



23 September 2019

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

BY EMAIL:

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Dear Director,

Continuation Inquiry 505 and Review of Measures 499 concerning Hot Rolled Structural Steel Sections exported from Japan, Korea, Taiwan and Thailand

SUBMISSION OF THE AUSTRALIAN INDUSTRY

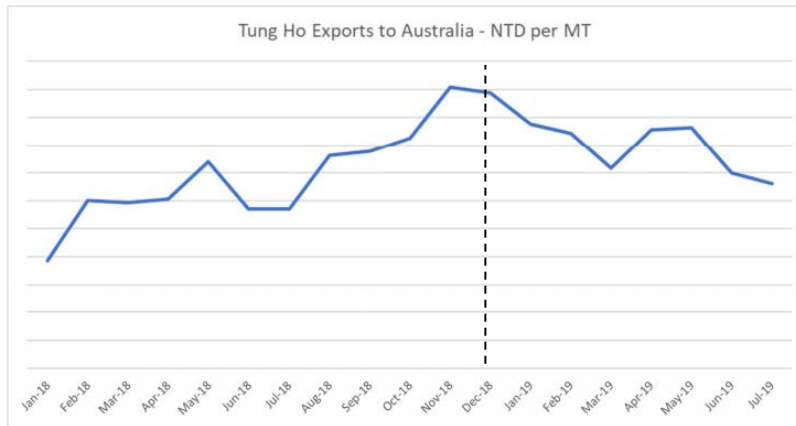
This submission is made on behalf of ONESTEEL MANUFACTURING PTY LIMITED (**Liberty Primary Steel**) in response to the two most recent Tung Ho Steel Enterprise Corporation (**THS**) submissions, the first regarding the Commission's basis for the proposed form of measure¹ and the second relating to Commissioner's satisfaction that the expiration of the measures against THS would lead, or likely lead, to a continuation of dumping and that this would lead to the recurrence of material injury to the Australian industry that the measures were intended to prevent².

1. Form of measure

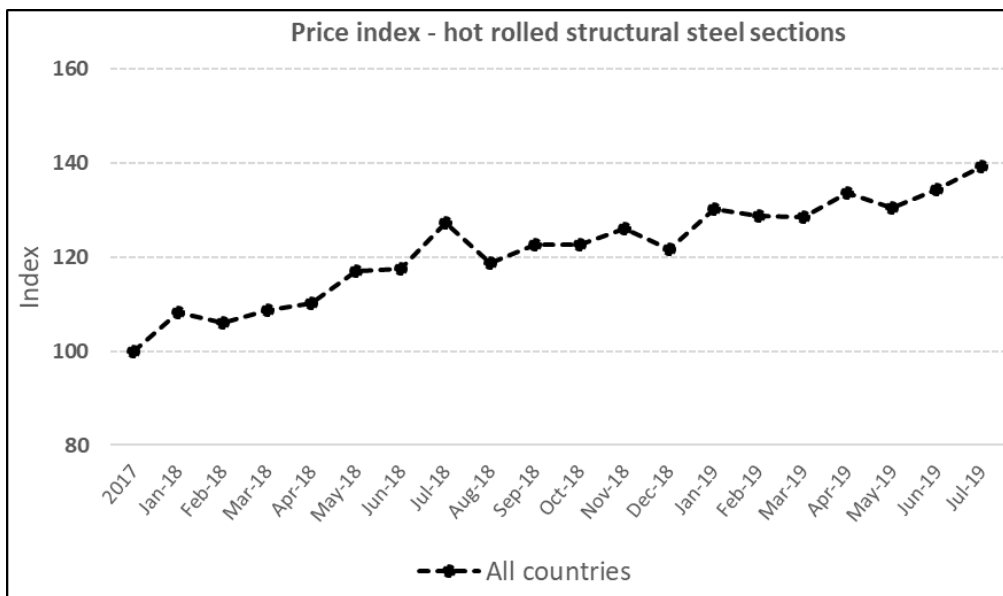
In its submission dated 2 September 2019 (electronic public record on 11 September) THS rejects the Commission's evidence based assessment that during the review period for Review 499, rising market conditions prevailed for hot rolled structural steel sections (**HRS**) in Australia. As an alternative, THS offers a trend of its own export prices for HRS into Australia to demonstrate "*a fluctuating, if not a falling market.*"

¹ EPR Folio No. 499/055 and 505/046

² EPR Folio No. 499/057 and 505/048



With respect, the trend of export prices for a single exporter do not constitute an overall “market assessment”. By contrast, the monthly weighted average unit price trend for imported HRS from all countries³ as per the most recent publication of the Commission’s Trade Remedies Index (TRINDEX) shows the average unit price of imported goods at the end of 2018 was over 20% higher than the weighted average unit price for the whole of 2017 and in July 2019 was approximately 40% higher than the weighted average unit price for CY 2017.⁴



The graph presented by THS instead serves to demonstrate that following the end of the Continuation Inquiry period (January to December 2018), the THS export prices for HRS to Australia have steadily declined, despite a prevailing rising market. The decreasing trend of THS export prices following December 2018 are in contradiction to claims made numerous times in the most recent THS submission that “*THS export price to Australia is likely to rise due to the ability to charge a price premium due to other importers being subject to measures*”⁵. This rhetoric presumably only applies once the final outcome of the review and continuation are known. In the interim, THS would have been acutely aware of an imminent Continuation Inquiry and that sales subsequent to the investigation period, that is after December 2018, would enjoy an amnesty of sorts, excluded from any

³ Defined as “import sources that represent greater than three per cent of total 2017 import volumes, as well as emerging significant new sources” – Trade Remedy Index at p.3

⁴ TRINDEX for month ending 31 July 2019 at p.12

⁵ EPR Folio No. 499/057 and 505/048 at p.3

dumping margin calculations. The Commission may well be dealing with a player astute at navigating the anti-dumping system, intentionally refraining from dumping during the investigation period in order to avoid or minimise ongoing measures and once outside the investigation period, have dropped their export price, unconstrained by the impact of effective measures as the market has risen significantly above their floor price. This behaviour of THS may be driven by an intention to increase market share at the expense of other exporters that have measures applying to them or defending their market share against Chinese goods that have begun to reduce their prices into the Australian market.⁶ In either scenario the Commission is correct to be satisfied that the measures ought to be continued lest their expiry lead to a recontinuance of dumping by THS and subsequent injury to the Australian industry.

THS further references ADRP Report No. 70 (**REP 70**) that relates to a review of the Minister's decision to secure the continuation of the anti-dumping measures in respect of Hot Rolled Coil (**HRC**) exported to Australia from Japan, the Republic of Korea, Malaysia and Taiwan. THS references the following to support its contention that the measures against THS should be discontinued:

As noted by the Applicants, in their applications, undertaking a continuation inquiry requires a prospective examination of the likelihood of future dumping and material injury. Neither the Anti-Dumping Agreement nor the Act prescribe any particular methodology to be used by investigating authorities in making a likelihood determination in a continuation inquiry. That said, any determination in relation to the measures must rest on a sufficient factual basis allowing the Commission to draw reasoned and adequate conclusions.⁷

Significantly, THS omit to include in their submission the following paragraph in REP 70 that undermines the foundation of their argument that the measures should be allowed to expire on the basis that THS were found to have a negative dumping margin:

As to the significance of the Applicants' negative dumping margins throughout the inquiry period, neither the Anti-Dumping Agreement nor the Act requires revocation as soon as an exporter is found to have ceased dumping and the continuation of measures is not precluded a priori in any circumstances other than where there is present dumping.⁸

The important matter before the Commissioner is not whether there was an absence of dumping during the Continuation inquiry period when the measures were operating, but whether, if the measures were to expire, it would lead or likely lead to the recurrence of dumping and injury caused by the dumping. The ADRP Panel Member in REP 70 justifiably affirmed the Commission's recommendation that measures continue to apply to Taiwanese exporters who were found not to be dumping by negative margins ranging between -1.8% and -9.2%, exceeding the THS preliminary margin of -1.6% in the current HRS matters before the Commission. The Commission's findings affirmed by the ADRP in REP 70:

Whilst exports by the Applicants were found to not be dumped during the inquiry period by negative margins, the Commission considered, if the measures were not continued, it is likely that future exports of HRC from the Applicants would be dumped, and that it was likely that material injury would be experienced by BlueScope as a result of that dumping.⁹

⁶ TRINDEX for month ending 31 July 2019 at p.12

⁷ ADRP Report 70 p.13 para 47.

⁸ Ibid para 48.

⁹ ADRP REP 70 p 6. Para 19

2. Excess global steel capacity and trade distortion

The most recent THS submission questions the veracity of the Commission's findings in relation to matters such as trade distortions resulting from China's excess capacity driving continued exports of HRS to Australia by the manufacturers under consideration in the current inquiry as a hypothetical scenario with "no evidence" of these distortions relating to HRS "have[ing] been provided".

Whilst it may be true that neither THS nor Hyundai Steel have chosen to provide the evidence to the Commission's investigation teams, the available evidence is beyond dispute.

2.1 Hyundai Steel

Liberty Primary Steel's previous submission highlighted that although Hyundai Steel claimed there was a limited impact from United States s.232 tariffs, the facts are that South Korea reduced its sales of "structural shapes heavy" by 50,000 tonnes to the US for 2018 compared to 2017 volumes likely in order to avoid exceeding and jeopardising the Korean import tariff-free quota.¹⁰

2.2 Tung Ho

Just as Hyundai have not been forthcoming to the Commission in relation to the impact of trade distortions, THS's denial of any evidence of the effect of trade distortions is inconsistent with the narrative expressed in the Tung Ho Steel Enterprise Corporation Annual Report for 2018 (THS Annual Report 2018) published 22 April 2019.

THS provides a sales view of the two main products, namely "H beam steel" and "Rebar" in the Taiwanese domestic market and then expresses significant concern about "future market supply and demand conditions and growth" for 2019 in relation to US s.232 tariffs, the Chinese "global factory" and the large steel capacity expansions in Vietnam (Formosa Ha Tinh) and Malaysia (Alliance Steel):

(2) The company's main products in the domestic market share

Unit: metric tons

Items		Year	
		2018	2017
H beam steel	Total sales in Taiwan	714,159	710,922
	The Company	418,347	403,192
	Market Share	58.58%	56.71%
Rebar	Total sales in Taiwan	5,650,267	5,213,592
	The Company	971,935	754,384
	Total sales in Taiwan	17.20%	14.47%

Source: Taiwan Steel & Iron Industries Association

(3) Future market supply and demand conditions and growth

Looking forward to 2019, *the United States 232 investigation* provoked import tariffs on global steel and aluminum due to national security problems; it provoked a wave of global steel trade protectionism and has even stirred up the sensitive nerves of "deChinalization". **Steel production industry will face more stringent international trade dilemmas**, and the issue of "deChinalization" will continue to prosper. In 21st century, the rise of China has enabled China to rapidly become a global factory. China's competitive advantage that result from the sacrifice of the rights of laborers and exploit of environment will face more rigorous inspections from the world and the challenge of China's self-awakening, which will bring more variables and challenges for global steel industry and international trade in 2019. With the launch of the second blast furnace of Formosa Ha Tinh Steel and the introduction of the 3.50 megaton production

¹⁰ EPR Folio No. 499/058 and 505/049

capacity of Malaysia's Alliance Steel in the second half of 2018, the global steel price will fail to reflect costs and most likely drop. **This will certainly affect the global trend of the steel market, elevating severity of the competition of international steel trade. Despite the truce in the China-U.S. trade war temporarily lifting the uncertainty and concern of global economic development, the competition between the two economic giants will continue to affect the growth of the global economy, finance and trade.**¹¹ [emphasis added]

In assessing the advantages and disadvantages of THS' "Developing Vision", THS lists the factors considered to be unfavourable, explicitly stating their concerns in relation to regional and international trade distortions challenging their ability to compete in the domestic and export market:

(ii) Unfavorable factors and countermeasures¹²

- a. **Severe oversupply of international steel production capacity, especially in neighboring China, South Korea and Japan.**
- d. **U.S. 232 investigation has imposed global import tariffs on steel and aluminum as a result of national security issues. This has provoked a wave of global steel trade protectionism. It has even stirred up the sensitivity of "deChinalization" and the global steel industry will face more severe the dilemma of international trade, and the issue of "deChinalization" will continue to prolong.**
- e. **In the face of the continuous increase in steel production capacity and the prevalence of trade protectionism in developing countries around the world, global export faces more severe challenges.**
- f. **There is a serious excess of steel production capacity in the developed countries around the world, and steel production capacity in emerging countries continues to increase.**
- g. **The negative impact of the U.S.-China trade war on global economic, financial and trade growth.** [emphasis added]

THS, as a major steel industry participant in Taiwan, offers the following insights on the "status of the industry":

*Since the arrival of the new Taiwan government in 2016, cross strait relations and international diplomacy have faced the double dilemma of China's powerful suppression. The cross strait negotiations on trade, trade and goods and trade under the ECFA framework has been unable to restart, with the international free trade agreement under strong pressure from China, no substantial progress can be made. Domestic and foreign enterprises are not waiting to see Taiwan's investment plans, and **overall Taiwan's steel demand is under tremendous downward pressure.***

*In March last year, President Trump of the United States announced the **import tariff of 25%** for all steel and aluminum products for countries around the world on the grounds of national security issues; Following this, **the European Union announced tariff on defense measures for 26 global steel products, and Canada, Mexico, Turkey and other states also announced the launch of their respective investigation on trade protection measures. Facing the rise of international steel trade protectionism in the international market, Taiwan's steel industry is bound to face more severe competition and challenges, and companies must strengthen their own global competition.***¹³

THS further acknowledges that China's influence on Taiwanese companies' effectiveness in the international market is not confined to excess steel capacity effects. THS cautions that "some steel businesses in Taiwan" that built their "core competitiveness on an unfair trading basis", namely reliance on "China's low-cost dumping of steel upstream semi-finished products and finished products" will likely face more stringent obstacles to international trade:

¹¹ Non-confidential Attachment A – THS Annual Report 2018 at p.136

¹² Ibid pp. 138-140

¹³ Ibid p. 129

*In the past, some steel businesses in Taiwan have relied too much on **China's low-cost dumping of steel upstream semi-finished products and finished products**. With the United States section 232 tariffs raising awareness of this unfair trade scenario, the **Taiwan steel industry will likely face more stringent obstacles to international trade**, if it keeps building its core competitiveness [sic] on an unfair trading basis; The United States is the first but certainly not the last country to provoke the issue of "deChinalization". When negotiating with the U.S. on the investigation for section 232 tariffs and the EU on defense measures, the government should focus on the medium and long-term steel industry development policy, establish complete supporting mechanisms and measures, and assist the steel industry to upgrade and transform. **The unfair trade based on the processing and re-export of steel products dumped by China will eventually lead to the loss of the entire global steel market.**¹⁴*

3. Tung Ho Steel capacity to produce HRS

THS have stated emphatically that they have no excess capacity to produce HRS that may be an incentive to sell goods at dumped prices to Australia and is to be differentiated to Korean exporter (of hollow structural sections) Kukje in this regard:

*Apologies for our ignorance, but we thought the Commission's assessment of THS capacity was in relation to the Commission's normal likelihood considerations, i.e. **does THS have excess capacity** that may be incentive to utilise through selling goods at dumped prices to Australia? **To which the answer is no***¹⁵
And
*Kukje excess capacity. [THS is near full capacity]*¹⁶

It appears that THS's narrative is again inconsistent with published publicly available data and THS may not have been fully transparent with evidence presented to the Commission in relation to the excess capacity that exists to produce HRS. The THS Annual Report for 2018 provides a very clear breakdown of actual production volumes for 2017 and 2018 against production capacity for the various product categories. According to THS's annual report to shareholders, the 2018

v. Production value of last two years

Unit: metric tons, NTS thousands

Year Production value Item	2018			2017		
	Capacity	Productivity	Production value	Capacity	Productivity	Production value
Steel embryo	3,300,000	2,136,814	32,612,323	3,300,000	1,947,262	23,902,710
Steel rebar	1,500,000	926,679	14,908,853	1,250,000	708,541	9,327,224
H beam steel		548,442	9,860,169		477,733	7,111,435
Steel plate		82,358	1,552,989		59,951	904,220
Channel steel	1,000,000	62,842	1,202,075	1,000,000	69,321	1,112,139
I type steel		2,617	51,135		2,214	36,837
Steel sheet pile		2,652	50,488		565	9,585
Steel structure	123,600	102,508	4,406,257	123,600	81,546	2,909,164
Environmental treatment	46,368	18,464	314,280	46,368	16,788	242,790
Wind power	28,000	25,616	42,120	28,000	25,758	51,517
Construction income	0	0	271,775	0	0	416,834
Others (note)	0	0	167,540	0	0	108,702
Total	5,997,968	3,908,992	65,440,004	5,747,968	3,389,679	46,133,157

(Note): Others include the lengthening of the subsidiaries and the forming of rebar, the sale of rebar and the sale of splicer materials.

¹⁴ Non-confidential Attachment A – THS Annual Report 2018 at pp. 139-140

¹⁵ EPR Folio No. 499/057 and 505/048 at p. 6

¹⁶ Ibid at p. 5

production of structural steel products (of which “H beam steel” constitutes the major proportion at 78%), presumably produced through a structural mill, amounted to 698,911t against a capacity of 1,000,000t.¹⁷

This indicates THS has excess capacity for structural steel products of approximately 300,000t or 30% of unutilized available capacity.

4. Relationship between THS and importer and legitimacy of un-dumped HRS supply to the Australian market

THS have claimed that the nature of the sales relationship between importer and exporter is an important consideration that should be assessed by the Commission, as it was in relation to Korean hollow structural steel exporter Kukje, in Continuation Inquiry 379, but which has not been assessed in relation to THS:

- *“The Commission considers that Kukje pricing at or close to the ascertained export price indicates that its ability to expand its Australian customer base is being constrained by the imposition of the measures and due to the risks faced by importers potentially having to rely on favourable duty assessments to recover their costs to import and sell should they import from Kukje.”*¹⁸

The Commission has conducted an assessment of the export price and normal value for THS and “found in Review 499 that over the review period there is a small differential between Tung Ho’s export price and normal value.”¹⁹

THS have espoused their success in achieving “total interim duty refunds” through successive duty assessments between 2014 and 2017²⁰:

- 20 November 2016 to 19 May 2017, Duty Assessment Number 0112, total interim duty refund;
- 20 May 2016 to 19 November 2016, Duty Assessment Number 0091, total interim duty refund;
- 20 November 2015 to 19 May 2016, Duty Assessment Number 0078, total interim duty refund;
- 20 May 2015 to 19 November 2015, Duty Assessment Number 0067, total interim duty refund;
- 20 November 2014 to 19 May 2015, Duty Assessment Number 0056, total interim duty refund; and
- 20 May 2014 to 19 November 2015, Duty Assessment Number 0047, total interim duty refund.

The cooperation required between THS and the importer in order to secure the dumping duty refund via multiple duty assessment applications is testament to the strength of the supplier-customer relationship that has been established between THS and the importer.

The strength of the relationship between THS and the Australian importer SANWA is confirmed in the THS Annual report for 2018, with SANWA reported to be the third-largest customer of THS by sales revenue for the 2017 and 2018 periods.²¹

¹⁷ Non-confidential Attachment A – THS Annual Report 2018 at pp. 149

¹⁸ EPR Folio No. 499/057 and 505/048 at p. 5

¹⁹ SEF 505 at p. 13

²⁰ EPR Folio No. 499/048 and 505/039 at p. 2

²¹ Non-confidential Attachment A – THS Annual Report 2018 at p. 146

ii. Customer names for the top ten sales within recent two years:

Unit: NT\$ thousands ; %

2018			2017		
Customer name	Amount	Proportion	Customer name	Amount	Proportion
Rieter Steel Co., Ltd.	2,361,564	5.94	MITSUI VIETNAM CO.,	3,164,317	9.97
CÔNG TY TNHH MITSUI VIỆT NAM	1,633,574	4.11	Rieter Steel Co., Ltd.	1,938,797	6.11
SANWA	1,613,402	4.06	SANWA	1,545,448	4.87

Liberty Primary Steel considers that there is evidence of an established, long term relationship between SANWA and THS for supply of HRS into the Australian market that does not show any sign of abating. Both the importer and exporter would have been acutely aware of the Continuation Inquiry timing and likely investigation period. As keen users of the duty assessment process to secure duty refunds, appropriate constraint on pricing would have been applied through the investigation period to ensure the best possible outcome for THS from the Continuation Inquiry. Whilst THS export prices weren't necessarily held to the floor price in a rising Australian HRS market, the measures were still acting through this period to prevent THS from dumping.

THS have further questioned, since the Australian industry is unable to supply the entire Australian HRS market, why the shortfall shouldn't be "*serviced by undumped imports, as verified by the Commission, from THS, otherwise what will be the impacts to the Australian economy?*"²²

Irrespective of whether Liberty Primary Steel has the capacity to supply the entire Australian market, Liberty Primary Steel agrees that the market should also be "*serviced by undumped imports*". This is the policy intent of Australia's anti-dumping legislation. For this to happen, the continuation of measures is central to ensuring that future imported goods are either not dumped or that the level of dumping is remedied by effective measures. This allows all market participants to compete strongly on a level playing field.

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

FOR AND ON BEHALF OF

THE AUSTRALIAN INDUSTRY APPLICANT

²² EPR Folio No. 499/057 and 505/048 at p. 2