



2 September 2019

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

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Dear Director,

**Public Record Case Nos. 499 and 505 - Hot rolled structural steel sections from Japan, Korea, Taiwan and Thailand**

**AUSTRALIAN INDUSTRY RESPONSE TO STATEMENTS OF ESSENTIAL FACTS (SEF)**

OneSteel Manufacturing Pty Limited, trading as 'Liberty Primary Steel' (**Liberty Steel**), being the applicant for *Review of anti-dumping measures*<sup>1</sup> and *Continuation of a Dumping Duty Notice*<sup>2</sup> concerning *hot rolled structural steel sections from Japan, Korea, Taiwan and Thailand (HRS)* refers to the Commission's recently published *Statements of Essential Facts Nos. 499*<sup>3</sup> and *505*<sup>4</sup> in this matter and responds as follows. References to headings and sub-headings correspond with those contained in the respective SEFs.

**A. Statement of Essential Facts No. 499 (SEF 499)**

**"5.2.3 Classification issues – steel standards and mill test certificates"**

Liberty Steel considers that the Commission has accurately assessed that the exported goods and like goods are marketed and sold on the basis of their compliance to certain steel Standards. Therefore, we consider the following finding by the Commission as a correct statement of the operation of steel markets both in Australia and in the domestic markets of the countries of export the subject of this review and continuation inquiry:

*...the Commission considers that it is the usual practice for steel products to be manufactured, bought and sold on the basis of the grade of steel that is required and of the specifications in the standard that must be met. The subsequent provision of mill test certificates may be requested by customers or relevant authorities to confirm that the required minimum specifications have been met.*

<sup>1</sup> Refer ADN No. 2019/02 (3 January 2019).

<sup>2</sup> Refer ADN No. 2019/021 (11 February 2019).

<sup>3</sup> EPR Folio No. 499/043 (12 August 2019).

<sup>4</sup> EPR Folio No. 505/034 (12 August 2019).

...

*In this review, the Commission has not found evidence that indicates that purchasers place their orders for steel on the basis of mill test certificates. The Commission does not consider that mill test certificates provide sufficient indication of what a customer's requirements are, or of the negotiated terms of the sale. Despite a mill test certificate providing confirmation that the steel has satisfied the requirements of a particular grade, prices of steel and other terms of sales are not negotiated on the basis of those certificates. As such, the Commission considers that the evidence found in this review indicates that it is not appropriate to classify like goods on the basis of mill test certificates.<sup>5</sup> [emphasis added]*

## “5.6 Taiwan

### “5.6.1.2 ... 5.6.2.2 Normal value”

We observe that in the case of both verified exporters from Taiwan (Tung Ho Steel and TS Steel), insufficient volumes of domestic sales were found to be made in the OCOT (ordinary course of trade) for the majority of models.<sup>6</sup> For Tung Ho in particular, Liberty Steel is concerned that the considerable expansion of the initial “dimension” and “weldability” MCC categories, proposed by Tung Ho and accepted and applied by the Commission, has facilitated the exclusion of domestic sales in favour of a constructed normal value, as cautioned by the Commission in its consideration of the Model Control Code structure (5.2.2):

*If model matching is applied too narrowly or precisely, this may potentially result in no domestic sales for comparison.*

*The Commission considers that the introduction of the MCC structure reduces the requirement for adjustments to account for differences between domestic and export models.<sup>7</sup>*

It is concerning that in an apparent attempt to find identical matches between increasingly complex and highly differentiated domestic and export models, Liberty Steel notes the increased disregard of domestic like goods sales and the increased application of constructed normal values in dumping margin calculations. This negates the need for the Commission to apply any specification adjustments (based on price comparability) which would otherwise have been required to be made for dumping margin calculation under s.269TAC(1).

In relation to other adjustments for both Taiwanese exporters, upward adjustments to the normal value were made either under s.269TAC(8) or s.269TAC(9) for “domestic credit expenses”. To the extent that this adjustment is made under s.269TAC(9) to the normal values determined under s.269TAC(2)(c), we question whether it is the correct or preferable decision.

For clarity, subsection 269TAC(9) provides as follows:

<sup>5</sup> SEF 499, pp. 15-16.

<sup>6</sup> In the case of Tung Ho Steel, four out of five of the export models had insufficient volumes of domestic sales in OCOT [5.6.1.2], and for TS Steel all export models had insufficient volumes of domestic sales in OCOT [5.6.2.2].

<sup>7</sup> SEF 499, p. 15.



- (9) *Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.*

The “costs to be determined” under paragraph 2(c) are:

- (i) *such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*
- (ii) *on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale.*

The purpose of calculating the normal value under paragraph 2(c) is to calculate an amount for the purpose of comparison to the export price that is a theoretical domestic sale in the “ordinary course of trade”. Therefore, the normal value calculated under a ‘constructed’ methodology should include administrative, selling and general costs, which includes finance costs necessary to generate a value, which if sold, would be in the ordinary course of trade. It is in this context that subsection (9) must be read. It is not open to subsection (9) to undo a value determined under paragraph 2(c) that is equivalent to an “ordinary course of trade” value by reducing it by an amount which is no longer, i.e. potentially loss making or unrecoverable.

Where an adjustment is being made to the normal value under subsection (9) on account of “domestic credit expenses”, unless the Commission is able to be satisfied that the ‘credit expense’ incurred on domestic sales was incurred on domestic sales found to be in the ordinary course of trade, then the adjustment should not be allowed. Otherwise, to do so, would render the normal value so adjusted that it is no longer at a level which “instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export” as required under sub-paragraph (ii).

## “7.2 Effect of the review

### “7.2.1 Form of measures”

Liberty Steel considers that the Commission was correct to recommend the combination of fixed and variable duty calculation (**combination method**) for exporters with a non-negligible dumping margin. However, the Australian industry categorically rejects the proposition that the combination method can ever be punitive to the importer. In fact, Liberty Steel cannot think of many circumstances in which the combination method would not be the most effective method of interim duty calculation for commodity-like products (where there is limited price differentiation between models). Therefore, the idea 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 Steel with respect to HRS.

In its 29 July 2019 submission<sup>8</sup>, Liberty Steel tracked the responsiveness of exporters the subject of measures in terms of volumes of goods exported (Figure 1, reproduced) and their verified dumping margins (Figure 2, reproduced) across the lifecycle of the measures.

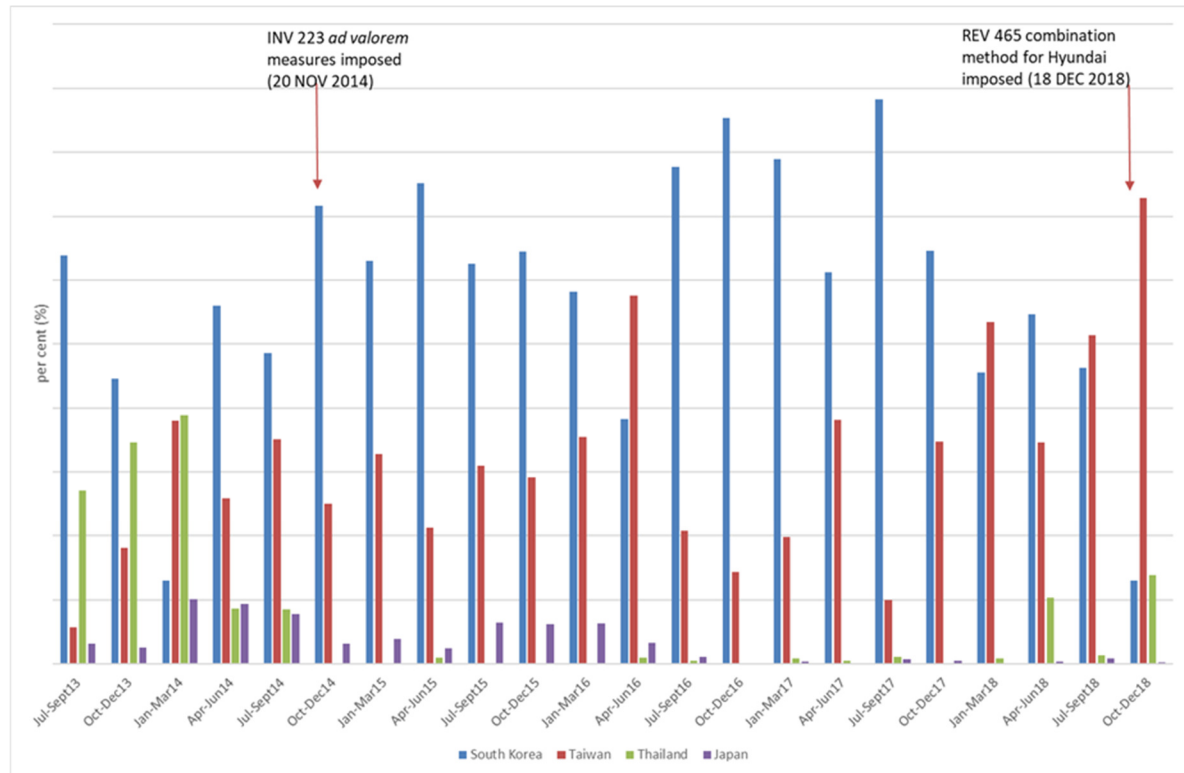


Figure 1: Quarterly share of the goods imported from countries subject to measures since 1 October 2014 (excluding Australian industry own imports) (Source: [appendix A2](#))

	Case Ref.:	INV 223	REV 345 / REV 346	ACC 359	REV 465	REV 499 / CON 505
Country	Investigation/Review/Inquiry Period:	1-Oct-12 to 30-Sep-13	1-Jan-15 to 31-Dec-15	1-Apr-15 to 31-Mar-16	1-Jan-17 to 31-Dec-17	1-Jan-18 to 31-Dec-18
JPN	JFE Bars and Shapes Corporation	12.15				12.2
JPN	Uncooperative Exporters	12.23				12.2
KOR	Hyundai Steel Company	2.52			9.9	9.5
KOR	Uncooperative Exporters	3.24			13.9	12.3
TWN	TS Steel Co Ltd	4.68				-1.6
TWN	Tung Ho Steel Enterprise Corporation	2.20		-8.4		-1.6
TWN	Dragon Steel				0	9.0
TWN	Uncooperative Exporters	7.89				12.3
THD	Siam Yamato Steel Co Ltd	18.00		-6.2		5.0
THD	Uncooperative Exporters	19.48				7.7
	Publication date:	20-Nov-14	19-Oct-16	18-Oct-16	18-Dec-18	

Figure 2: Summary of verified dumping margin rates for named/cooperative exporters and uncooperative exporters (Source: [adcommission.gov.au](#), various EPR Folios)

When Figures 1 and 2 (above) are taken together they demonstrates that for the majority of the period of the measures – which were subject to an *ad valorem* duty rate – the measures did not prevent an increase in the dumping margin from the largest sources of supply, and those sources with

<sup>8</sup> EPR Folio No. 505/028.



increasing dumping margins across the life cycle of the measures did so in increasing export volumes. In other words, the original measures were not effective. It was not until *Review No. 465* (concerning exporters from South Korea) that the measures for those exporters were revised and interim duty calculated by reference to the combination method that the measures appeared to restore exporter compliance (i.e. dumping margins decreased in the subsequent review/inquiry period for 499/505).

Applied here, not only does the combination method of interim duty calculation promote exporter compliance and therefore effective measures, but there is no risk of the amounts of duty collection being punitive to the importer due to the longstanding evidence of use of the Final Duty assessment process by importers and cooperation by their respective exporters. As the Commission is no doubt aware, the use by importers of the Final Duty assessment process 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 INV 223 and REV 465 in the case of exports from South Korea), then Australia’s anti-dumping system is ineffective and in fact punitive to the injured domestic industry member(s).

As the Commission will recall from Liberty Steel’s presentation at its industry verification visit, not only is the combination method never punitive to 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 – as **Figures 3 and 4** (below) illustrate.

Ascertained normal value (ANV), \$/tonne	\$	100		
Ascertained export price (AEP), \$/tonne	\$	80		
			<b>Year 1</b>	<b>Lowered price *</b>
Actual Export Price (DXP), \$/tonne	\$	80	\$ 70	Increased Price †
				\$ 90
<b>Combination duty method</b>				
- Fixed Amount ( <i>ad valorem</i> ) 25%	\$	20	\$ 20	\$ 23
- Variable amount (where DXP < AEP) AEP-DXP	\$	-	\$ 10	-
IDD calculated using "combination" method	\$	20	\$ 30	\$ 23
<b>Final duty payable, \$/tonne</b>				
	ANV-DXP	\$ 20	\$ 30	\$ 10
	<i>less refund</i>	\$ -	\$ -	\$ 13
<b>Total Final Duty Liability</b>		\$ 20	\$ 30	\$ 10
<b>Effectiveness of measures</b>		<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes: \* Assume no change in normal values

**Figure 3:** Example of efficiency (effectiveness) of the combination method of duty calculation



Ascertained normal value (ANV), \$/tonne	\$	100		
Ascertained export price (AEP), \$/tonne	\$	80		
			<b>Year 1</b>	<b>Lowered price *</b>
Actual Export Price (DXP), \$/tonne			80	70
				<b>Increased Price *</b>
				90
<b>Ad valorem method</b>				
	<i>ad valorem rate</i>	25%	20	17.5
				22.5
<i>IDD calculated using 'ad valorem' method</i>				
			20	17.5
				22.5
<b>Final duty payable, \$/tonne</b>				
		ANV-DXP	20	30
				10
	<i>less refund</i>		0	0
				12.5
<b>Total Final Duty Liability</b>				
			20	17.5
				10
<b>Effectiveness of measures</b>				
			100%	58%
				100%

Notes: \* Assume no change in normal values

Figure 4: Example of efficiency (effectiveness) of the ad valorem method of duty calculation

Figure 3 (above) demonstrates how the combination method is in fact more effective in capturing the full dumping duty in a falling and rising market – generating more efficient duty collection between variable factors reviews.

On the other hand, Figure 4 (above) demonstrates that the *ad valorem* method is ineffective and inefficient at capturing the correct amount of final duty liability when the exporter lowers the export price (in this case there is a **42% loss in efficiency**). In spite of this incontrovertible evidence, the *Guidelines on the Application of Forms of Dumping Duty (the Guidelines)* persists in recommending that these are precisely the circumstances (falling prices) in which the *ad valorem* method should be applied, despite the proven inefficiency of doing so.

The Guidelines seek to justify the use of the *ad valorem* duty method on the basis of its concept of capturing the “effective rate” of duty:

*The ‘effective’ rate of this duty, when the duty has been imposed as a fixed amount per unit, diminishes in a rising market making it ineffective. The ‘effective’ rate increases in a declining market making it punitive.<sup>9</sup>*

The ‘effective rate’ argument against the combination duty method is illusory, as it simply posits the amount of duty as a proportion of the transactional export price as an indicator of its effectiveness - irrespective of whether the amount of transactional dumping by the exporter has in fact increased.

<sup>9</sup> Australian Government, *Anti-dumping Commission, ‘Guidelines on the application of forms of dumping duty’* (November 2013)

If this 'effective rate' metric is to have any meaning, it should measure the amount of duty paid against the amount of duty payable – this measurement of performance would take into account the operation of the duty assessment process (whose role is to equalise any overpayment of duty).

Instead whoever conceived the 'effective rate' metric, seeks to assert the culpability of the combination method, by suggesting its 'punitive' effects against importers, but entirely ignores its punitive impact on the domestic industry at times of their greatest vulnerability to dumping – namely during a declining market.

#### **"7.4.1 The Commission's assessment"**

Despite our submission contending that the Commissioner recommend that the Minister's notice have effect from a date earlier than that the date of publication of the Minister's declaration, we observe the Commission's recent recommendation to the Minister in *Final Report No. 483* concerning wire rope exported to Australia from the Republic of South Africa. Although that case involved an anti-circumvention inquiry with regard to the slight modification of goods, the reasons for the Commission's recommendation that the Minister's declaration specify the SEF publication date as the date from which changes to the original notice are to take effect, are equally applicable to this review of anti-dumping measures. In relevant part, the Commission observed as follows:

*To ensure the alteration to the original notice provides an effective remedy to the injurious effects caused by the circumvention behaviour identified in this inquiry, it is necessary to alter the original notice in such a way that the changes are applied both retrospectively and prospectively.*

*The retrospective element of the recommended change to the notice in this case recognises that circumvention activity was found to have occurred since 2017.*

*The Commissioner recommends that for the purposes of the Act and Dumping Duty Act the alterations specified in the declaration be taken to have been made to the notice with effect on and after the date of the publication of the SEF, being 11 February 2019.*

*The Commission notes that the date of effect for the retrospective application of the alteration to the original notice has changed since SEF 483. In the SEF the Commission proposed the alteration to the original notice apply retrospectively from 6 July 2018 (the date of initiation of the inquiry). The Commission has since revised this date to the date of publication of the SEF.*

*Given the complexity of this inquiry and the highly contested nature of the claims of slight modification, the Commissioner considers that in this case it is appropriate to apply retrospective measures to the date of publication of the SEF. The publication of the SEF provided notice to interested parties of the Commissioner's preliminary views including the Commissioner's view that a circumvention activity had occurred and the potential for retrospective application of the notice.<sup>10</sup>*

Applied here, similar considerations of the effective operation of the revised variable factors ought to be foremost in the Commission's contemplation of the correct or preferable recommendations to the

<sup>10</sup> Final Report No. 483, p. 43.



Minister. Should the SEF findings translate to the recommendations contained in the final report, then all exporters will now be subject to a revised floor price for the purpose of interim duty calculation. In some cases, this variable factor had not been amended for many years. Therefore, it is entirely conceivable that the Australian industry continues to experience un-remedied injury. Even though Hyundai Steel has experienced a decline in its dumping margin, this is likely due to an increase in its ascertained export price. In any event, the fact that the exporter continued to dump by a considerable margin since *Review No. 465* cannot be overlooked. Therefore, the operation of the likely higher variable factor needs to be enacted at the earliest opportunity. Although, the Australian industry considers this should be a date closer to initiation of the review, the Commission would be remiss in its duty to the Minister to not recommend that the revised variable factors have effect from a date before the date of the Minister's declaration. The Australian industry presented evidence supporting this view in its submission dated 29 July 2019.<sup>11</sup>

Although the Commission failed to foreshadow the making of this recommendation in SEF 499, we observe, the Australian industry applicant did place this issue on the public record on at least 29 July 2019. Furthermore, the Commission has nevertheless documented this submission and its preliminary views in SEF 499, together with the statement, "*subject to the consideration of any submissions made in response to this SEF*", which places all interested parties on notice of the very live possibility that the Commission may recommend in its final report to the Minister that the revised variable factors have effect from an earlier date than the date of the Minister's declaration. In the interest of giving all parties prior notice of a possible earlier date, it is Liberty Steel's contention that the effective date of the revised variable factors be applied from the date of initiation of Review No. 499, namely 3 January 2019.

## **B. Statement of Essential Facts No. 505 (SEF 505)**

Liberty Steel considers the Commission's analysis and findings, overall, thorough and accurate. Without detracting from the Commission's conclusions, Liberty Steel makes the following additional comments and observations.

### **"7.1.2 Distortions in steel markets"**

Although the Commission is correct to cite the WTO database that "*the only anti-dumping measures in place against exports of HRS from Japan, Korea, Taiwan and Thailand were those that have been imposed by Australia*", the same cannot be said of the United States' Section 232 tariffs and the European Union's steel safeguard measures which apply to both the goods and the countries the subject of the measures under this continuation inquiry. When juxtaposed against the Commission's finding that "*[e]xcess steelmaking capacity in China is apparent and the possibility of diversion of HRS trade to any of the countries subject to this inquiry is present. Such diversion would likely result in the need for HRS producers in those countries to expand their export trade to other countries, including*

<sup>11</sup> EPR Folio No. 499/037.



*Australia*<sup>12</sup>, then the continuation of the material injury that the anti-dumping measures are intended to prevent is likely should the measures be allowed to expire.

#### **“9.1 Submissions on changing conditions and the identification of the Australian industry”**

Hyundai Steel’s histrionic reaction to Liberty Steel’s small and periodic importation of one model of the goods, and attempted conflation between such imports and the Australian industry’s modest recent success in securing rail product orders, was appropriately tempered by the Commission’s assessment of the evidence which supports the conclusion that:

- imports of the goods by Liberty Steel were “small”<sup>13</sup> and “a temporary measure to resolve production scheduling matters”<sup>14</sup>;
- Liberty Steel’s production scheduling and current contractual arrangements does not “indicate that it has shifted its focus away from HRS”<sup>15</sup>;
- that certain production constraints in respect of HRS were of a “short-term nature”<sup>16</sup>;
- the increased production of rail in 2018 “had not negatively affected its production of HRS in 2018” and that “[t]his is corroborated by reduced importations of the goods by Liberty Steel from 2017 to 2018”<sup>17</sup>; and
- that obtaining government contracts does not support the view that Liberty Steel “has shifted its focus from producing HRS”<sup>18</sup>.

In further support of the Commission’s conclusions we supply an extract of HRS sales and rail product sales (CONFIDENTIAL ATTACHMENT A). We also supply updated sales data demonstrating that sales of imported goods across the inquiry period and in the period following (January to June 2019) were ■■■ per cent<sup>19</sup> and ■■■ per cent<sup>20</sup> of all sales of HRS, respectively.

#### **“Non-Confidential Appendix 1 – Steel grades and standards for Model Control Code subcategory of minimum yield strength”**

Liberty Steel acknowledges the improved transparency afforded to all interested parties through the SEF disclosure of the grades and Standards assigned to the MCC category of minimum yield strength for domestic sales used in normal value calculations for all countries and exporters. In the absence of any volume or value disclosure, additional transparency could be provided through disclosure of

<sup>12</sup> SEF 505, p. 28.

<sup>13</sup> SEF 505, p. 37.

<sup>14</sup> SEF 505, p. 44.

<sup>15</sup> SEF 505, p. 44.

<sup>16</sup> SEF 505, p. 44.

<sup>17</sup> SEF 505, p. 44.

<sup>18</sup> SEF 505, p. 45.

<sup>19</sup> appendix A4.

<sup>20</sup> CONFIDENTIAL ATTACHMENT B.



grades and Standards relative to each exporting country without any risk of a breach of commercial confidentiality for any of the exporting entities. The grades and Standards shown in Appendix A are already publicly disclosed on the individual exporters' websites and product brochures.

With respect to the "Standard" information disclosed in Appendix 1, Liberty Steel requests the following:

- **That the version of the Standard be included.** For the Korean Standards KS D 3503 (General Structures) and KS D 3515 (Welded Structures), there have been significant changes between the 2014 and 2016 versions of the Standards. At the time of the Standard changes, the Korean Iron and Steel Association advised:

*The National Institute of Technology and Standards announced the revision of Korean Industrial Standards on December 5, 2016 for KS 24 construction steels to meet the strengthening requirements of building safety and to support the export competitiveness of Korean companies.<sup>21</sup>*

For the Korean Structural Standards referenced, the 2016 changes included grade designation on the basis of minimum yield strength rather than tensile strength and a complete new range of grades with different chemical and mechanical properties (aligning closely to the Euronorm Standard) replaced grades available under the 2014 Korean Standards.

The 2016 versions of these Standards became effective from 1 January 2018. Both versions of the Standards were operating concurrently in 2017.

- **That products included under grade "SD295" in Subcategory "B" be reviewed for relevance.** This is a common steel reinforcing bar grade, not known to be used for structural steel sections.

Should the Commission seek clarification of any of the matters raised in this submission, please do not hesitate to contact your Australian industry representative on record.

**FOR AND ON BEHALF OF**

**THE AUSTRALIAN INDUSTRY APPLICANT**

<sup>21</sup> [http://kosa.or.kr/statistics/slssue\\_view\\_2013.jsp?index=7746](http://kosa.or.kr/statistics/slssue_view_2013.jsp?index=7746)