

OFFICIAL USE and PUBLIC RECORD VERSION

2 October 2019

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

By E-mail: investigations2@adcommission.gov.au

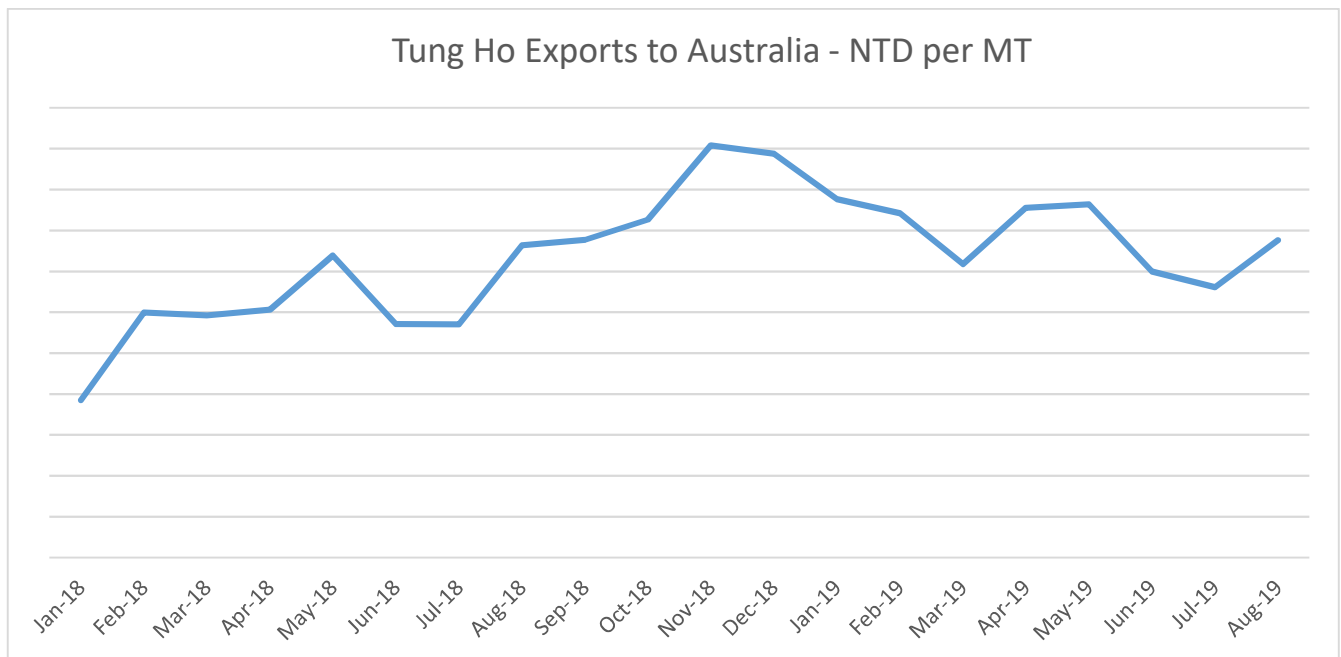
Dear Director

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

1. As you are aware, I am the authorised representative for Tung Ho Steel Enterprise Corporation ("THS").
2. We refer to ONESTEEL MANUFACTURING LIMITED ("Liberty Primary Steel") submission, dated 23 September 2019, and provide the following reply.

Form of measure

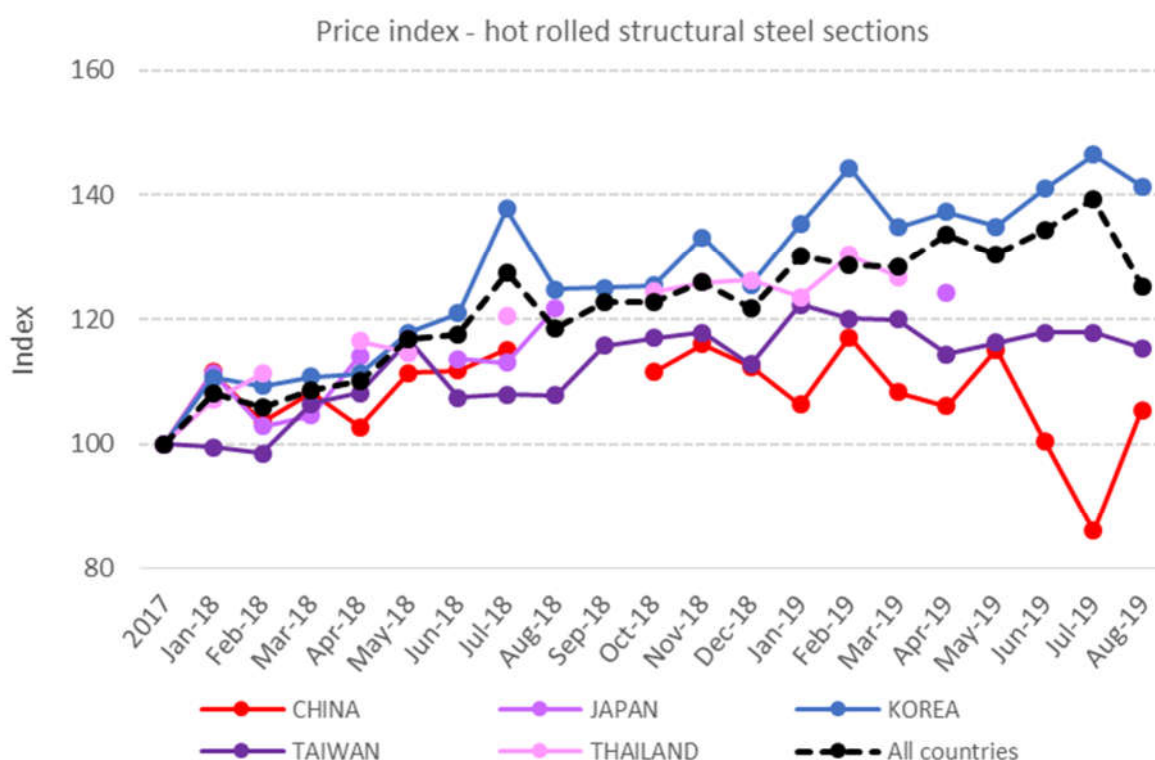
3. In THS submission dated 2 September 2019, we provided the following graph of THS monthly export prices to Australia during the investigation period and subsequent: -



4. In Liberty Primary Steel submission dated 23 September 2019, they make the following observation (***emphasis added***): -

*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 countries 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.*

5. However, Liberty Primary Steel failed to provide the most recent publication of the Commission’s Trade Remedies Index, as follows: ⁻¹



6. The above support THS export data and also demonstrates a significant fall in the market price for August 2019 for the “all countries” index, again demonstrating fluctuating if not falling market.
7. The Liberty Primary Steel submission dated 23 September 2019 then goes on to make the following unsubstantiated and spurious allegations: -

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”. 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 dumping margin calculations. The Commission may well be dealing

¹ Trade Remedies Index Report for the month ended 31 August 2019 dated 11 September 2019, page 12



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. 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.

8. THS reject these allegations as mere conjecture, with no evidence at all. To the contrary, as **verified** by the Commission during six duty assessments, two reviews of measures investigations and one continuation investigation, rather espoused by THS as implied by Liberty Primary Steel.
9. THS will continue to export goods to Australia at un-dumped and profitable prices, based on the cost to make and sell (including variable expenses) plus a profit margin, only where Australian market conditions/customers will accept that price. THS would also welcome the Commission to verify sales are un-dumped after 31 December 2019, if required, to debunk the above Liberty Primary Steel conjecture.
10. Concerning the following extract from Liberty Primary Steel submission dated 23 September 2019, it is not significant that THS omitted from REP 70, the paragraph regarding negative dumping margins, as we would consider the Commission would be well aware of this. Our point was, as emphasised that any likelihood determination **must rest on a sufficient factual basis**.

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.

Excess global steel capacity and trade distortion

11. Liberty Primary Steel submission dated 23 September 2019 claims THS has not been forthcoming to the Commission concerning the impact of trade distortions. The annual report is on the public record, as Liberty Primary Steel has reported; however, all they have provided are potential impacts to THS, that THS has provided to shareholders, and other readers, as a duty of disclosure. Again, no actual evidence.

Tung Ho Steel capacity to produce HRS

12. Liberty Primary Steel submission dated 23 September 2019, provides the following spurious allegations: -

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.



13. Then provides the following, extracted from THS 2018 annual report (highlight box added): -

v. Production value of last two years

Unit: metric tons, NT\$ thousands

Year 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	1,000,000	548,442	9,860,169	1,000,000	477,733	7,111,435
Steel plate		82,358	1,552,989		59,951	904,220
Channel steel		62,842	1,202,075		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
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. As Liberty Primary Steel and the Commission would fully understand is that the 1,000,000t capacity is name-plate capacity only, based on optimal operation, e.g. one shape.
15. The Commission requests production data as part of exporter questionnaires, with the following note concerning production capacity: -

““ Rather than showing a ‘name-plate’ optimal capacity it is more meaningful to show the maximum level of production that may reasonably be attained under normal operating conditions. For example assuming: normal levels of maintenance and repair; a number of shifts and hours of operation that is not abnormally high; and a typical production mix.”*

16. Actual production capacity has been provided and verified by the commission.

Relationship between THS and Importer and legitimacy of un-dumped supply to the Australian market

17. The relationship between THS and Australian importer Sanwa has been verified as arms-length by the Commission.
18. There has been no evidence of Sanwa relying on favourable duty assessments to recover their costs of import of goods from THS, unlike Kukje², together with other evidence found by the commission in REP 379.
19. Cooperation is required between THS and importer Sanwa to secure dumping duty refunds, however great commitment is required by THS, together with the Commission and the Australian

² Final Report 379



taxpayer to assess dumping duty assessments.

20. Liberty Primary Steel submission dated 23 September 2019 then makes the following conjecture ("***emphasis added***"):-

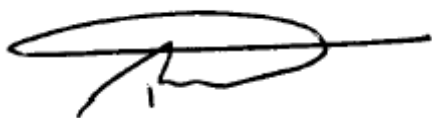
*Liberty Primary Steel considers that there is **evidence of an established, long term relationship between SANWA and THS** for supply of HRS into the Australian market **that does not show any sign of abating**. Both the importer and exporter would have been acutely aware of the Continuation Inquiry 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.***

21. The only evidence Liberty Primary Steel has established is that a long term relationship between Sanwa and THS exists, and THS are likely to continue to supply HRS to the Australian market, not evidence for a likelihood determination that dumping would be probable if the measures were terminated.
22. Besides, there is no evidence that the imposition of a floor price during the investigation period acted in any way to prevent THS from dumping, only THS procedures, policies and actual sales data as verified by the Commission.

Submission Summary and Conclusion

23. Liberty Primary Steel continues to provide no factual evidence regarding the likelihood of dumping recurring and the material injury that the anti-dumping measures were intended to prevent.
24. The continuation of measures in the form of a floor price would be imposed without evidence to validate a likelihood determination. Also, THS will continue to export HRS to Australia at un-dumped prices, however, should market conditions and variable factors require export price to be below floor price, then dumping duty will become payable applying the unnecessary burden on THS, Sanwa, the Commission, and more importantly, the Australian taxpayer and national interest, to apply, assess and verify duty assessment applications.
25. The Commissioner should recommend the notice ceases to apply in relation to a particular exporter, being THS.
26. Should you require any further information concerning this submission, please contact the writer.

Yours faithfully



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