NON-CONFIDENTIAL

25 September 2019

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

BY EMAIL: **investigations2@adcommission.gov.au**

Dear Director,

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

AUSTRALIAN INDUSTY RESPONSE TO MEETING WITH HYUNDAI STEEL CO. LTD

OneSteel Manufacturing Pty Limited, trading as 'Liberty Primary Steel' (**Liberty Primary**), the applicant for *Review of anti-dumping measures*[1] and *Continuation of a Dumping Duty Notice*[2] in this matter refers to the File Note concerning the recent meeting with Hyundai Steel Co. Ltd (**Hyundai**) and its representatives.[3] Liberty Primary responds to a number of incorrect and misleading assertions made by the exporter in the course of its meeting with the Commission.

Claims of unsubstantiated "loss-making"

Hyundai's representative claims *"the Applicant's intra-group based sales of like goods, and its distribution arm's significant 20% gross profit margin (AUD137m) during FY2017-2018"*[4] [emphasis added]. However, what the representative fails to disclose is that the earnings before tax (**EBT**) result is a more sobering, [redacted] [EBT result] for InfraBuild Trading Pty Ltd (formerly OneSteel Trading Pty Limited). Liberty Primary observes that the Commission's assessment of the economic conditions of the Australian industry always occurs at the EBT level, so it is unclear why on this occasion, the exporter seeks to assert an "unsubstantiated 'loss-making'" narrative on the basis of the gross margin of a customer of the Australian industry member, albeit a related party. If it is the exporter's intention to assert an allegation of 'profit shifting' from manufacturer to related customer, then its argument is misguided.

[1] Refer ADN No. 2019/02 (3 January 2019).
[2] Refer ADN No. 2019/021 (11 February 2019).
[3] EPR Folio No. 505/050 (20 September 2019).
[4] EPR Folio No. 505/050 (Attachment 1), p.2.

In any event, we fail to follow the relevance of the exporter's argument that the *"changed identity/structure of Australian industry"*[5] somehow affects the Commission's ability to assess material injury to Liberty Primary as the sole member of the Australian industry producing 'like goods'. We observe that the assessment of injury to the domestic industry only relates to its production and sales of the 'like goods', not to the entire general category of goods produced (or no longer produced) by the industry member. In this regard, nothing has changed since the original *Investigation No. 223*, whereby the economic analysis remains confined to the 'like goods' only.

Claims that "rail" products are a form of HRS

Liberty Primary is gravely concerned that Hyundai Steel, as one of the world's largest steel manufacturers, asserts publicly its belief that *"[r]ail is a form of HRS"* and that *"HRS in the form of rail is a like good to HRS subject to duty..."*[6]. Quite apart from the entirely different shapes, size and Standards[7] of rail and HRS products, we refer the exporter to the goods description, in particular the exclusions from the description of the goods the subject of measures:

> *"Hot rolled structural steel sections in the following shapes and sizes, whether or not containing alloys:*
> - *universal beams (I sections), of a height greater than 130mm and less than 650mm;*
> - *universal columns and universal bearing piles (H sections), of a height greater than 130mm and less than 650mm;*
> - *channels (U sections and C sections) of a height greater than 130mm and less than 400mm; and*
> - *equal and unequal angles (L sections), with a combined leg length of*
> - *greater than 200mm.*
>
> ...
>
> *"The measures do not apply to the following goods:*
> - *hot rolled 'T' shaped sections, sheet pile sections and hot rolled merchant bar shaped sections, such as rounds, squares, flats, hexagons, sleepers and **rails**; and*
> - *sections manufactured from welded plate (e.g. welded beams and welded columns)."*[8] *[**emphasis** added]*

"Steelforce acquisition" allegations

At the outset it is important to make a number of observations concerning the acquisition of Steelforce Holdings Pty Ltd by the InfraBuild Group:

1. the acquisition occurred outside (following) the review/inquiry period for REV 499/CON 505; and

[5] EPR Folio No. 050 (Attachment 1), p. 2.
[6] EPR Folio No. 050, p. 2.
[7] The Australian Standard for structural steel is AS/NZS 3679.1, whereas the Australian Standard for *railway track material steel rails* is AS1085.1.
[8] ADN No. 2019/21 (11 February 2019)

2. Liberty Primary does not belong to the InfraBuild Group, and has no common Australian parent company with the latter.

There is no definition known under domestic law that would equate Steelforce Holdings and any of its subsidiaries as members of the Australian industry producing like goods. Therefore, when Hyundai seeks to imply that *"[t]he newly-formed Australian industry account for [redaction] of Hyundai Steel's overall exports to Australia during the POI"*, then the exporter is attempting to misguide the Commission not only in terms of the legal definition of who comprises the Australian industry, but also to imply Liberty Primary consignments of imports by an entity which [at the relevant time] was a wholly independent party to the Australian industry member. For the avoidance of doubt, this inference by Hyundai must be entirely rejected by the Commission as incorrect, unreliable and irrelevant.

We assume that Hyundai is attempting to implicate Steelforce Holding's pre-acquisition imports from the exporter in the redacted table referencing a number of periods preceding the Steelforce acquisition.[9] Furthermore, in a note to this table, Hyundai wrongly describes Steelforce as *"a vertically integrated manufacturer, trader and distributor of <u>long product steels</u> across Australia and New Zealand"* [<u>emphasis</u> added].[10] This is not correct, Steelforce is only integrated with respect to pipe and tube products, not 'long steel products' as conventionally understood by the industry.

In any event, we fail to understand the exporter's concern regarding *the "Steelforce acquisition and the future of the Australian industry"*,[11] especially since the Australian Consumer and Competition Commission expressly dismissed these concerns:

> *"The ACCC concluded that the proposed acquisition would be unlikely to result in a substantial lessening of competition in any relevant market.*
>
> ...
>
> *"Despite the acquisition leading to Liberty having a substantial market share in each state, <u>the ACCC considered that the continuing presence of a number of competing distributors in each state, and the ability of these distributors to expand their operations, would act as a constraint on Liberty post-acquisition. In reaching this conclusion, the ACCC had regard to the fact that most customers regularly seek quotes from multiple distributors, and that there are limited barriers to customers switching between distributors.</u>"*[12]

In support of the ACCC's conclusion we observe that there remain several third-party ACRS certified[13] and non-certified mills that are able to supply HRS to Australia and are more likely to do so if they are not competing against heavily dumped South Korean exports.

[9] EPR Folio No. 505/050 (Attachment 2), p. 3.
[10] EPR Folio No. 505/050 (Attachment 2), p. 3.
[11] EPR Folio No. 505/505 (Attachment 1), p. 3.
[12] https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/gfg-alliance-australia-liberty-house-group-steelforce-holdings-pty-ltd (accessed 23 September 2019)
[13] https://www.steelcertification.com/structural_hot_rolled_sections.html (accessed 23 September 2019)

"Treatment of duty paid sales and the IDD"

We remain unclear with respect to the exporter's arguments concerning *"recognising the special nature of IDD, like the USDOC"*. With respect, the United States administration operates a retrospective duty collection system based on the taking of cash deposits, not interim duties. On the other hand, the Australian system operates prospectively.

When the export price is determined deductively, the domestic law is clear on the deduction of taxes and duties paid by the importer as a prescribed deduction.

We do not understand how the exporter reasons within its dumping margin calculation table, that non-deduction of interim duty paid exaggerates the dumping margin. For example, assume the following conditions:

- Ascertained normal value (ANV) = AU$110
- Ascertained export price (AEP) = AU$100
- Ad valorem rate = 10%

Therefore, assuming that a single transaction is made following the imposition of duties, i.e. within the first review period at a DDP price of AU$110 (assuming no other post exportation expenses or GST incurred), then the deductively determined export price would be calculated as follows:

- Price at first point of resale to an unrelated buyer in Australia (per unit):	AU$110
less amounts for:	
- Interim (or final) duty paid	AU$10
- Deductive export price (FOB)	AU$100

Assuming the ANV for the Review Period remained fixed at AU$110, then the dumping margin for the Review Period remains 10%.

"Form... of anti-dumping measures"

We observe the attendance of Mr Chan Joo Lee of DKC Global Trade Consulting and assume that the services of this firm have been engaged by Hyundai. We note from the firm's website, the following services are offered:

> *"DKC Global Trade Consulting is composed of highly experienced consultants, who have indulged in extensive antidumping proceedings. Our experience extend [sic.] to various different industries, such as electronics, steel, chemical and etc. The extent of our service also provides pre-monitoring, pricing strategies, and antidumping margin assessments through profound analysis of the data.*

> *"DKC Global Trade Consulting has been involved in antidumping cases filed by government authorities of different countries, including the United States, China, EU, India, Australia, Canada, Thailand, Brazil, Pakistan, Japan and etc. With such experience, we have acquired profound knowledge of different antidumping margin calculation methodologies. Hence, we have developed our own dumping margin calculation toolkit, which considers various scenarios and comprehensive data processing in order to pinpoint the most approximate dumping margin rate."*[14]

Given Hyundai's access to such experienced advisors with the ability to offer *"pre-monitoring , pricing strategies, and antidumping margin assessments"*, then there is no reason why the combination method of interim duty calculation should not be imposed, given that any variable amounts of duty collected cannot possibly be punitive or unforeseen since they have access to such sophisticated *"dumping margin calculation toolkits"*. This is especially so with respect to their duty paid sales to Australia, and their capacity to seek a repayment of any excess duty paid via the Final Duty Assessment process. The primary consideration for the Minister when issuing her notice under s.8(5) of the *Dumping Duty Act* is to ensure that the anti-dumping measures imposed remain effective. In this regard, the ineffectiveness of the *ad valorem* method of interim duty calculation is beyond debate – with the exporter increasing its dumping margin from 2.52%[15] to 9.9%[16] when measures were calculated and collected by reference to an *ad valorem* rate.

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

[14] http://dkc-kr.com/trade-remedy/ (accessed 23 September 2019)
[15] ADN No. 2014/127
[16] ADN No. 2018/167