

OFFICIAL USE and PUBLIC RECORD VERSION

13 September 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") response, dated 10 September 2019, to THS submission following publication of the Statements of Essential Facts 499 and 505, and provide the following reply.
3. We do not consider sufficient positive evidence has been established for the following, "**an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated – and not simply if the evidence suggests that such a result might be possible or plausible**".¹
4. Also, the Anti-Dumping Review Panel observed the following (**emphasis added**): -
 - a. *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.*²
5. Liberty Primary Steel's states the following (**emphasis added**): -
 - a. *"The Commission in SEF 505 provided extensive particulars of the **evidence** relied upon to support the 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 prevent."*
6. To support the above claim, Liberty Primary Steel provides the following extracts from SEF 505 (**emphasis added**), which we will now provide the **following further comments and observations**: -
 - a. *"The Commission considers that excess capacity in China encourages Chinese manufacturers to*

¹ THS Submission dated 2 September 2019, para 12 - United States - Corrosion carbon steel products from Japan. AB, para 111

² ADRP Report No. 70, page 13, paragraph 47.



seek export markets for their products. In respect of manufacturers that are under consideration in this inquiry, it is reasonable to deduce that they will continue to face competition in several markets from Chinese manufacturers and that it is in their interests to continue to export HRS to Australia.”³

✓ The above, is supported by reference to page 29 of Steel Market Developments – Q4 2018 OECD report, which we cannot locate the supporting quote on page 29, however the statement doesn't provide evidence of probable outcome to HRS exports to Australia.

b. “Excess steelmaking capacity in China is apparent and the **possibility** of diversion of HRS trade to any of the countries subject to this inquiry is present. Such diversion **would likely result** in the need for HRS producers in those countries to expand their export trade to other countries, including Australia.”⁴

✓ No evidence of this possible outcome has been provided. Besides, how is it specific to HRS and Australian market and suppliers.

c. “The Commission considers that this [Ai Group November 2018 Construction Outlook findings] indicates that high levels of demand in the Australian HRS market will continue to be present from 2019 to 2020. The Commission also considers it is reasonable to expect that some of this demand will continue to be met by importers.”⁵

✓ As identified by the Commission, “at full capacity, the Australian industry cannot supply the entire Australian HRS market⁶”, why shouldn't this demand be serviced by un-dumped imports, as verified by the Commission, from THS, otherwise what will be the impacts to the Australian economy?

d. “The Commission has found that in 2018, the three largest exporters of HRS to Australia, Hyundai, **Tung Ho** and SYS, accounted for the largest proportion of HRS exports to Australia. The analysis also indicates that they have been the three largest exporters of HRS to Australia since 2010.”⁷

✓ Exports from Tung Ho have been verified as un-dumped; however exports from Hyundai and SYS will likely be subject to measures. Again, why shouldn't Liberty Primary Steel's inability to supply the entire Australian HRS market demand, be serviced by un-dumped imports, as verified by the Commission, from THS?

e. “At the industry verification visit, the Commission was presented with evidence that indicated Liberty Steel continues to apply the IPP process and that the processes of price setting and negotiation as described in REP 223 and in Liberty Steel's application remain in place. This evidence included the provision of Liberty Steel's IPP model which is used to negotiate and set prices and that incorporates prices of imported HRS, copies of correspondence with customers as well as discussions with relevant sales personnel at Liberty Steel.”⁸

✓ Unlike Liberty Primary Steel, THS selling price is based on the cost to make and sell (including variable expenses) plus profit margin, for both domestic and export sales, with export prices further benchmarked against prevailing domestic selling prices to ensure goods are un-dumped. The Commission has verified THS exports to Australia as un-

³ SEF Continuation Inquiry 505 – Page 27

⁴ SEF Continuation Inquiry 505 – Page 28

⁵ SEF Continuation Inquiry 505 – Page 14

⁶ SEF Continuation Inquiry 505 – Page 47

⁷ SEF Continuation Inquiry 505 – Page 13

⁸ SEF Continuation Inquiry 505 – Page 15



dumped on multiple occasions. If Liberty Primary Steel chooses to continue to apply their flawed IPP model, rather than on a costed and quality model, then at least IPP will be based on un-dumped exports to Australia from THS or dumped exports subject to measures.

- f. *"The Commission **considers that it is reasonable to expect** Tung Ho will aim to maintain its level of export sales volumes. The Commission considers that in order to do so in a market such as the Australian HRS market, which can be described as a price sensitive one and, as such, one with a high degree of price elasticity, Tung Ho would be required to maintain its export prices at current levels relative to other imports."*⁹

✓ Yes, it is reasonable to expect THS will aim to maintain or increase the level of export sales volumes, but at profitable and un-dumped prices. Besides, THS will be competing with "other imports" that will be subject to measures, providing THS (likewise Liberty Primary Steel) the opportunity to apply a price premium.

- g. *"The Commission has analysed details of Tung Ho's **verified export sales data** and has found that there is a strong negative correlation between price and export quantity. That is, when price falls, exports increase and vice versa. This supports a finding that the Australian HRS market can be described as a price sensitive one. **It follows that in order to increase exports, Tung Ho must decrease its prices.**"*¹⁰

✓ We refer to attached confidential graph demonstrating quarterly FOB export volumes and average HRS price for quarters ended from 30 June 2014 to 30 June 2019, extracted from verified sales by the Commission in reviews and duty assessments.

✓ The attached does not demonstrate "strong negative correlation between price and export quantity", but the opposite, as the highest volume of sales have been when the average price has been near peak levels during the period.

✓ We consider the correct correlation between THS export volumes and prevailing offer prices from competing dumped import sources. THS will not accept an order unless it is profitable and at un-dumped pricing.

✓ It doesn't follow that in order to increase exports, THS must decrease price. THS will continue to export HSS to Australia at un-dumped and profitable prices.

- h. *"The Commission has found in Review 499 that over the review period there is a small differential between Tung Ho's export price and normal value. As such, a small reduction in export prices relative to Tung Ho's domestic prices would result in dumping. **In these circumstances, the Commission considers** that it is likely that exports of HRS at dumped prices by Tung Ho would recur if the measures expire."*¹¹

✓ No evidence of this possible outcome has been provided, or is there any history of this occurring. Although, "in Review 499 that over the review period there is a small differential between Tung Ho's export price and normal value", why should it be assumed, "it is likely that exports of HRS at dumped prices by Tung Ho would recur if the measures expire", when the contrary has been assessed in Review 499, Review 345 and six duty assessment verifications. There is no motivation for THS to export at un-dumped prices, however the opposite, due to lack of future competition from other exporters subject to measures.

- i. *"The Commission considers that if the measures expire dumping by Tung Ho and TS Steel is*

⁹ SEF Continuation Inquiry 505 – Page 33

¹⁰ SEF Continuation Inquiry 505 – Page 33

¹¹ SEF Continuation Inquiry 505 – Page 33



likely to recur. The Commission also considers that:

o the increasing volumes of HRS from Taiwan;

o the price undercutting observed in respect of HRS imported from Taiwan and sourced from Tung Ho;

o the high degree of price elasticity in the Australian HRS market; and

o the import price competition to which Liberty Steel is subject;

would likely result in Liberty Steel achieving reduced selling prices should the measures on Tung Ho and TS Steel expire. Consequently, price suppression and the resulting impact on revenue and profits are likely to worsen if the measures on HRS exported to Australia from Taiwan by Tung Ho and TS Steel expire.”¹²

- ✓ Increasing volumes of HRS from Taiwan, however, verified un-dumped volumes by THS over two 12 month review periods, and six 6 month duty assessment periods.
- ✓ Undercutting of HRS sourced from THS have been verified at un-dumped and profitable prices.
- ✓ There is a high degree of price elasticity in all HRS markets, not just Australia; same applies in Taiwan, however doesn't cause dumping by THS, as verified by the Commission.
- ✓ Liberty Primary Steel will be subject to import price competition from HRS subject to the measures, with THS (likewise Liberty Primary Steel) able to charge a price premium.

7. Liberty Primary Steel then provides the following response to our THS Submission to SEF dated 2 September 2019, which we will now provide the following further comments and observations: -

a. *“In an attempt to counter the Commission’s assessment that THS is likely to resume dumping if excluded from measures, THS state that they have systems in place to ensure “no accidentally [sic] dumping” occurs and provide the total interim duty refunds claimed by THS and the preliminary findings of Review 499 as evidence to support their claim that their systems to avoid “accidental” dumping do work. Liberty Primary Steel provides the corollary view that these findings simply demonstrate that the measures applying to THS during this time have been effective in delivering the intended effect of preventing dumping by this exporter and should be continued.”¹³*

- ✓ This corollary view is not supported by any evidence, unlike the THS history of verified exports to Australia of profitable and un-dumped HRS over an extended period. There is no incentive for THS to export HRS at dumped prices. THS, unlike Liberty Primary Steel, run a primary business strategy, based on profitability for a return to shareholders, which is why it has established systems to mitigate any potential dumping exposure, to ensure all markets remain available to THS. Also, as stated previously in this reply and previous submission, 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.

8. Liberty Primary Steel makes the following reference to page 56 of the Commissions Final Report 379 which we will now provide the following further comments and observations: -

a. *“In its Final Report 379 – Continuation Inquiry into hollow structural sections exported from China, Korea, Malaysia and Taiwan, the Commissioner made a similar assessment in relation to the Korean exporter Kukje that was found not to be dumping during the inquiry period and an earlier Review.*

A compelling factor of the Commission’s assessment of the likelihood of the reoccurrence

¹² SEF Continuation Inquiry 505 – Page 40

¹³ Liberty Primary Steel Response dated 10 September – Page 3



of dumping is an assessment of the effectiveness of the current measures. Kukje's export pricing methodology is a positive indication that the imposition of the measures are having their intended effect."

- ✓ This is true; however, Liberty Primary Steel fails to mention evidence obtained and investigations undertaken by the Commission, in making the above assessment as follows, which have not been undertaken or obtained concerning THS: ¹⁴
 - ✓ Kukje excess capacity. [THS is near full capacity]
 - ✓ Other Trade Remedies in other jurisdictions.
 - ✓ Evidence obtained by the Commission during the onsite verification of Kukje's export sales data and the sales data of its only Australian customer proves that during the inquiry period Kukje has consistently imported HSS at, or close to, the ascertained export price.
 - ✓ The Commission discovered evidence during the onsite verification of Kukje's only Australian customer's import data, which indicated that this importer has relied on achieving favourable duty assessments in order to cover a majority of its costs to import and sell.
 - ✓ The evidence suggests that the relationship between Kukje and its customer extends beyond that of simply seller and buyer into a relationship where jointly they have constructed a pricing methodology in order to remain competitive without dumping.
 - ✓ The Australian industry and other interested parties have provided evidence that demonstrates that Kukje's pricing is consistently lower than the majority of its competitors and they have expressed concern that these pricing offers are at levels that do not allow for full cost recovery. [Commission should benchmark THS pricing to other exporters to verify, but THS believe their price will be above others]
 - ✓ 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.
 - ✓ Evidence also obtained during onsite verification shows that Kukje relies heavily on exports of HSS to the United States (US). As noted above, the Commission is of the view that the measures recently imposed on HSS in the US market will make it difficult for Kukje to maintain its export volumes to the US market, and as a consequence Kukje is likely to increase its reliance on Australia as an export market.

9. Liberty Primary Steel then provides the following response to our THS Submission to SEF dated 2 September 2019 (**emphasis added**), which we will now provide the **following further comments and observations**: -

- a. *"THS also claim that because the Commission has found that they have limited capacity to increase HRS production that this is a reason they are unlikely to recommence dumping if the measures are not continued. **This indicates a misunderstanding on the part of THS** of the*

¹⁴ Final Report 379



*Commission's analysis in relation to the impact of Chinese excess capacity displacing Taiwanese domestic producer tonnes in the Taiwanese market."*¹⁵

- ✓ Apologies for our ignorance, but we thought the Commission's assessment of THS capacity was in relation 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.
- ✓ Concerning Chinese excess capacity displacing Taiwanese domestic producer tonnes in the Taiwanese market, no evidence of this occurring has been established, together with the balance of Liberty Primary Steel submission regarding impacts of US Section 232 tariffs, just statements suggesting that such a result that might be possible or plausible.

Submission Summary and Conclusion

10. Liberty Primary Steel has provided no new evidence regarding the likelihood of dumping recurring and the material injury that the anti-dumping measures were intended to prevent, other than reference to the Commission's Final Report 379.
11. However, Liberty Primary Steel excluded many factors of Final Report 379, that demonstrate a higher threshold factual evidence is required for the Commission to make such a likelihood assessment, which was not applied in the assessment of THS.
12. The Commissioner should recommend the notice ceases to apply in relation to a particular exporter, being THS.
13. Should you require any further information concerning this submission, please contact the writer.

Yours faithfully



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¹⁵ Liberty Primary Steel Response dated 10 September – Page 3

