



25 July 2019

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

BY EMAIL:  
[Investigations2@adcommission.gov.au](mailto:Investigations2@adcommission.gov.au)

Dear Director,

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

**AUSTRALIAN INDUSTRY SUBMISSION**

ONESTEEL MANUFACTURING PTY LIMITED (**Liberty Steel**) provides the following submission in regard to Continuation Inquiry 505 and Review 499, and in response to the Siam Yamato Steel (**SYS**) submission of 4 April 2019<sup>1</sup>.

**Cumulation of injury**

Liberty Steel submits that in assessing whether the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent, the Anti-Dumping Commission (**Commission**) should again consider the cumulative effects of the dumped imports.

In recommending the imposition of measures following Investigation 223 the Commission found in Final Report 223 (**REP 223**) that:

The Commission considers the conditions of competition are such that it is appropriate to consider the cumulative effect of the dumped imports from Japan, Korea, Taiwan and Thailand.<sup>2</sup>

In considering whether cumulation was appropriate the Commission found that:

The conditions of competition between imported and domestically produced HRS are similar. Furthermore, domestically produced HRS can be directly substituted with the exported HRS and evidence indicates that the importers' customers are directly competing with OneSteel's distribution network.

<sup>1</sup> EPR Folio No. 505/006

<sup>2</sup> REP 223, p. 73.

Two of the importers subject to verification visits by the Commission imported from at least two of the countries subject to the investigation and sold the imported HRS to their customer base. This indicates that HRS from different countries is used by the same or similar customers (of the importer).

The goods are alike, have similar specifications and end-uses, and compete in the same markets. This has been verified during importer, exporter and Australian industry visits completed to date.<sup>3</sup>

Liberty Steel provided evidence to the Commission at the verification visit that demonstrated that offers of HRS from the four countries subject to anti-dumping measures continue to be used in setting import parity prices (IPP) as the reference point for the Liberty Steel prices<sup>4</sup>.

In REP 223 the Commission further found that:

... the data and information provided to the Commission which evidences the high level of transparency and sensitivity surrounding price in the Australian HRS market, and the extent to which it is reasonable to conclude that OneSteel's prices are inextricably influenced by prices from import competition.

The nature of the HRS market is that products of the same specification (in this case product made to the AS/NZS 3679.1) from different sources are generally interchangeable. As a result, price is one of the primary factors affecting purchasing decisions.<sup>5</sup>

Liberty Steel places significant importance on maintaining sales volume and continues to operate an import benchmark pricing strategy.

Known import offers in the market are used by customers to negotiate lower prices from Liberty Steel. As there are similar shapes, thicknesses and lengths for HRS models these are commodity products, and as such price is generally the main factor which influences customers' purchasing decisions.

Pricing in the market is driven by export prices from the four countries subject to the measures.

The exporters' export price to Australia is set by negotiations with the importers, the importers themselves are pricing in competition with other importers.

The *Industry Verification Report* for Continuation 505 notes that:

At the visit, Liberty Steel reiterated its claim that domestic prices are directly influenced by the price of imported goods. The verification team's finding that Liberty Steel continues to apply the IPP process supports Liberty Steel's claim.<sup>6</sup>

<sup>3</sup> REP 223, pps, 72-73

<sup>4</sup> [REDACTED] refer.

<sup>5</sup> REP 223, p. 75

<sup>6</sup> EPR Folio 505/008, p.21

## SYS Submission

SYS makes a number of false and misleading claims to which Liberty Steel considers it must respond as set out below:

### 1. SYS falsely claims that Liberty Steel is a monopolist in the Australian HRS market.

SYS's submission makes numerous references implying that Liberty Steel is a monopolist<sup>7</sup> in its pricing and behaviour in the HRS market yet provides no evidence to support their false allegations. The lack of substantiation is unsurprising as the Commission has consistently found that Liberty Steel's prices are influenced by import prices. The Commission's *Industry Verification Report*<sup>8</sup> clearly states:

In the original investigation (223), the Commission found that OneSteel sets its prices by applying an Import Parity Pricing (IPP) process in which it must negotiate prices with reference to offers made in the HRS market for imported goods. It was found that HRS exported to Australia from the subject countries at dumped prices required Liberty Steel to match those prices. **This resulted in OneSteel achieving lower prices than it might have otherwise and consequently experiencing material injury.**

In its application for the continuation of measures, Liberty Steel stated that it continues to apply the IPP process and that pricing in the Australian market is driven by prices of HRS exported from Japan, Korea, Taiwan and Thailand. Liberty Steel also stated that known import offers in the market are used as a tool by customers to negotiate lower prices from Liberty Steel. **The verification team found that Liberty Steel does continue to apply the IPP process and that the processes of price setting and negotiation described in REP 223 and in Liberty Steel's application remain in place. [emphasis added]**

These repeated findings by the Commission are in stark contradiction to the vacuous claims of SYS. The Commission's *Industry Verification Report* also notes that since measures were imposed on HRS in November 2014, import volumes and market shares have continued to increase. In calendar year 2018, (the Continuation inquiry period) the volumes of imports of HRS into the Australia market are estimated to exceed over ■ tonnes. Again, these facts contradict SYS's unsubstantiated and false claims that Liberty Steel is a monopolistic supplier.

In relation to the SYS claim that *"the potential for abuse of market power by monopolist pricing"* are *"matters no doubt of interest to ACCC, as it considers a takeover application as to Steelforce"*<sup>9</sup>, the ACCC has now finalised its consideration of the Steelforce acquisition by Liberty and will not be opposing the acquisition, as the extract from the ACCC media release<sup>10</sup> explains:

<sup>7</sup> EPR Folio 505/006, p12 at par 20

<sup>8</sup> EPR Folio 505/008, p9

<sup>9</sup> EPR Folio 505/006, p12 at par 21

<sup>10</sup> <https://www.accc.gov.au/media-release/liberty%E2%80%99s-acquisition-of-steelforce-not-opposed>



The ACCC's review focused on the wholesale supply and distribution of three types of long steel products: hollows, **structurals** and merchant bars.

"The ACCC looked closely at this proposed acquisition. We decided not to oppose it because we considered that **imported products and rival distributors will continue to provide strong competition**," ACCC Deputy Chair Mick Keogh said. [emphasis added]

Liberty Steel welcomes competition in the Australian market on the basis that it is fair competition. Liberty Steel is not a monopolist and there is no evidence that Liberty Steel exhibits monopolistic behaviour.

2. SYS misleadingly refers to findings of a 2015 Review of measures as a "recently completed Review" to justify its claim that measures should not continue.

SYS's submission makes multiple references to a so-called "recently completed review". The only completed Review of Measures applicable to SYS is Review 346 which had a review period of Calendar Year (CY) 2015. A Review under Division 5 of the Act, that relates to variable factors in a period that is over three years old cannot be considered to be recent.

The most remarkable element of Review 346 was SYS's exploitation of a loophole that existed in Australia's review legislation at the time. Following imposition of 18.28% *ad valorem* dumping margin in November 2014 for HRS exported by SYS, the exporter embarked on a strategy in which they reduced their annual exports of HRS to Australia by more than █% (from over █ tonnes per annum to █) and then applied for a Review of Measures. The contrived behaviour of SYS was identified by Liberty Steel (formerly OneSteel) in a submission during Review 346.

OneSteel alerts the Commission to the fact that the recent SYS export behaviour indicates that SYS have embarked on a deliberate short term strategy to nullify *ad valorem* dumping measures within 16 months of the imposition of duties.

Export data in the confidential table shows that since the imposition of measures in November 2014, SYS have only exported to Australia small volumes of the goods (approximately █ tonnes) at relatively high prices. This in turn inflates the ascertained export price ("AEP") during the review period and in turn generates a negative dumping margin that allows SYS to request a review of measures with the aim of reducing their dumping margin of 18.28% to zero.<sup>11</sup>

The SYS methodology to nullify the intended effect of measures was quickly adopted by other exporters across a range of products and threatened to undermine the effectiveness of Australia's anti-dumping system.

<sup>11</sup> EPR Folio 346/004, p.2.

This led to the enactment of the CUSTOMS AMENDMENT (ANTI-DUMPING MEASURES) BILL 2017 to close the loophole. The government's Explanatory Memorandum that accompanied the change to the legislation accurately describes the technique deployed by SYS:

**How might exporters exploit the current system?**

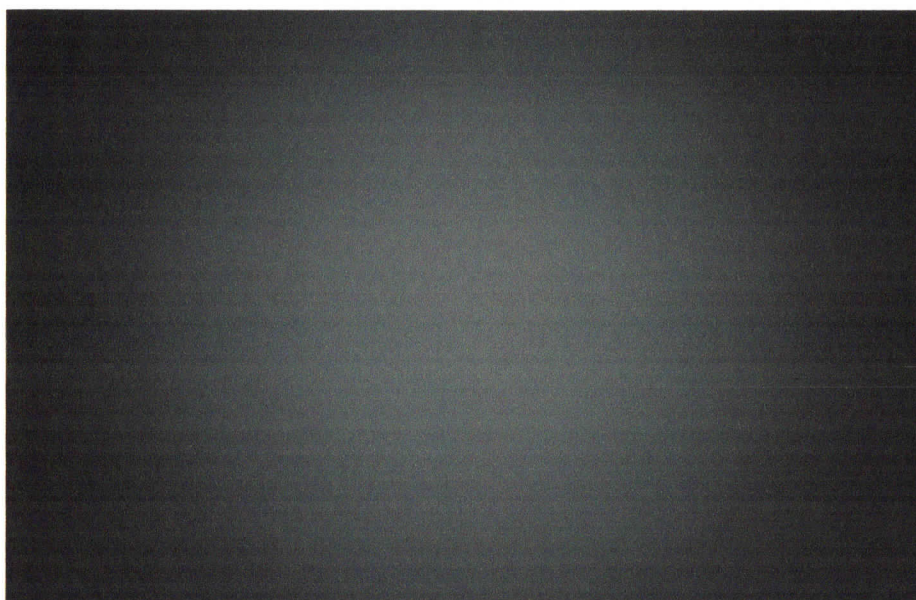
Under the existing framework foreign exporters can cease exporting for a period of time ('the review period') or export small volumes at a higher price, before applying for the anti-dumping measure to be reviewed, after which a lower rate or no rate is imposed. This can facilitate them then taking advantage of movements in the market to resume injurious dumping for a period of up to 18 months, without any effective measure in place.

By changing their behaviour by either suspending exports, or exporting sub-commercial quantities, exporters make it difficult to construct a non-zero duty rate. This rate would then apply on their return to the market at higher volumes.

A similar issue arises in the case of exporters who have exported very small quantities of the goods at high prices. Such behaviour would require the dumping margin for the exporter to be negative or zero, allowing them to receive a floor price set equal to their normal value (and a zero percent ad valorem element on top).

If the floor is set at a low point in the market, exporters could resume dumping when the market is strong with zero percent ad valorem duty and a floor price. This situation could persist for 18 months. The Australian industries who applied for the original anti-dumping measures are restricted from applying for another review for 12 months. Should they apply for a review at that stage, it would typically be another six months before new variable factors, new dumping margins and new anti-dumping measures are established.<sup>12</sup>

**Confidential Graph – Thai exports of HRS Australia – low volumes at high price<sup>13</sup>**



<sup>12</sup> CUSTOMS AMENDMENT (ANTI-DUMPING MEASURES) BILL 2017, EXPLANATORY MEMORANDUM (Ex EM), P.11.

<sup>13</sup> Data Source - [REDACTED]

Therefore, it is disingenuous for SYS to claim that the Review of Measures (346), a review designed to exploit a past weakness in Australia's legislation and undermine the remedial effect of Australia's anti-dumping system, establishes that SYS have not dumped since that time.

Finally, the Commission has preliminarily found in Review 499 and Continuation Inquiry 505, that SYS did dump during the period 1 January 2018 to 31 December 2018 by a margin of 5%.

The facts before the Commission are that SYS has a long history of dumping Hot Rolled Structural Sections into the Australian market having been found to be dumping in 2002 and again in 2014. SYS have shown themselves to be a sophisticated exporter that is willing to exploit weaknesses in Australia's legislation.

That SYS have been found to be dumping during the most recent Review and Continuation period further demonstrates that the measures are required to prevent SYS from dumping. It is for these reasons that it is very important that the Commission's recommendation to the Minister be that the measures should be continued.

FOR AND ON BEHALF OF

THE AUSTRALIAN INDUSTRY APPLICANT