

# STAUGHTONS

**PUBLIC RECORD VERSION.**

**Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459  
PO Box 867, Bacchus Marsh, Vic., 3340**

The DIRECTOR,  
INVESTIGATIONS 2,  
ANTI-DUMPING COMMISSION,  
CANBERRA, ACT 2600.

INVESTIGATION No 499  
CONTINUATION No 505  
SIAM YAMATO STEEL (SYS)

7<sup>TH</sup> August 2019.

BY Email: [investigations2@adcommission.gov.au](mailto:investigations2@adcommission.gov.au)

Dear Director,

I am writing on behalf of the Thai exporter of HRS, Siam Yamato Steel (SYS) in relation to the above mentioned concurrent investigations and with the request that especially in relation to the current Review of measures the Commission maintain consistency on the methodology and rationale employed in previous Reports No 223 and No 346.

SYS is also compelled to address some of the baseless and odious claims the applicant has made with regard to SYS's historical behaviour and so termed strategy in it's public record submission Nos 35, 37, 38.

ISSUES:

REVIEW of MEASURES-Case 499

- Request for Consistency on methodology.
- Mandatory MCC sub category on Yield Strength is inappropriate.
- Rejection of Applicant's observations on MTC's.
- Changed circumstances since original I.P.-Applicant's reference to 'cumulation' and injury. causation.
- Applicant's own imports & suspected price setting -NON- INJURIOUS imports.
- Applicant's obvious market power-Responsible for own price setting.

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RESPONSE to APPLICANT's SUBMISSIONS -EPR No 35; 37; 38;

- **Re EPR No 38-** The Commission is bound to maintain confidentiality on commercially sensitive information pertaining to the SYS verification and being the Australian 'gold medalist' on redactions the applicant should fully understand the need for confidentiality.
- **Re EPR No 37-**The applicant complains about the previous ad valorem duty imposed on the Korean exporter when it is apparent it has been the beneficiary of that duty method. SYS is strongly opposed to the imposition of the combination method of the variable Floor price & a fixed ad valorem method & submits that in cases of dumping duty being more than negligible the Commission should recommend the fixed ad valorem rate.
- The imposition of a Floor price is considered to be a punitive measure when the nature of the HRS sector is cyclical due to the need for global commodity inputs ( Scrap etc) and when the various shapes and grades have very different price points .
- Should however, the Commission recommend a Floor price when the dumping duty has been found to be negligible, the Floor price should be in the functional currency of the subject export transactions.
- **Re EPR No 35-**SYS responses to this submission are provided later in this document.

**CONTINUATION of MEASURES-Case No 505.**

- The SYS verification evidenced that it has no excess or incremental production capacity and has no plans to increase the production capacity of the GUC.
- SYS has reliably exported the GUC to several markets but not including the US market AND the only export market that has anti-dumping measures on its GUC exports is the Australian market.
- During the I.P. of this case ,SYS exports were subject to a Floor price and every transaction for the Australian market complied with the Floor price.
- On the basis the Commission maintains it's methodology from the previous investigations on SYS, the finding in relation to Case No 499 (nd Case No 505) will be negligible dumping.
- There should be no justification therefore for the imposition of any measures on SYS exports of the GUC beyond the expiry date of the present measures.
- The injury claims of the applicant are at best problematic, and at worse, possibly contrived.

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1. REQUESTS FOR CONSISTENCY ON METHODOLOGY:

- **Normal Value Methodology:**

With regard to the methodology for determining Normal Value in the current review of measures Case No 499, SYS submits that the Commission's methodology for calculating Normal Value should be consistent with that employed by the Commission in both the original investigation , Case No 223, and the Review of measures, Case No 346.

In Case No 223, the final report findings at para 7, page 60, stated-

- *'The Commission calculated the total normal value for the investigation period by using the quarterly weighted average unit normal value multiplied by the corresponding quarterly export volumes consistent with policy.'*

In Case No 346, the final report findings at para 5.4, page 17 stated-

- *'The Commission compared the quarterly weighted average of export prices over the whole of the review period with the quarterly weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB (2)(a) of the ACT.'*

- **Establishment of Normal Values:**

SYS previously submitted to the Commission that the Commission's partly adopted MCC structure of what the applicant proposed is simply inappropriate in that it requires a two tier mandatory Yield Strength based only on the relevant exporter's domestic standards nominal MPa which for this current Review of measures not only ignores the relevance and importance of actual and factual data evidenced by exporter mill test certificates (MTC'S) which for SYS are provided for every sales transaction and are the only means of steel users knowing the actual Yield Strength of their ordered HRS. Likewise, the Australian /New Zealand standard for grade 300 HRS products mandates that the applicant also needs to supply an MTC on its delivered products. The current mandatory sub-category of Yield Strength proposed by the applicant therefore appears to be a wilful attempt to exploit the process for its own self-interest gain by way of obtaining unintended market protection on both its Whyalla produced, and a likely preferential import supply of the GUC.

For reasons including the maintaining of consistency, the treatment and rationale employed by the Commission in Reports 223 & 346 should be applied in this Case No 499 (a Review of those measures). SYS also submits that the Commission can , if willing, adapt an investigation's initial MCC structure in accordance with verified evidence on an exporter-by exporter basis and as such SYS urges the Commission to seriously re-consider the mandatory sub category on Yield Strength to account for the real world situation as evidenced by exporter verification visits and modify the restrictive theoretical scenario on Yield Strength as proposed by the applicant.

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With regard to consistency of treatment and practice on comparability of domestic like goods;-

- **In Case No 223**, the Commission's final report decided to assess the comparable subset of goods on an exporter- by - exporter basis and in relation to the expert opinion report provided by the applicant (then operating as Onesteel), the Commission observed that the expert's report was limited to a standards comparison and did not '*consider the actual physical specifications of the products manufactured by each of the cooperating exporters and other evidence obtained by the Commission during this investigation*'.
- The Commission's final report No 223 also stated ,inter alia, -

*'To accept Onesteel's contention, that is, establishing normal values primarily guided by a comparison of standards would be to disregard the evidence obtained during the course of exporter verification in the form of mill certificates'.*

*'These certificates contain evidence of mechanical properties and chemical composition of the goods which establishes the actual physical specifications to which the goods are produced and sold. These certificates were important in establishing whether the physical characteristics of the goods produced in the domestic market are sufficiently similar to those produced for export sale for normal value purposes.'*

*-Emphasis added.*

- The final report of **Case 346** also included the following in relation to **Normal Value and Dumping margin**.

*'Normal Values were established in accordance with subsection 269TAC (1), using SYS's domestic invoice prices for like goods , by grade, shape and size, sold in the ordinary course of trade in arms length transactions.'* - (para 5.3)

*'The Commission compared the quarterly weighted average of exportprices over the whole of the review period with the quarterly weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB (2)(a) of the ACT.'*

*'The Commission finds that HRS exported to Australia by SYS in the review period was not dumped'- para 5.4.*

*Emphasis added.*

- **The Commission's approach to model matching -Final Report on Case 346.**

*'For the purposes of this review and consistent with Investigation 223, the Commission has examined a number of test certificates pertaining to SYS's export and domestic sales .These test certificates contain evidence of the mechanical properties and chemical composition of the goods, which establish the actual physical specifications to which the goods are produced and sold.'*

*Emphasis added.*

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## **Conclusion on Model Matching claims of applicant:**

SYS completely rejects the applicant's claim that \**' a comparison of mill test certificates against minimum export Standard requirements is fundamentally technically flawed '* on the basis that the claim is not only self-serving but is factually wrong as has been evidenced by the Commission's previous investigations on HRS.

**\*Liberty Steel public record doc # 29.**

## **Liberty Steel Public Record submission No 35.**

Liberty Steel's response to the SYS submission of 4<sup>th</sup> April 2019 includes references to the Commission's observations in the final report No 223 (REP 223), including the Commission's consideration on cumulation of imports and the prevailing conditions of competition.

It needs to be noted that REP 223 dealt with imports of HRS during the period October 2012 and September 2013 and if, as the applicant also claims that calendar year 2015 cannot be considered to be a recent period of time then clearly the investigation period of REP 223 cannot be considered a recent period of time.

More importantly however is the fact that since the REP 223 period of time there has been a significant ' change of circumstance', namely the obvious need for the applicant to import volume tonnes from Korea and it's more recent acquisition of 'Steelforce' which was a relatively large independent importer and stockist/distributor of HRS in Australia and new Zealand, and a company that the applicant did not directly supply with Whyalla product.

Public record submissions on behalf of another cooperating exporter clearly demonstrate that the applicant has been an importer of HRS which is supported by our own evidence of the applicant importing into the Western Australia market and market intelligence that the applicant provided its customers with imported HRS when they ordered Whyalla product.

Of even more significance however is the following extract from public record document No 34 on behalf of a cooperating exporter:-

- **'Further, insofar as Hyundai Steel's exports to Liberty Steel are concerned , the export prices reflect Hyundai Steel's acceptance of Liberty Steel's pricing requirements and thereby must also serve as a point of reference for determining the USP or non- injurious price' -EX page 8 , EPR Doc No 34.**

## **QUESTION ?**

Given the fact that Imports from Korea are said to have comprised up to 70% of the import volume of HRS,( which must have equated to more than 150k tonnes,) the above statement that the exporter in question accepted the applicant's pricing requirements could suggest that the applicant has effectively determined the import parity price (IPP) that it continually claims it needs to compete with on its Whyalla product and of course it would also be the price that other importers would need to compete with in the single Australian market.

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Should in fact that suggestion have merit, then the applicant's claims on it suffering material injury from dumped imports is invalid on the basis that any injury from price and volume effects by way of dumped imports is totally self-inflicted.

## **MARKET POWER:**

Liberty Primary Steel, the applicant, claims to be Australia's sole producer of the GUC and it mainly sells to an Australian related distribution network of 46 branches {Liberty Metalcentre plus the new addition of 'Steelforce' that was an importer} and all of the said entities are owned and operated by the same group. Further contributing to this market position is the need for the applicant to source imported product for its domestic sales.

The applicant does not supply each and every Australian customer which is its prerogative but if it intentionally foregoes sales opportunities then it cannot claim any loss of sales.

Whilst the only reliable, alternative market supply (apart from possibly Bluescope) is imports from the accredited subject countries, the GUC, unlike the more commodity type products such as HSS, can only be supplied by the number of accredited producer exporters of HRS to Australia and which is very limited with Korea, Taiwan, Thailand accounting for the volume of imports. There are however other country imports which by definition must be considered non-dumped, non-injurious by the applicant.

SYS maintains the view that the applicant is clearly responsible for its own domestic pricing and since 'dumping' and 'injury causation' is all about sales, and not production, the obvious need for the applicant to import at prices it apparently agreed with the exporter suggests it may have contributed to any apparent injury it claims was caused from so termed injurious imports.

## **OTHER MATTERS-APPLICANT'S SUBMISSION No EPR 35.**

- **Year 2002.**

With regard to SYS the applicant makes reference to the Commission's previous investigations of REP 223 and REP 346. The applicant also makes what we consider to be a misleading statement on SYS's historical behaviour being in relation to a year 2002 investigation involving SYS and exporters from Korea and South Africa. The current applicant's submission No 35 states SYS were found to be dumping in year 2002.

Whilst of little relevance to current actions but for reason of correcting the current applicant's claim that SYS was found in year 2002 to having 'dumped', we note that the facts relating to that investigation being Trade Measures Report No 55 (TMR) are:-

- ACDN No 2002/32 dated 5<sup>th</sup> July 2002 did state that SYS had initially 'dumped' – TMR No 55 found the rate was 3.52% compared to 18.25% for Korea and 42.59% for South Africa.
- On that same date however, 5<sup>th</sup> July 2002, ACDN No 2002/33 announced that the Minister had requested a Review of those measures but only on SYS being the subject of TMR No 62.

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- It can reasonably be understood that this unprecedented review action by the Minister would have been instigated by the applicant in its previous life as 'Onesteel'.
- The record then shows that ACDN No 2003/21 advised that the review of measures on SYS by TMR No 62 had been completed and that the report resulted in the Minister **amending the initial 3.52%** rate on SYS to de -minimis which means, factually, and contrary to the current applicant's claims , no measures by way of any interim dumping duty were applied to SYS from the initial investigation.

In any event those measures that were applied from the initial investigation expired on the 5<sup>th</sup> July 2007.

## **ACCUSATION-'SYS EXPLOITING THE SYSTEM'**

- **The applicant's claims that SYS acted strategically and exploited the then 'review system' is not only inventive and fanciful but completely without any logical basis.**
- The applicant stresses the issue of 'cumulation' in respect of competing imports and that all imports are price centric-in other words they all compete in the same single Australian market and that price alone determines whether they obtain sales. The applicant conveniently ignores the market reality of demand exceeding its controlled production capacity for the GUC and a restricted marketing policy on supplying the available market.
- Specifically ,with regard to the assertions that SYS strategically and intentionally only exported a small volume of GUC at high prices during year 2015 is contrary to the then prevailing market conditions.
- SYS had a fixed dumping duty rate of 18% compared to the volume Korean exporter's 2.52% (no floor price) and a Taiwan exporter's 2.2% (no floor price) and the applicant itself was an importer from Korea.
- It beggars belief therefore that given the applicant's repeated assertions that imports are all sold on price, that SYS, with a higher than necessary export price and with the importer having to pay 18% interim dumping duty would attract a final Australian customer prepared to pay a premium simply to acquiesce a supposed strategic play by SYS-That scenario is a nonsense and SYS could only have achieved sales for reasons of customer demand and product availability.

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- In any event the Commission found in Case No 346 that the SYS exports must have been sufficient to properly determine export prices vide subsection 269TAB (1)(a). Normal values were determined vide subsection 269TAC (1) **and the finding in para 5.4 was that the exports were not dumped.**

COMMENT:

**SYS in applying for a Review only exercised its proper entitlement and for Australia's most recidivist user of the anti-dumping system to accuse it of exploiting the system is simply disingenuous.**

Having been a long term observer of this applicant in its current and previous lives, this writer is never surprised but always disappointed that a sole Australian producer of goods required for domestic construction and infrastructure needs to have a business model based entirely on the anti-dumping system.

It would seem from these current and previous cases that the applicant is not content with having gamed the anti-dumping system, its actions suggest it is now attempting to hijack the system. It may also explain why no Liberty Steel person is prepared to put a name to any public record submission to the Commission..

CONCLUSION.

The Commission is requested to contact the writer for any clarification or further information .

Thank you for your consideration and,

Regards,

M J Howard  
Representative.

**Given the emphasis on 'Green steel' etc, Attached is the SYS World Steel Association certificate on Climate Action.**