDACTED]. (verification) How can it resolve disputed contentions as to appropriate Codes prior to such a visit, which can only be useful as a discrete exercise if ADC uses it to verify data relevant to the final Codes properly determined by ADC to apply?

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5. Why does SYS dispute the Codes suggested by Liberty Steel ? As ADC is aware, all anti-dumping investigations must in the end compare like with like. Either ADC develops like Codes to properly compare EP and NV, or must make adjustments required by statute and the WTO ADA.
6. Liberty correctly states that all exports to Australia seek to comply with the Australian standard. While that standard covers yield strength between 280-320 MPa, Liberty Steel admits that all Australian customers demand and receive yield strength of at least 300 MPa. Why then is that not the natural Code cut-off minimum? How else can like with like be compared?
7. It is frankly impossible to understand why Liberty Steel instead proposes a cut-off of above and below 265 MPa, a cut-off that has no relevance to goods it suggests are causing injury and are said to be dumped. By its own admission, this has no relevance to the Australian market or to a like for like comparison with exports to Australia, being the goods under consideration and as to which Liberty asserts injurious dumping.
8. All Liberty Steel says in its application and addendum is that 265 MPa and 355 MPa are cut-offs for some unexplained reason in Japan and Korea. It is impossible to understand why these are meaningful as cut-offs for the Australian market purposes. Nor does Liberty Steel say why this would be relevant for Thailand. Nor does ADC in its consideration Report.
9. It is also impossible to understand whether ADC actually thinks that these are sensible cut-offs, or instead, is just waiting for importers and exporters to raise any concerns. If ADC thinks these are sensible, it is impossible to discern why and hence difficult to understand how to respond. ADC should simply indicate its preliminary thinking to allow meaningful responses if that is its current view. If ADC is instead waiting upon responses, this response should at the least cause ADC to try and hone in on those categories that would require the least adjustment in comparing EP and NV. That would be categories closely linked to the Australian market segmentation.
10. We do agree that differentiating between shapes is appropriate.
11. Whether tensile strength should indeed be optional as Liberty Steel suggests depends on how well the yield strength differential is discerned. While we reserve our position on this point, we accept that it may well be the case that if fair and reasonable yield differentials are reflected in the final Codes, this may account naturally for differential tensile strengths.

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12. The converse is also true. If inappropriate yield categories are identified, that will also deal inappropriately with differing tensile strengths
13. While a full submission will be submitted in due course, it should be stating the obvious to ADC that WTO jurisprudence on like product analysis in anti-dumping investigations must be followed. Where steel products are concerned, there is no more important differentiating factor than yield strength. Hence, sensible and defensible Codes must give appropriate deference to these considerations, working back from the goods under consideration (GUC). The need to work back from GUC was made clear by the Panel in *United States – Final Dumping Determination on Softwood Lumber from Canada*.
14. The only potential value of an MCC system is to try and differentiate between sub-categories of GUC relying as far as possible on the actual data of the relevant exporters, as is required by WTO law and jurisprudence. Such sub-categories mean that an analysis of dumping can truly concentrate on like with like and not mix arguably differing products on a weighted average basis, which might often lead to either unduly high or low margins being assessed.
15. Once sensible sub-categories of GUC are discerned, ADC should then seek data on those very categories in the home market for NV purposes. If there is reliable data of commercially significant sales of those categories in the ordinary course of trade, that should be all that is needed.
16. In such circumstances it makes no sense for ADC, at Liberty Steel's suggestion, to call for data on other Code categories of goods not sold to the Australian market. Such an exercise would either be an inefficient waste of time, or would compromise the analysis or both. For example, if the extra category thus examined has differing costs, an adjustment must be made. If that is the only reason for different NVs for that category, after adjustment, those prices now marry up with GUC and change nothing.
17. Conversely, what if those other categories not sold to Australia are sold in quite different domestic market conditions, either at low prices because of intense local competition and poor domestic demand, or at unduly high prices because of high local demand and monopolistic supplier power? In the first scenario, the Australian industry would be unfairly denied protection if the irrelevant local sales, when averaged into the analysis, brought NV calculations down below EP when they would otherwise be higher. In the second scenario, why should that industry be protected if there is no dumping from the actual categories of GUC, but an artificially high weighted average NV can be orchestrated by adding in products different to GUC that operate on wholly different market conditions?

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18. Here again, ADC would need to adjust for the different conditions. If they did so properly, the exercise becomes a waste of time. If they do not, the exercise makes Australia in violation of WTO obligations.
  
19. The 1959 Report of the Group of Experts on 'Anti- Dumping and Countervailing Duties' noted this problem and stated that:
  - . *“the meaning of ‘like products’ as agreed by them should not be interpreted either too broadly so as to cover products of a different kind with higher prices on the internal market, nor too stringently so as to elude the application of paragraph 1(a) of Article VI” (GATT, Analytical Index, Guide to GATT Law and Practice, Updated 6th edn, Vol. I and II (Geneva: World Trade Organization and Bernan Press, 1995), 227).*
  
20. Experts make clear that if identical products are available to GUC, these should be the ones considered. Only where that is not the case, should the analysis look to those closely resembling GUC. Even then, adjustments must be made. (E. Vermulst, *The WTO Anti-Dumping Agreement: A Commentary* (Great Britain: Oxford; University Press, 2005), 10.)
  
21. A failure to properly determine categories and compare like with like based on suitable adjustments where necessary was seen as a violation in Argentina – Definitive Antidumping Measures on Imports of Ceramic Floor Tiles from Italy, WT/DS189/R (Panel Report, 28 Sep. 2001), 192–193.
  
22. Various comments in Liberty’s addendum also are hard to reconcile with the cut-off it has suggested. The addendum says “The Commission should determine which of the exporters’ domestic steel goods are manufactured to a Standard suitable for Welded Structures not just General Structures.” It says “The Australian Hot Rolled Structural Steel Standard AS/NZS 3679.1 specifies two grades based on their minimal yield strength, ie. 300MPa and 350MPa.” Why are these not the cut-offs recommended? Minimum yield strength is said by Liberty to be “the key property used for structural steel design material selection.” Where then does a defence of 265MPa present itself?

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23. Liberty Steel suggests “*For consideration of minimum yield strength and chemistry requirements applicable to the grades of HRS produced by the exporters for domestic and export sale, Liberty Steel urges the Commission to request copies of the Standards to which the grades have been produced and that the requirements contained in those Standards.*” That would make sense if the actual products made, closely matched those standards. If however the actual products were made to higher or lower standards, adjustments should be made based on the actual composition and not the minimum set. We find it impossible to understand the point that Liberty Steel is making in the addendum when it admits that product is often made above the minimum. Is it suggesting that ADC is legally allowed to ignore the reality and not adjust from the reality? That could not be justified.
24. As noted, Liberty Steel suggests that “the comparable Standard grade for domestic sales in the exporters home markets is that with a minimum yield strength of at least 265MPa (refer to the standards for Korea and Japan).” Nowhere does it explain how, after demonstrating that GUC must be more than 300 MPa, that this much lower cut-off is appropriate and why 264 MPa has any meaningful difference to 266MPa (ie, figures just above and below their cut-off)? Why should a Japanese and Korean cut-off apply to Thailand?
25. In these circumstances, it would only be reasonable prior to a final ruling by ADC on proper Coding, for any exporter to do no more than present ADC with spread-sheets that can support calculations whatever Codes are finally selected. That is what we are presenting today, but we remain willing to discuss with ADC and Liberty Steel if necessary, what the final Code determinations should be and then do any useful additional calculations.

Thank you for your consideration and please contact the writer should you require any clarification or further information relating to this submission.

Regards,

M J Howard

SYS Representative .