

**Canberra**  
6/2 Brindabella Circuit  
Brindabella Business Park  
Canberra International Airport  
Australian Capital Territory 2609

Canberra +61 2 6163 1000  
Brisbane +61 7 3367 6900  
Melbourne +61 3 8459 2276

[www.moulislegal.com](http://www.moulislegal.com)

2 September 2019

**Brisbane**  
Level 4, Kings Row Two  
235 Coronation Drive  
Milton, Brisbane  
Queensland 4064

**Melbourne**  
Level 39, 385 Bourke Street  
Melbourne  
Victoria 3000

Australia



commercial + international

**The Director**  
**Investigations 2**  
**Anti-Dumping Commission**  
**55 Collins Street**  
**Melbourne**  
**Victoria 3000**

By email

Dear Director

## **Hyundai Steel Company** **Continuation 505 & Review 499 – expiry of measure and duty methodology**

As you know we represent Hyundai Steel Company (“Hyundai Steel”) in this continuation inquiry (“Continuation 505”) and the ongoing review inquiry (“Review 499”) concerning hot rolled structural steel sections (“HRSS”). The Statement of Essential Facts for Continuation 505 (“SEF 505”) details a preliminary recommendation to secure the continuation of anti-dumping measures and that the dumping duty notice “remain unaltered”, noting that the applicable anti-dumping measures are altered by the findings of Review 499.

In this submission, Hyundai Steel addresses a number of issues arising from SEF 505 and the Commission’s proposed recommendation regarding Continuation 505.

---

<b>A</b>	<b>Expiry of measure by reason of abuse of anti-dumping system</b>	<b>2</b>
<b>B</b>	<b>The makeup and identity of the Applicant is not adequately explored</b>	<b>3</b>
	1 Incorrect identification of the new Australian industry results in flawed analysis	3
	2 Intra-group transfers may create artificial “loss”	4
<b>C</b>	<b>Effect of the Steelforce acquisition has been ignored</b>	<b>5</b>
<b>D</b>	<b>Hyundai Steel’s capacity utilisation condition is misunderstood</b>	<b>7</b>
<b>E</b>	<b>Flawed and inconclusive injury assessment</b>	<b>7</b>
<b>F</b>	<b>Ad valorem duty collection method should be applied</b>	<b>12</b>
	1 Information from the Applicant should be given little weight	12
	2 Appropriate duty collection method based on the Duty Guidelines	13

---

## A Expiry of measure by reason of abuse of anti-dumping system

At the outset, Hyundai Steel would like to draw the Commission's attention to an important issue raised in its submission dated 21 May 2019, namely that the measure should be allowed to expire as against Hyundai Steel as a matter of public policy. This position is also reflected in a submission by the Government of Korea, dated 4 June 2019. The SEF addresses this issue merely as a matter of the eligibility of OneSteel Manufacturing Pty Ltd (hereafter OneSteel Manufacturing or "the Applicant") being considered as the "domestic industry".<sup>1</sup> In our view, this misses the more important policy issue that underlines the submissions of Hyundai Steel and the Government of Korea. Our submission notes:

*Hyundai Steel acknowledges that Article 4.1(1) provides a discretion, rather than a directive, for the investigating authority to exclude certain domestic producers from the "domestic industry", if such producer is also an importer of the allegedly dumped product. It is submitted that such discretion is called for, and to be discharged in good faith, in response to parties attempting to "game" the system. That discretion is enlivened in the current circumstances as OneSteel itself is a significant importer of the goods and, as the sole Australian producer, is the domestic industry for the purpose of this inquiry. It is evident that OneSteel has been using Hyundai to supplement its supply when it is running at its full, commercially practicable and viable capacity. As will be explained in detailed below, OneSteel is expected to run at near full capacity for the foreseeable future. The Commission will have information if OneSteel is also supplementing supply from other sources.*

...

*Through its market dominance, and its own imports, OneSteel asserts significant influence on the pricing of imported goods in the Australian market. OneSteel then resorts to the anti-dumping system, with the market prices it has actively created, to demand the imposition and continuation of anti-competitive measures on the foreign imports it requires and brought in by itself. All at a time where it is further consolidating its control of the Australian market. Hyundai submits that in these circumstances it is not appropriate for a producer that is importing the goods to also be considered part of the domestic industry. To allow so would be to allow a blatant manipulation of the anti-dumping system. Accordingly, we respectfully submit that the Commission should take into consideration the discretion afforded under Article 4.1 of the Anti-Dumping Agreement, and find that it cannot be satisfied that discontinuation of the measure as against exports from Hyundai would lead, or would be likely to lead, to a continuation or a recurrence of the material injury that the anti-dumping measure is intended to prevent. The anti-dumping measures should be allowed to expire.<sup>2</sup> [underlining supplied]*

Hyundai Steel respectfully requests the Commission to reflect upon, and to highlight, this special circumstance in its recommendation to the Minister, and recommend that the Minister not secure the continuation of the anti-dumping measure as against Hyundai Steel.

---

<sup>1</sup> SEF 505, at page 44.

<sup>2</sup> See, Hyundai Steel submission dated 21 May 2018, at pages 2 and 3.

## B The makeup and identity of the Applicant is not adequately explored

Hyundai Steel has previously observed the complicated and changing business structure employed by the Applicant and its parent and related companies (collectively referred to as “the Liberty Steel Group”).<sup>3</sup>

### 1 Incorrect identification of the new Australian industry results in flawed analysis

In its submission of 21 May 2019 Hyundai Steel demonstrated that the core and scope of the business activities of the Applicant have changed since the original investigation. In particular, operations formerly part of the “old” OneSteel Manufacturing, such as the production facilities located in Newcastle and Sydney, have been restructured and placed within different legal entities.

SEF 505 appears to have neglected any consideration of these changes to the Australian industry in relation to HRSS. For instance, the SEF continues to describe the Australian industry as if the Applicant is still the same business as it was before the Liberty Steel acquisition and restructure, stating:

*Liberty Steel’s manufacturing facilities are:*

- *the fully integrated Whyalla Steelworks including the HRS rolling mill and [sic] located in South Australia;*
- *two electric arc furnaces (EAFs) located in Newcastle, New South Wales and Laverton, Victoria;*
- *bar mills at Sydney and Laverton;*
- *rod mills at Newcastle and Laverton; and*
- *wire mills located in various locations in Australia.*

*The Whyalla integrated steel works produces semi-finished steel for Liberty Steel’s rolling facilities across all sites. The Whyalla Steelworks produces steel using a basic oxygen steelmaking (BOS) system in which liquid steel is cast into blooms, billets, or slabs. Bloom is the feed product for making HRS. Billet is used as feed for rod and bar products (not subject to this inquiry). Slab is produced for export (not subject to this inquiry). HRS that is made by the Australian industry, and which is the subject of this inquiry, is all produced at the Whyalla Steelworks.*

*In the EAFs, Liberty Steel recycles steel to produce billets. These billets, as well as billets made at the Whyalla Steelworks, are used to make various forms of steel such as merchant bar which are not subject of this inquiry.*

OneSteel Manufacturing, referred to as “Liberty Steel” in SEF 505, does not have manufacturing facilities in Newcastle, Sydney, and Laverton. Those production facilities belonged to OneSteel Manufacturing in the *original investigation*, but have now been separated from the Applicant. They are now part of “InfraBuild (Newcastle) Pty Ltd” (formerly, “Liberty OneSteel (Newcastle) Pty Ltd”) and “The Australian Steel Company (Operations) Pty Ltd”. This should be well known to the Commission.<sup>4</sup> SEF 505’s description of the composition of the Applicant suggests a lack of appreciation of the structural and identity changes to the Applicant since the dumping duty was originally imposed following Investigation 223. In our view this lack of understanding of the correct identity of the Applicant and the scope of the Australian industry casts doubt on the legal foundation of the continuation inquiry as well

<sup>3</sup> Please refer to EPR505-011 – Hyundai Steel submission of 21 May.

<sup>4</sup> ADC Investigation 495.

as on the Commission's consideration of the statutory test of "*continuation..., or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent*". [underlining supplied]

If the Commission takes the view that the "Liberty Steel Group" is now taken to be the Australian industry, then the scope of the inquiry should be adapted to appropriately consider the operation of *all* of the affiliated Liberty Steel Group operations relevant to the GUC. In particular, the distribution arm of OneSteel Manufacturing, InfraBuild Trading Pty Ltd (formerly "OneSteel Trading Pty Limited", or "Liberty Metalcentre").

We explore this issue in more detail below.

## 2 Intra-group transfers may create artificial "loss"

As the Commission is aware, the vast majority of the Applicant's sales are not in direct competition with the imported goods, including those from Hyundai Steel. Instead,

*The verification team identified that a significant proportion of Liberty Steel's sales were made to related party customers*.<sup>5</sup> [underlining supplied]

Further, the Commission states:

*At the industry verification visit, Liberty Steel indicated that the Australian HRS market is predominantly supplied by distributors and that one of these distributors is Liberty Metalcentre, which is a related entity of Liberty Steel*.

*The distributors source products from the Australian industry or from overseas suppliers. HRS produced by Liberty Steel generally competes at the wholesale level of trade with distributors. Sales of HRS by distributors are to end users*.<sup>6</sup> [underlining supplied]

According to the Liberty Steel Group website, its distribution arm consists of three affiliated entities:

***Distribution:*** *Liberty Metalcentre, Liberty Reinforcing and ARC are part of the distribution portfolio. Collectively, the largest processor and distributor of metal in Australia, with market leading positions in reinforcing and general steel distribution*.<sup>7</sup>

We understand that "Liberty Reinforcing" and ARC ("Australian Reinforcing Company") are distributors of reinforcing bar and related products. Liberty Metalcentre, being the trading name for OneSteel Trading Pty Ltd, which recently changed its name to InfraBuild Trading Pty Ltd (hereinafter "OneSteel Trading") is the distributor of HRSS.

The latest financial reports for the Applicant and OneSteel Trading respectively show:

<sup>5</sup> EPR505-008 – Liberty Steel Verification Report at page 10.

<sup>6</sup> SEF 505 at page 12.

<sup>7</sup> Please refer to <http://www.libertyhousegroup.com/our-businesses/liberty-steel/liberty-steel-australia/>; <https://www.infrabuild.com/en-au/about-us/our-businesses/>

- OneSteel Manufacturing Pty Ltd made a **gross loss** of \$48 million on a total revenue of \$1,843.7 million in 2018.<sup>8</sup>
- OneSteel Trading Pty Limited made a **gross profit** of \$137.1 million on a total revenue of \$659.6 million.<sup>9</sup>

In our view the SEF has not given adequate consideration to the Applicant's intra-group based distribution model and its impact on the profit and pricing behaviour of the Australian industry. Neither OneSteel Manufacturing nor OneSteel Trading made a net profit in 2018. However, the fact that the distribution company OneSteel Trading, which is not the Applicant, was able to supply the GUC to the market at a significant gross margin raises questions about the manufacturing entity's claimed inability to sell the GUC at a profitable price. It faces no competition for the intra-group supplies made to its affiliated distributors.

Taking the analysis further, the main factors underlying OneSteel Trading's net unprofitability are unclear. If this is due to significant expenses in sales rebates, then it would suggest that the price undercutting analysis limited to the Applicant's own pricing is distorted by artificially high prices.

These questions are critical. They have neither been asked nor answered by the Commission. They should be carefully explored and examined in order to form a correct and coherent view about the economic condition of the Australian industry and whether the anti-dumping measure put in place five years ago should be continued.

## C Effect of the Steelforce acquisition has been ignored

During the course of this inquiry the Liberty Steel Group completed its acquisition of Steelforce Holdings Pty Ltd ("Steelforce"). Hyundai Steel has previously commented on the consequences of this acquisition:<sup>10</sup>

*During the review period, as Hyundai Steel identified, [CONFIDENTIAL TEXT DELETED – comments regarding Australian sales]. We respectfully ask the Commission to fully take into account this imminent change to the Australian industry, in addition to the other systemic changes to the Australian industry since the measure was originally imposed. Insofar as Hyundai Steel's exports are concerned, the procurements by the current and about-to-be Australian industry [CONFIDENTIAL TEXT DELETED – comments regarding Australian sales]. This means that even if Hyundai Steel continues to supply the Australian market in the same way as it did in the review period, [CONFIDENTIAL TEXT DELETED – comments regarding Australian sales]. Another possible scenario is that [CONFIDENTIAL TEXT DELETED – comments regarding Australian sales]. Either way, this highlights the fact that the economic conditions and make-up of the Australian industry has evolved to a very different state to the one that this anti-dumping measure was put in place to protect. Thus, we believe that a continuation of the current measure is neither necessary nor warranted.*

*Accordingly, the measure should be allowed to expire in relation to the goods exported by Hyundai Steel. Liberty Steel, being the newly restructured and ever-expanding Australian*

<sup>8</sup> Please see, OneSteel Manufacturing Pty Ltd FY2018 Financial Report, at page 9

<sup>9</sup> Please see, OneSteel Trading Pty Limited FY2018 Financial Report, at page 9

<sup>10</sup> EPR505-018 – Hyundai Steel submission dated 27 June at page 2.

*industry, is not prevented from lodging a new application for dumping duty once the measure is discontinued. [footnote omitted]*

Hyundai Steel is disappointed to note that SEF 505 sidesteps the need to evaluate the impact of this major change in the Australian market for HRSS and the composition of the Australian industry itself, stating:

*The Commission considers the impact of the acquisition of Steelforce by the GFG Alliance Australia/Liberty House Group on the economic conditions of the Australian industry in respect of HRS is not clear at this time.<sup>11</sup>*

With respect, SEF 505's failure to engage on this question is baffling. A continuation inquiry *mandates* a forward-looking exercise. The Commission is tasked with assessing whether the same material injury that the anti-dumping measure is intended to prevent is likely to continue or recur in the future, if the measure is allowed to expire. The composition of the market and the Australian industry are the foundations of this assessment. Liberty Steel Group's acquisition of a major importer of the goods, which happens to be Hyundai Steel's largest customers in Australia, in circumstances where Liberty Steel Group is also one of Hyundai Steel's largest customers in Australia, goes to the heart of this inquiry.

Hyundai Steel acknowledges it is still early days in the Liberty Steel Group's acquisition of Steelforce. However, the potential impact of this acquisition is clear enough to be taken into account by the investigating authority, and warrants further investigation. As recently reported:

*Mr Gupta, whose GFG Alliance finalised the acquisition of steel trader and distributor Steelforce on Monday, said the business would add 120,000 tonnes of throughput to GFG's Australian operations.<sup>12</sup>*

It is also sufficiently clear that the Australian industry is unlike the one that the original measure was intended to protect, due to its restructure, the acquisition of Steelforce, and the government support from which it has benefitted, including direct grants and sole-source procurement contracts. We respectfully remind the Commission of its legislative obligations in an inquiry of this nature under Section 269ZHF(2) of the Act:

*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.*

It follows that any doubt as to the precise impact of the Australian industry's restructuring in recent years and its acquisition of major importer-distributor of the HRSS must be taken into account. They are key factors affecting the Commission's ability to reach the level of satisfaction required by the legislation. The language of the legislation clearly requires that any doubt favour a decision *not to recommend* continuation of the measure.

---

<sup>11</sup> SEF 505 at page 45.

<sup>12</sup> See <https://www.afr.com/companies/manufacturing/why-billionaire-sanjeev-gupta-expects-low-rates-to-be-permanent-20190812-p52q7v>.

## D Hyundai Steel's capacity utilisation condition is misunderstood

Hyundai Steel notes that a key basis for the recommendation of the continuation of measures is the production capacity available to subject exporters. With respect to Hyundai Steel, SEF 505 states:

*The Commission has found at the verification visit that Hyundai has the capacity to increase its production of HRS. The Commission understands that 100 per cent capacity utilisation is based on a hypothetical name plate capacity of existing plant and on assumptions such as non-stop operation without closures to conduct maintenance. However, the Commission considers it noteworthy that the reserve capacity of Hyundai is nevertheless very large relative to the production capacity of Liberty Steel and relative to the entire Australian HRS market.<sup>13</sup>*

As the SEF acknowledges, the 100% capacity represents only theoretical capacity. It is neither practical nor desirable for Hyundai Steel to operate its production at this level. Hyundai Steel believes that it is a generally accepted industry standard that the optimal capacity usage for a steel manufacturer like Hyundai Steel is between **[CONFIDENTIAL TEXT DELETED – percentage range]**. Within this capacity range production takes place under the most ideal and overall most economical conditions. Utilisation in excess of this range tends to overly strain the conditions of the equipment and machinery, which results in a higher likelihood of machine failures in the short term and reductions in efficiencies due to shortened useful life of the facility over the longer term.

Hyundai Steel provided evidence that its capacity utilisation was **[CONFIDENTIAL TEXT DELETED – percentage]** in 2016, **[CONFIDENTIAL TEXT DELETED – percentage]** in 2017 and **[CONFIDENTIAL TEXT DELETED – percentage]** in 2018. For the first half of 2019, Hyundai Steel's capacity utilisation was maintained at the optimal level of **[CONFIDENTIAL TEXT DELETED – percentage]**. There is no evidence to indicate that Hyundai Steel has an “overcapacity” issue and would likely increase its capacity utilisation rate above optimal levels, whether for the purpose of selling to the Australian market or any other markets. Indeed, the evidence shows that even when Hyundai Steel does have a theoretical availability of production capacity it does not take up that capacity in order to increase its export or domestic sales volumes.

Accordingly, we respectfully submit that the statement in SEF 505 that “*the Commission considers that the potential excess capacity in Korea may result in increased export volumes should the measures expire*”<sup>14</sup> is without basis, and contradicted by the verified evidence.

## E Flawed and inconclusive injury assessment

SEF 505 finds that the Applicant suffered injury in the forms of:

- price suppression sales volume and sales revenue;
- reduced profit and profitability;
- reduced market share;
- reduced capacity utilisation;
- reduced return on investment;
- reduced employment levels and wages for employees; and
- reduced productivity.

<sup>13</sup> SEF 505 at page 32.

<sup>14</sup> SEF 505 at page 33.

Hyundai Steel is concerned to note that these findings are made by comparing the position of the Applicant during the review period against the performance of the original applicant nine years ago, i.e. in 2010! The use of 2010 as the benchmark year for injury analysis beggars belief. The purpose of a continuation inquiry is to examine the existence or likelihood of a continuation or recurrence of material injury caused by dumping. Its purpose is not to see whether an industry is performing better or worse than at some arbitrary point in the past. A very different market, with changed dynamics, and a very different industry, with changed production and supply modalities, built up behind the price protection afforded by dumping duties must be considered on their own merits, and not through the prism of the industry and market of almost a decade ago.

One implication of this flawed approach is that it makes assumptions that are unsupportable in an anti-dumping context. For example, SEF 505 appears to imply that any observed injury to the Australian industry during the inquiry period in comparison to 2010 was caused by the imported goods subject to the anti-dumping measures, without performing any proper causation analysis. As an example, with respect to the perceived declining level of employment since “FY10”, and the systemic financial failure of the *former* Australian industry, SEF 505 states:

*Liberty Steel's staff levels have declined since FY10. Liberty Steel has indicated to the Commission that the period of voluntary administration of OneSteel led to the retrenchment of experienced staff. New staff were recruited as part of the company restructure. The Commission considers that Liberty Steel has experienced injury in the form of reduced employment in the period since FY 2011.*<sup>15</sup> [underlining supplied]

And:

*Liberty Steel's Whyalla operations have received benefits from government assistance as well as from private investment. However, the Commission considers that this does not necessarily suggest that injury related to the production and sale of HRS in particular has been removed. The Commission understands that government assistance was related to the Arrium business (the parent company of OneSteel at the time) as a whole and considers the voluntary administration of Arrium may be a further indicator that the Australian industry has suffered injury. The Commission's analysis in chapter 5 of this report has demonstrated that the Australian industry producing HRS has continued to suffer injury.*<sup>16</sup> [underlining supplied]

The SEF paints the systemic and longstanding financial impairment of the *former* Australian industry, the Arrium group, and its own management decisions after the subject anti-dumping duty was put in place, as being somehow attributable to the goods under consideration. We see this as being plainly incorrect and unjustifiable. The assessment of future injury is a forward-looking exercise. Continued loss-making and poor performance of an industry when dumping measures have been in place for five years suggests that something other than dumping is the cause of injury, rather than the opposite.

---

<sup>15</sup> SEF 505 at page 23.

<sup>16</sup> SEF 505 at page 44.



Additionally, the SEF does not address Hyundai Steel's submission that the Applicant's true economic conditions must be fully assessed by taking into account the Applicant's production and contracts with respect to rail products.<sup>17</sup> The SEF states:

*The Commission does not consider that Liberty Steel's production scheduling and current contractual arrangements indicate that it has shifted its focus away from HRS. The Commission is satisfied that certain production constraints in respect of HRS were of a short-term nature. In the confidential version of its submission of 6 August 2019, Liberty Steel provided information that demonstrates that the increased production of rail in 2018 had not negatively affected its production of HRS in 2018. This is corroborated by reduced importations of the goods by Liberty Steel from 2017 to 2018. Further, the Commission does not consider that the need to meet domestic demand by occasionally importing HRS of itself demonstrates that no material injury caused by dumping was experienced by the Australian industry.*

*The Commission considers that obtaining government contracts is a standard business practice for any business that supplies the required products. The Commission does not consider that Liberty Steel's contracts to provide rail indicate that it has shifted its focus from producing HRS.*

With respect, Hyundai Steel considers the SEF's comment that the increased production of rail did not "negatively affect[ ]" the Applicant's production of HRS is a mere acceptance of the Applicant's assertion at its face value. This observation does not take into account the economic *benefit* created by the rail projects. Further, the finding contradicts the Commission's own recognition that rail production *does* constrain the production of HRS, and the fact that the Applicant decided to import large volumes of HRS, instead of producing HRS within its own facility. Indeed, as advised by the Applicant itself:

*...the decision to import preceded the decision to restore an additional (fourth) work shift, not (in contradiction of the exporter's assertion) any growth in the rail products market...<sup>18</sup>*  
[underlining supplied]

The Applicant therefore admits that it was required to add a whole work shift in order to fulfil the increased demand on its single rolling line used to produce both GUC and rail products.

In this regard, we also take notice of the SEF's finding that, during 2018, the Applicant achieved all of the following at the same time:

- *lowest* capacity utilisation in recent history;
- *highest* unit cost in recent history; but
- *increased sales volume* as compared to 2015 and 2017; and
- the highest total sales revenue since 2015

We refer to the following graphs from SEF 505

<sup>17</sup> The separation of rail products from the GUC, when they are the same thing made on the same production line in the same production facility, is itself an abuse of the anti-dumping system. Ultimately it is all HRS. Keeping rail products separate from the GUC likely has a very strong cross-subsidy effect. Governments and railway companies pay high prices to the Applicant for rail products. At the same time, the Applicant reduces its prices for the GUC to deliver itself optimal volume and revenue, and does so behind an anti-dumping barrier enabled by claiming that it has been materially injured by the low prices it created in the first place.

<sup>18</sup> See, EPR 505-31, at page 4.

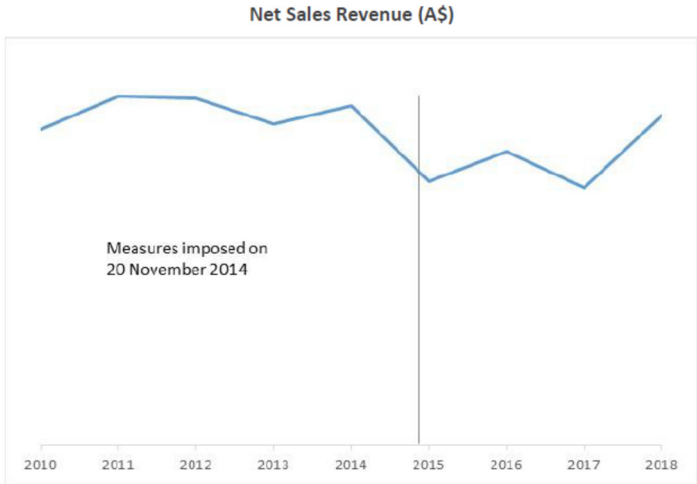


Figure 4 – Liberty Steel HRS Net Sales Revenue

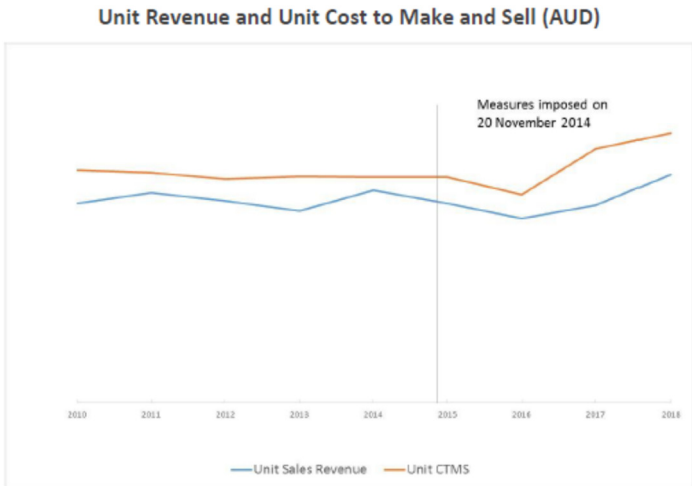


Figure 2 – Liberty Steel HRS Unit Revenue and CTMS

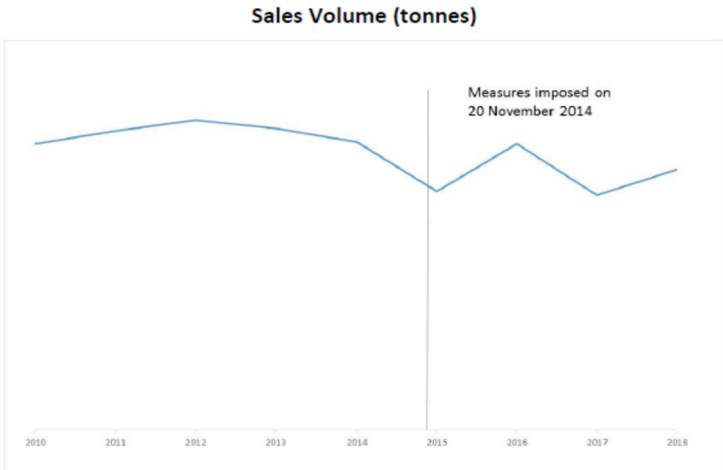
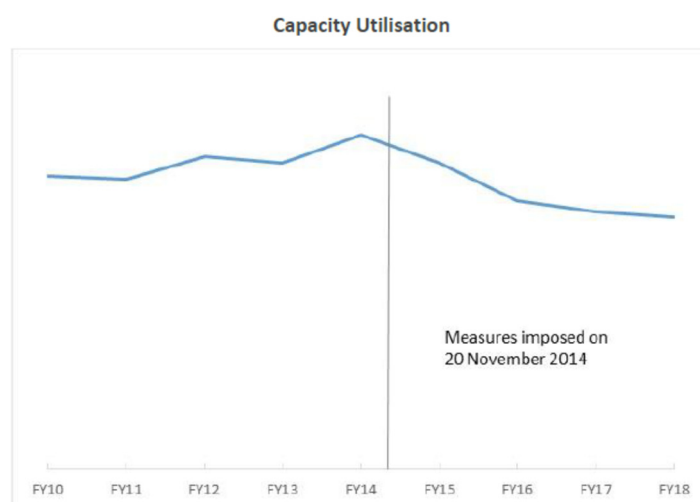


Figure 3 – Liberty Steel HRS Sales Volume



*Figure 8 – Liberty Steel HRS Production Capacity Utilisation*

These indicators are almost incompatible between each other, and is at odds with the Applicant's advice that it has added one more shift on its production line for HRS. In our view, the answer to these contradictory indicators lies in the Applicant's decisions to produce and deliver the more profitable and time sensitive rail product projects, in which it faces no market competition at all, and to rely on imported HRS to maintain and increase market share, whether because its production capacity is constrained or it is considered more profitable to do so. Without any disclosure of the Applicant's production volume, we imagine that the additional fourth shift was responsible for the reduced capacity utilisation showing for the GUC and the increased unit CTMS for HRS, presumably compensated by the production of rail products made on the same production line, and overall increased capacity.

Separately, we take issue with the SEF's comments concerning the likely effect of Hyundai Steel's exports:

*The Commission has found at section 7.2.2 of this report that exports of HRS to Australia from Korea have increased since the imposition of measures in November 2014 and exporters from Korea have maintained distribution links in Australia. Further, the magnitude of Hyundai's spare production capacity is material compared to the size of the Australian HRS market.<sup>19</sup>*

Hyundai Steel has repeatedly demonstrated that a substantial proportion of its sales were made to the Liberty Steel Group itself. The Commission may be "satisfied that certain production constraints in respect of HRS were of a short-term nature",<sup>20</sup> but this does not detract from the fact that Hyundai Steel was required to supply the HRS to the Applicant itself. If anything, the "short-term nature" of the production constraints, if that is true, indicate that it is unlikely for Hyundai Steel to export the same volume of the goods in the future. Further, any "material injury" to the Applicant caused by such exports (such as reduced capacity utilisation and potentially increased unit cost and reduced profit) must not be attributed Hyundai Steel.

The SEF fails to take into account the fact that **[CONFIDENTIAL TEXT DELETED – percentage]** of Hyundai Steel's exports to Australia during the review period were made to the Applicant and Steelforce, entities who now make up the Australian industry. In our view, the Australian industry has substantively changed, and its financial condition has significantly improved, since the anti-dumping measure was imposed in the original investigation. The Commission cannot conclusively be satisfied

<sup>19</sup> SEF 505 at page 38.

<sup>20</sup> SEF 505 at page 44.

that expiration of the measure would lead to or be likely to lead to a continuation or recurrence of the material injury that the measure is intended to prevent. Anti-dumping measures are not intended to be a permanent feature in the operation of the Australian industry's business, lest the measure just become a crutch for the Australian market that benefits from the duties. The question of whether material injury will recur to a newly-formed Australian industry should be dealt with under a new investigation, if those conditions arise.

Once again, Hyundai Steel respectfully submits that the Commission should recommend to the Minister that the measure be allowed to expire, *because of the inability on the part of the Commission to assess how the newly-formed Australian industry will perform in the future*. This is as much a matter of public policy, as discussed in Part A of this submission, as it is a matter of evidence and proper administrative decision-making.

## **F Ad valorem duty collection method should be applied**

At present, the combination duty collection method is imposed on Hyundai Steel's exports to Australia. If the anti-dumping measure is to be continued, Hyundai Steel respectfully submits that the Commission should revise the duty collection method applicable to Hyundai Steel, taking into account the particular circumstances surrounding Hyundai Steel's exports, the effect of the duty, and the likely market trend in the near future. In Hyundai Steel's view, taking these matters into account, an *ad valorem* form of duty is more appropriate.

### **1 Information from the Applicant should be given little weight**

Hyundai Steel notes the Applicant's submission that a combination duty method "*must clearly be preferred in the case of all exporters and sources where a non-negligible dumping margin has been found*".<sup>21</sup> Noting that the combination method already applies to Hyundai Steel, the Applicant uses Hyundai Steel as a "*case study*" to argue for the *ad valorem* method to apply for all exporters. The Applicant argues that an "*ineffective ad valorem method of interim duty calculation allowed Hyundai to continue to dump*"<sup>22</sup> In our view, such comments are disingenuous, self-serving and misleading.

The Applicant's submission ignores the fact that Hyundai Steel's increased export volume since the original investigation was in response to the demand of *the Applicant itself*, and to the demand of a market that was left inadequately supplied *by the Applicant itself*, due to the Applicant's own decision to shift its production and operational focus to other products. The Applicant sought supply from Hyundai Steel, and demanded that Hyundai Steel meet its pricing and volume requirements. Accordingly, Hyundai Steel asks the Commission to dismiss the Applicant's submission on this issue. The dumping margin, which is overstated in any event, was generated by the Applicant's price demands and the understandable belief on the part of Hyundai Steel that the price was at a level that the Applicant itself had assessed as representing a responsible level of pricing in the Australian market.

The Applicant's insistence that combination duty should be applied on every occasion is unsurprising, and well recognised by the Commission in the *Guidelines On The Application Of Forms Of Dumping Duty* ("the Duty Guidelines"). The Duty Guidelines state, in part:

<sup>21</sup> EPR505-028 – Liberty Steel submission at page 6.

<sup>22</sup> EPR505-028 – Liberty Steel submission at page 2.

- *The punitive effect in a falling market of the fixed form of this duty can have adverse effects on downstream industries. The Minister may need to consider these effects when deciding on the duty method.*<sup>23</sup>

...

*In a falling market the duty collected can become punitive under a combination measure. This is true whether the fixed element is collected as an amount per unit or as an ad valorem duty. The punitive effect is illustrated in Table 1 for both forms of combination duty. While an applicant industry may be attracted to this form of duty for this reason the fact there can be such negative effects on other industries in a falling market is something the Commission and the Minister may have to consider.*<sup>24</sup> [underlining supplied]

The Duty Guidelines also recognise the following:

*These forms of dumping duty calculation all have the purpose of removing the injurious effects of the dumping. However, in achieving this goal certain forms of duty will better suit the particular circumstances of some dumping cases more so than other forms of duty.*<sup>25</sup> [underlining supplied]

In Hyundai Steel's view, an *ad valorem* form of duty is the more appropriate. We explain the basis of this view in detail as follows.

## 2 Appropriate duty collection method based on the Duty Guidelines

Hyundai Steel respectfully submits that the Commission should find that the *ad valorem* method, rather than the combination duty method, is the most appropriate duty method for Hyundai Steel's exports, based on the Duty Guidelines:

### Combination method considerations<sup>26</sup>

Statement from the Guidelines	Hyundai Steel comments
<i>This form of duty, like the floor price duty method and fixed duty method, may not suit those situations where there are many models or types of the good with significantly different prices.</i>	Not applicable for the GUC exported by Hyundai Steel.
<i>It is suited to circumstances where there are complex company structures with related parties; and where circumvention of measures is likely.</i>	The company structure of Hyundai Steel is not complex in the manner consider by the Duty Guidelines. All of Hyundai Steel's Australian sales of the GUC are made to unaffiliated customers.
<i>It can be applied more precisely to certain goods in some cases.</i>	Not applicable to the GUC exported by Hyundai Steel

<sup>23</sup> Duty Guidelines at page 4.

<sup>24</sup> Duty Guidelines at page 6.

<sup>25</sup> Duty Guidelines at page 2.

<sup>26</sup> Duty Guidelines at page 4.

*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.*

The market for HRSS – like other steel products – is cyclical and volatile, due to the fluctuating nature of the raw material inputs and changing economic conditions in end user markets, especially in the construction sectors. Towards the end of 2018 and into 2019 the market prices for steel products steadied, and in some cases declined.<sup>27</sup> Considering future forecasts, it is expected that global steel prices will trend downward both in the short term,<sup>28</sup> and in the long term.<sup>29</sup> It is reasonable to expect that the prices for HRSS will follow these same trends.

*The punitive effect in a falling market of the fixed form of this duty can have adverse effects on downstream industries. The Minister may need to consider these effects when deciding on the duty method.*

The Applicant's stranglehold over the Australian market has been further strengthened by its acquisition of Steelforce. As indicated above, it is more likely that the HRSS market will enter a downward cycle, as iron ore prices retreat from the peaks reached during the period of review. It is therefore more likely for a combination duty to have a punitive effect on the downstream industries and the broader economy.

*The ascertained export price used in this measure can become out-of-date.*

As above, the ascertained export price established during the review period is likely to have peaked at the highest level, and will soon become punitive and outdated.

## Ad valorem method considerations<sup>30</sup>

### Statement from the Guidelines

### Hyundai Steel comments

*The simplest and easiest form of duty to administer when delivering the intended protective effect.*

Applicable to the GUC.

*It has an advantage where there are many models or types (it does not require an ascertained export price or ascertained floor which may not be meaningful where models show significant price variation).*

Not applicable to the GUC exported by Hyundai Steel.

<sup>27</sup> OECD Steel Market Development Report Q2 2019 at page 23, available at <https://www.oecd.org/sti/ind/steel-market-developments.htm>.

<sup>28</sup> OECD Steel Market Development Report Q2 2019 at page 26, available at <https://www.oecd.org/sti/ind/steel-market-developments.htm>.

<sup>29</sup> Please refer to <https://www.mining.com/iron-ore-prices-have-peaked-will-lose-steam-report/>; <https://www.smh.com.au/business/markets/no-signs-of-stopping-iron-ore-prices-slump-to-multi-month-lows-20190822-p52jri.html>; <https://thewest.com.au/business/mining/treasurer-ben-wyatt-calls-end-to-was-iron-ore-price-bonanza-as-brazils-vale-steps-up-supply-after-dam-collapse-setbacks-ng-b881288856z>; and <https://www.afr.com/markets/commodities/iron-ore-to-plunge-to-us50-a-tonne-liberum-20190823-p52jym>.

<sup>30</sup> Duty Guidelines at page 11.

*It has an advantage for goods which are subject to significant price variations over time because:*

- a) *the ad valorem duty method does not show the same variability in the 'effective rate' of the duty – as export prices fluctuate - that arises under the other methods; and*
- b) *the ad valorem duty method may require less frequent reviews than these other duty methods in this situation.*

Applicable to the GUC, which is a commodity product highly sensitive to raw material price movements, and the broader economic conditions.

*It may not be the most appropriate duty method when applied to goods which may have high priced varieties or models of the goods, particularly where a particular variety of goods was not causing injury to the Australian industry.*

Not applicable to the GUC exported by Hyundai Steel.

*It has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty. That said, where such behaviour is observed when monitoring the measures an anti-circumvention inquiry can commence.*

Not applicable to the GUC exported by Hyundai Steel. In fact, Hyundai Steel's export prices **[CONFIDENTIAL TEXT DELETED – comment about export price trends]**

Further, Hyundai Steel notes that the Commission has typically considered that the *ad valorem* method is more suitable for commodity type steel products such as HRSS. In the original Investigation 223, the Commission stated:

*In determining the form of measures, the Commission has given consideration to the submissions lodged by interested parties, the Guidelines on the Application of Forms of Dumping Duty – November 2013 (available on the Commission's website) and relevant factors influencing the HRS market. In this investigation, the Commission considers an ad valorem form of duty appropriate for removing the injurious effects of dumping. The Commission notes that the cyclical nature of the HRS market, which involves price fluctuations, lends itself to this form of duty, and that unlike other forms of duty, there is no 'effective rate' impact.<sup>31</sup> [underlining supplied]*

The cyclical nature of the HRS market is no different today than it was at the time of the original investigation.

<sup>31</sup> Investigation 223, Final Report at page 89.

Likewise, in a recently variable factors review also concerning goods exported from Korea, namely steel reinforcing bar, the Commission considered that the *ad valorem* method was the most appropriate duty collection method,<sup>32</sup> stating:

*Based on the above, there are indications that the prices for the main inputs into the production of rebar are volatile with an overall downwards trend. The level of volatility cast doubts as to whether the combination duty method is the most suitable measures. For these reviews, the Commission considers that the *ad valorem* method remains the most appropriate form of measures to be applied to exports from Korea, as there is no evidence that exporters have lowered their export prices to avoid the effects of any duty.*<sup>33</sup> [underlining supplied]

Hyundai Steel submits that the same factors apply to its exports of HRSS.

In light of all the above we submit that the use of the *ad valorem* method is most suitable in the circumstances of this case, having regard to the product concerned and more specifically to the nature of Hyundai Steel's trade with its Australian customers, including Liberty Steel.

\*\*\*\*\*

On behalf of Hyundai Steel, we once again urge the Commission to recognise that the Australian industry has systemically and economically changed, is enjoying much-improved overall economic conditions, and is less prone to both price and volume injury following the Steelforce merger. In Hyundai Steel's view, the Commission should find that there is insufficient evidence to recommend that the Minister take steps to secure the continuation of the anti-dumping measures.

If the measure is to be continued, Hyundai Steel asks the Commission to revise the duty collection method as applicable to Hyundai Steel's exports to the *ad valorem* basis, and not to impose the measure by reference to a record-high ascertained export price, as this would be overtly and unnecessarily punitive.

Yours sincerely



**Charles Zhan**  
Senior Associate  
+61 2 6163 1000



**Macky Markar**  
Senior Lawyer

<sup>32</sup> Review 489 and Review 486.

<sup>33</sup> Review 489, Final Report at page 32.