

17 September 2019



Hyundai Steel Company

Continuation Inquiry 505

Meeting with the Anti-Dumping Commission

Melbourne, 17 September 2019

A Meeting participants

Name	Organisation
Mr Joong Won Lee	Assistant Manager, Trade Affairs Team, Hyundai Steel Company
Mr Gyubong Lee	Counsellor for Industry, Trade and Energy Commercial Attaché Embassy of the Republic of Korea to Australia
Mr Chan Joo Lee	Director, DKC Global Trade Consulting
Mr Charles Zhan	Senior Associate, Moulis Legal
Mr Daniel Moulis	Partner Director, Moulis Legal
Ms Maddison Godwin	Lawyer, Moulis Legal
Mr Jukka Mantynen	Case Manager, Investigations 2, Anti-Dumping Commission
Mr Mayuran Jeyarajah	A/g Director, Investigations 2, Anti-Dumping Commission
Ms Melanie Brandis	Director, Operations Policy and Stakeholder Engagement, Anti-Dumping Commission
Ms Jessie Wai	Investigations 2, Anti-Dumping Commission

B Current and future situation of Australian industry

The Anti-Dumping Agreement and the Customs Act require anti-dumping duties to be limited to five years. Only in exceptional circumstances, after a thorough forward looking analysis, may the duty be allowed to stay in place for more than five years.

1 Changed identity/structure of Australian industry and unsubstantiated “loss-making”

We would like to talk about Infrabuild. Hyundai Steel is concerned by the SEF’s incorrect assessment of the Australian industry entity and its composition. The SEF appears to have failed to recognise the significant changes to the Australian industry since the original investigation in 2013.¹ The Applicant is not the Australian industry that applied for the anti-dumping duty in the original investigation (INV 223).

The Applicant for this Continuation Inquiry is in a different and better economic position both structurally and substantively, as compared to the Australian industry as considered in INV 223.

We also want to highlight:

- the fact that a “significant” proportion of the Applicant’s costs relate to raw materials sourced from related parties, and the unexplained spike in costs since the Arrium administration and takeover by the present owner;
- the Applicant’s intra-group based sales of like goods, and its distribution arm’s significant 20% gross profit margin (AUD137m) during FY2017-2018.

Has the Commission investigated the Applicant’s real costs, real market price and real profit as part of this continuation inquiry? The facts suggest that the appearance of injury with respect to the Applicant is a contrivance – profit being earned in raw materials and sales, at the expense of manufacturing, being the stage at which the Applicant can get “protection”.

2 Inappropriate separation of rail HRS from other HRS in injury and policy terms

Even before this Continuation Inquiry, during Review 465, Hyundai Steel raised its concerns regarding the legitimacy of the anti-dumping measures, because of the Australian industry’s focus on meeting its supply target for super-profitable rail projects, including the AUD10 bn Inland Rail contracts,² and its reliance on imports from Hyundai Steel to supply its own customers.

Rail is a form of HRS. HRS in the form of rail is a like good to HRS subject to duty in terms of production and physical characteristics. Rail is produced by the Applicant on the same facilities for producing HRS. Carving out HRS rail from the injury analysis of the Australian industry producing HRS is artificial and inappropriate.

Is the Applicant’s production, capacity utilisation and cost for HRS being presented in a way that artificially show “injury” due to the exclusion of rail?

Is the Applicant’s profitability, revenue and return on investment for the HRS being examined taking into account the rail production and sales?

Does the Applicant reduce its pricing for HRS because it can, given the same productive assets produce a higher profit form of HRS with respect to which the Applicant faces no competition?

¹ See pages 3 to 5 of the “measure expiry submission”, at EPR505-40. The submission highlighted the Liberty Steel acquisition and significant changes to the identity of the Australian industry since the original investigation.

² See <https://www.whyllanewsonline.com.au/story/6262826/more-whyalla-steel-for-inland-rail/>; and <https://inlandrail.artc.com.au/awarded-tenders>

We say that the Applicant's HRS investment and operation is being subsidised with the highly profitable rail projects. It has been unable to meet HRS market demand. This is why it turned to Hyundai Steel for supply. Hyundai Steel supplied the Applicant based on **[CONFIDENTIAL TEXT DELETED – Australian sales practices]**. The Applicant then asks for higher dumping duties and continuation of the anti-dumping measures, which were intended as a temporary measure to protect the failing Australian industry it once was five years ago.

These practices are an outright abuse of the anti-dumping system. The measure must be allowed to expire as against Hyundai Steel.

We respectfully ask the Commission to carefully consider and address these questions and issues in this continuation inquiry, and to reflect these factors in the final recommendation to the Minister.

3 Steelforce acquisition and the future of the Australian industry

Hyundai Steel has consistently raised its concerns regarding the Steelforce merger. We urge the Commission to give full consideration of the potential impact of the Steelforce acquisition on the Australian industry and on Hyundai Steel's exports of HRS to Australia. The newly-formed Australian industry account for **[CONFIDENTIAL TEXT DELETED – proportion]** of Hyundai Steel's overall exports to Australia during the POI. How could Hyundai Steel's exports cause injury when **[CONFIDENTIAL TEXT DELETED – commercial impact of sales to Australian industry]** Hyundai asks the Commission to take into consideration of its discretion under the Article 4.1 of Anti-Dumping Agreement to address the abuse of the system in the way that the Applicant has engaged its business in Australia and with Hyundai.

We refer to our submission in response to SEF 505:

...any doubt as to the precise impact of the Australian industry's restructuring in recent years and its acquisition of major importer-distributor of the HRSS must be taken into account. They are key factors affecting the Commission's ability to reach the level of satisfaction required by the legislation. The language of the legislation clearly requires that any doubt favour a decision not to recommend continuation of the measure.

C Dumping margin determination

4 Date of sale

5 Physical difference adjustment

6 Treatment of CIF-duty paid sales and IDD

Hyundai Steel has provided detailed explanation regarding these issues throughout Review 499.

In relation to the date of sale issue, all of the information requested by the Commission and provided by Hyundai demonstrates that the material terms for its Australian sales, including price and volume, were not subject to further negotiation or changes, between sales order date and the final commercial invoice. There is no reason why the sales order date should not be used as the date of sale.

In relation to the physical difference adjustment, Hyundai Steel simply requests the Commission to adopt the adjustments based on the same reason as established in Review 465 and the original investigation. The reason established in Investigation 223 and Review 465 was that, the normal value and the export price "are not in respect of identical goods", and the physical differences affect their fair comparison. This is not affected by the adoption of the MCC or the revision of the Korean Standards.

Lastly, in relation to treatment of duty paid sales and the IDD, Hyundai Steel would like to re-emphasise its concern regarding the distortive effect of deducting IDD in the calculation of export price. Hyundai

Steel first raised this concern in its submission dated 27 June 2019. In the post-SEF submission, Hyundai Steel also clarified its role as the importer for the goods exported under duty-paid terms, both based on the contractual terms and based on the Customs record. Accordingly, the SEF's approach of deducting the IDD from export price and not recognising Hyundai Steel's role as the importer of such goods will have the effect of both distorting the dumping margin, and as an impediment to Hyundai Steel exercising its right to seek refund of the duty through duty assessment.

D Form and effects of anti-dumping measures

Hyundai Steel has made detailed comments addressing each of the factors relevant to the Commission's determination of the appropriate duty collection method in its post-SEF submission. Hyundai Steel urges the Commission to fully taking into account the changes to the Australian industry in recent times and foreseeable future, the necessity for Australian market to be supplied by imported goods, and the price volatility in the HRS market. Hyundai Steel has been a responsible and reliable supplier of quality HRS product to the Australian market. This is reflected in its decision to supply the goods at **[CONFIDENTIAL TEXT DELETED – Australian sales practices]**. If the anti-dumping measure is to be continued, Hyundai Steel urges the Commission to adopt the least distortive and punitive method, being the ad valorem method, and to assure opportunity for refund.