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9 August 2019

Director Operations 3
Anti-Dumping Commission
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Expiry review of hot rolled structural steel sections exported from Taiwan

This submission is made on behalf of Dragon Steel Corporation (DSC) to the current expiry review into hot rolled structural steel section (HRSS) exported from Taiwan.

Section 269ZHF(2) of the Customs Act ("the Act") explicitly requires that the Commissioner:

must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

The Commission's Dumping and Subsidy Manual¹ provides further guidance on the threshold test for establishing whether recurrence of dumping is 'likely'. It explains that:

In examining the likelihood of injury as a result of any future dumping or subsidy, the Commission takes guidance from WTO jurisprudence where 'likely' has been taken to mean 'probable'...

In *US Drams*², the WTO Dispute Panel found that the continued imposition of measures must be based on 'positive evidence'. The Panel stated:

Accordingly, we must assess the essential character of the necessity involved in cases of continued imposition of an anti-dumping duty. We note that the necessity of the measure is a function of certain objective conditions being in place, i.e. whether circumstances require continued imposition of the anti-dumping duty. That being so, such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced.

¹ Dumping & Subsidy Manual; December 2013, page 153

² US Drams – WT/DS99/R; para 6.42, page 139.

Further, the Appellate Body said of Article 11 in *Corrosion Resistant Carbon Steel*³:

In view of the use of the word "likely" in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated—and not simply if the evidence suggests that such a result might be possible or plausible.

Therefore, the Act requires that the Commissioner recommend expiry of the measures, unless there is positive evidence to demonstrate that the recurrence of dumping and material injury in the future is likely or probable (ie. implying a greater degree of certainty that the event will occur than a finding that the event is not "not likely"). DSC contends that factors outlined in this submission support a finding that material injury caused by subject imports is not likely to recur after expiry of the anti-dumping measures.

It is well known in the Australian market that the applicant, OneSteel Manufacturing Pty Ltd (Liberty), has been a substantial customer of imported HRSS originating from Korea and Taiwan. It is also well documented that the decision to source imported HRSS is linked to capacity constraints at Liberty's Whyalla steelworks, caused by the sharp increase in steel demand for contracted rail projects from 2016. This has resulted in Liberty diverting a greater portion of its Whyalla steel production away from HRSS to steel rail products, with the shortfall in HRSS sales being replaced by Korean and Taiwanese imports.

The diversion of production capacity from HRSS to rail products is evident in figure 8 of the industry verification report shown below.

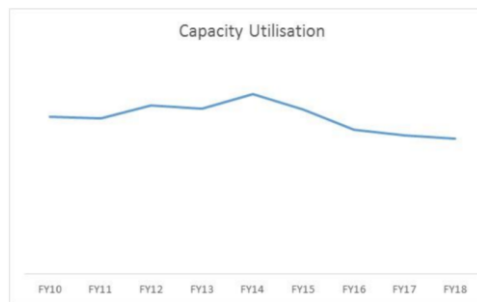


Figure 8 – Liberty Steel HRS Production Capacity Utilisation

It is also noted that whilst HRSS capacity fell in FY2018, sales of HRSS by Liberty increased by an estimated 10 percentage points during that same period as evidenced below in figure 6 of the industry verification report. This confirms that Liberty was able to increase its sales in the Australian market with the assistance of imported HRSS from Korea.

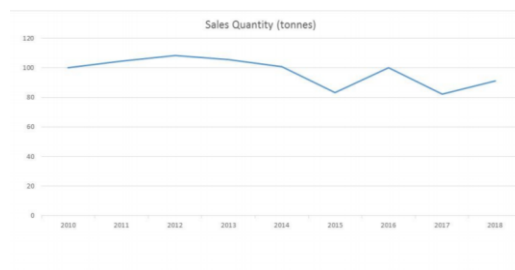


Figure 6 – Index of Liberty Steel HRS Sales Volume

³ US – Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan – WT/DS244/AB/R; para 111, pages 39-40.

In these circumstances, in assessing whether material injury to the Australian industry will recur in the future in the absence of measures, the Commission must distinguish and isolate the effects of Liberty's decision to divert capacity away from HRSS and supplement local sales with imported HRSS. Injury caused by this decision must not be attributed to imports of the subject goods.

For example, it is evident from figure 2 of the industry verification report that Liberty's unit CTMS exceeded or outpaced unit sales revenue since 2016. It is highly likely that the observed increase in unit CTMS is due in part to Liberty's fixed costs being apportioned across reduced production tonnes from 2016 to 2018. Despite this, the Commission notes that *'Liberty Steel has been unable achieve prices sufficiently high to cover the increasing CTMS of HRS. As such, the Commission considers that Liberty Steel has experienced injury in the form of price suppression.'*

The Commission's analysis and preliminary conclusion are flawed as it merely compares the unit CTMS of self-produced HRSS with unit sales revenue of all HRSS sold, including both self-produced and imported goods. To more accurately conclude on price suppression, the Commission must establish whether weighted average unit sales revenue has covered Liberty's weighted average unit CTMS of both self-produced and import purchased HRSS.

That is, if Liberty have been able to purchase imported HRSS at prices substantially below its own cost of production, then it has achieved a greater margin on those particular sales. The impact of the lower purchased cost of imported HRSS and the greater margin from those subsequent sales would not be reflected or incorporated in the chart at figure 2. In that circumstance, drawing conclusions of price suppression is flawed as the chart is missing Liberty's critical purchase costing information relevant to imported HRSS.

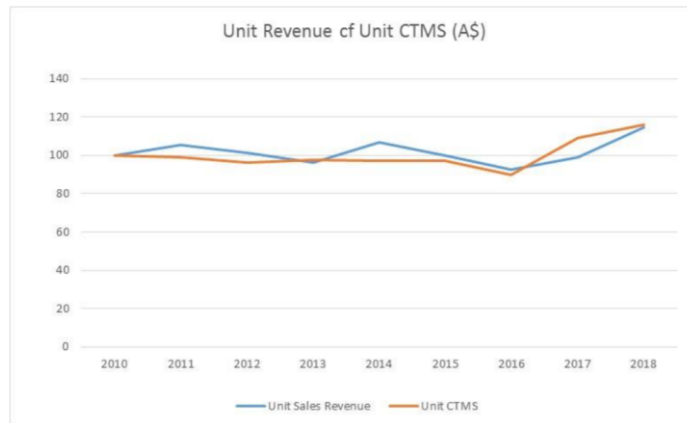


Figure 2 – Indices of Liberty Steel HRS Unit Revenue and Cost to Make and Sell

The issue of Liberty's sales of imported HRSS is also important in any price comparative analysis. It is noted that in its application, Liberty states that it *'continues to negotiate its prices monthly with customers relative to the market movements of import offers...'*. This claim cannot be simply accepted when Liberty is itself a significant purchaser and seller of imported HRSS into the Australian market.

It is unreasonable for Liberty to hold the view that DSC's import customers of its approximately [REDACTED] tonnes of HRSS exported during the expiry review period, are able to cause price related injury, whilst ignoring the impact on prices from its own purchases and sales of substantially greater volume of imported HRSS. Instead, the Commission should examine the price relativities between Liberty's sales of self-produced and imported HRSS,

and sales of imported HRSS by other importers. For example, if Liberty's selling prices of HRSS imports are on par with other imported selling prices, then it is reasonable to consider that Liberty has contributed to the price pressure facing its self-produced goods.

In terms of volume related injury, it is critical that the Commission accurately establish the volumes of Liberty's import purchases relative to other importers. As noted earlier, DSC's total exports during the review period represents approximately [REDACTED] tonnes, and it is understood that Liberty has purchased significantly more imported HRSS tonnes than this amount. If shown to be correct, this would again support the view that Liberty's actions and decision to divert production capacity away from HRSS, has been a primary factor to its economic conditions during the review period.

Likelihood of material injury incurring must be foreseeable

It is also worth noting that the 'likelihood' of dumping and material injury recurring is governed by subsection 269TAE(2B), which also references 'threat' of material injury being foreseeable and imminent, unless measures were imposed. In assessing the likelihood of material injury recurring in the absence of measures, DSC contends that the prospective assessment of material injury must also be foreseeable and imminent. This ensures a reasonable framework within which the likelihood test can be meaningfully applied.

To that end, DSC considers the foreseeable period for HRSS to be 6 months given the commodity nature of the goods. The Commission must therefore consider whether material injury will recur within six months of the measures expiring. In doing so, the Commission is required to assess whether it is likely that Liberty would continue to experience capacity constraints with its HRSS production, and continue to purchase and sell imported HRSS as a replacement for its reduced production volume.

In the absence of credible evidence that Liberty will expand capacity at its Whyalla plant within the foreseeable six month period, the Commission must conclude that the recurrence of material injury in the foreseeable future is not likely.

Yours sincerely

John Bracic