

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459
PO Box 867, Bacchus Marsh, Vic., 3340
Ph +61 (0) 459 212 702

PUBLIC RECORD VERSION

October 8, 2019

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

BY Email: investigations2@adcommission.gov.au

INVESTIGATION No 499
CONTINUATION No 505

Dear Director,

I am writing on behalf of the affected Australian party thyssenkrupp Materials Trading Australia (TKM) in relation to the above mentioned investigations and more specifically the Commission's inquiry on Continuation No 505.

INTRODUCTION:

TKM totally supports the Department of Industry, Innovation and Science's stated catchphrase of '*Supporting Economic Growth and Job creation for all Australians*' and for obvious reasons has been taking a very serious interest in the submissions to the Commission's HRS inquiries submitted on behalf of the applicant, the most recent being No 56 on the EPR which is dated 4th October 2019 and which like most of the applicant's submissions, primarily responds to opposing submissions made on behalf of the exporter Hyundai Steel Co.

However, for reasons including those expressed in this document TKM is compelled to respond to those more recent submissions on behalf of the applicant as the only conclusions TKM can form from those submissions calling for the continuation of measures beyond 20th November 2019 for a further five years are, apart from them demonstrating an absolute entitlement to de-facto protectionism, is that their content simply does not make economic sense and more generally, that they have become increasingly inane.

Some potent examples of this include: _

- (i) the applicant is a vertically integrated monopoly with obvious market power at both the ex-works and retail sales levels and the concept of having to base it's ex-works pricing on IPP is entirely their choosing and thus the cause of it's material injury claims must be rejected on the basis of this being a construct of a business model intentionally structured on a guaranteed access to the Australian anti-dumping system and
- (ii) the exporter Hyundai Steels statement that the applicant's own imports from 'Hyundai' were at prices set by the applicant which have been found to have been at 'dumped' prices but which technically could not have been injurious and which in all probability not only influenced other import prices {ie; the IPP} but also belies the applicant's claim of being a 'price taker'.

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459

PO Box 867, Bacchus Marsh, Vic., 3340

Ph +61 (0) 459 212 702

PUBLIC RECORD VERSION

- (iii) the applicant's claim that in regard to 'the assessment of injury to the domestic industry' that 'nothing has changed since the original investigation No 223 whereby the economic analysis remains confined to the like goods only' is obviously true in the sense that despite having the imports from the exporters in question subject to dumping duty measures during the past five years, the applicant's Whyalla production and ex-works sale of the GUC continue to have been at an apparent loss, which TKM claims is entirely of the applicant's choosing. One of the economic and relevant market factors that has changed however are the recent acquisitions of the former independent Australian and New Zealand based importer/stockist/distributor 'Steelforce' and the Queensland based distributor Tonkin Steel by the applicant's related party entity now branded as INFRABUILD. This has to be a relevant consideration given the INFRABUILD distributor footprint has some 46 branches Australia wide.
- (iv) Mr Sanjeev Gupta, who can reasonably be said exercises control over the GFG ALLIANCE AUSTRALIA and LIBERTY HOUSE GROUP corporate entities is on the record of saying that the 'Steelforce' acquisition would add 120,000 tonnes of throughput to GFG's operations, and whilst that tonnage comprises all long products of the kind produced by GFG'S entities it obviously includes non GUC product such as steel pipe & tube etc.
- (v) given the fact however that any injury analysis caused by 'dumping' is all about SALES and not production, the relevance in terms of any injury analysis and the applicant's obvious market power is that no present GFG entity or past 'Arrium' entity ever directly supplied 'Steelforce' prior to this acquisition and as the submission of 26th September 2019 on behalf of 'Hyundai' notes re, inter alia, '*the applicants representation that a difference in ultimate holding company between Onesteel Manufacturing and the newly acquired Steelforce will result in increased competition between Onesteel Manufacturing and Onesteel Trading*', is more than likely to result in the opposite to what the applicant claims will be increased competition. The obvious question therefore is what is the purpose of acquiring a major market competitor if not to reduce market competition?
- (vi) with regard to what the ACCC determined in relation to the Steelforce acquisition it is considered important to note that one of the ACCC's considerations put to industry participants was :- '*whether imports of long steel products are readily available and can be economically imported taking into account current and possible future anti-dumping measures*'.
- (vii) TKM also takes issue with what the applicant again expressed in it's submission of 4th October 2019 that '*by virtue of the price taking status of Liberty Primary, the presence of numerous exporters*' etc., being justification for the continuation of measures. As previously stated, the **status of price -taker is totally of their own choosing** and the reality in terms of the Australian market demanding that the GUC must comply with both AS/NZ 3697 and the ACRS certification, the **suggestion that there are numerous**

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459

PO Box 867, Bacchus Marsh, Vic., 3340

Ph +61 (0) 459 212 702

PUBLIC RECORD VERSION

exporters is simply wrong as the Commission has confirmed that the majority of the GUC imports are from Korea, Taiwan, and Thailand which defines the number of factual exporters to Australia.

- (viii) the market reality is that given the applicant cannot supply the current underlying domestic demand let alone the future projected demand including reported mining investment and demand emanating from the Federal Government's A\$100 billion infrastructure spend over the next ten years that will require both the GUC and Rail, there needs to be imports of the GUC to satisfy that demand.
- (ix) the clear conclusion is that there is a domestic capacity constraint on the GUC that needs to be remedied by imports and with the Australian Dollar at around 0.67US\$, the lowest it has been for 10 years and having depreciated circa 34%, the increased risk of unavoidably costly blowouts on both normal and infrastructure projects will only be exacerbated by the Minister's imposition of fixed priced exports by means of dumping duty measures for the next five years.
- (x) the question therefore, contrary to what the applicant wrongly claims to be a global overcapacity, is will the continuation of measures result in damage to Australia's fragile economy by way of supply shortages and costly blowouts and all at the expense of benefitting one Australian business operation by means of dumping duties which, whilst having been in place for the past five years have not improved the applicant's domestic sales or profitability.
- (xi) as has been previously noted, this applicant and its related business operations that are now included in the INFRABUILD entity have been the 'singular' largest user of Australia's anti-dumping system for at least the past five years and whilst Mr Gupta is on the record of saying that the INFRABUILD business units are '*making more and more money*' AND are being prepared for an IPO, at the 'same' time, Mr Gupta is also reportedly seeking favours from the Federal Government by way of financial assistance for the Whyalla operation.
- (xii) therein lies the apparent contradiction and it is open to question whether the Liberty Group has intentionally undermined the Australian anti-dumping system.

THE REQUIREMENT:

TKM respectfully submits that the Commission would be fully aware that legally this Continuation inquiry 505 is entirely concerned with the hypothetical question of :

*'if dumping duty measures are removed is it probable that the exporters in question will export at actionable dumped prices and if so, is that dumping likely to cause material injury that is not insignificant to the sole Australian producer of the GUC.'*and:

'In essence, the Commission has to undertake a crystal ball exercise with the onus on the applicant to convince the Commission that there will be future dumping and that the dumping, by itself, will cause material injury.'

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459

PO Box 867, Bacchus Marsh, Vic., 3340

Ph +61 (0) 459 212 702

PUBLIC RECORD VERSION

As previously expressed to the Commission by the exporter SYS, the ultimate wording of s 269ZHF(2) is considered crucial in that it sets up a high evidentiary burden, requiring a conclusion that that dumping plus injury would both occur if the measures are not continued. TKM is firmly of the opinion that whilst dumping of a technical nature may continue by some exporters, any such dumping would not be the cause of any injury that would justify the continuation of measures.

Contrary to the assertions by the applicant, the factual reality is that it's Whyalla operation is a vertically integrated monopoly in that it's essential steel making materials of iron ore, coking coal, and scrap are supplied by related parties having the same ultimate ownership and it's steel product outputs of the GUC and steel billets are supplied to related parties within the rebranded IFRABUILD group that has the same ultimate ownership.

There are of course various aspects to being a monopoly but two of those aspects are considered to encompass the use of an obvious market power and market behaviour in terms of fair business practice in downstream markets. The issue TKM has with the applicant is it's view that the intent of the Australia's anti-dumping legislation is to ensure the market is '*serviced by undumped imports*' and that '*this allows all market participants to compete strongly on a level playing field*'.

The more relevant consideration in TKM's view is that whilst imports may be technically dumped they are, in reality, non-injurious in that the claimed material injury of the applicant is from causes other than the imports including its chosen pricing model and being logistically challenged because of it's Whyalla location relevant to the major markets.

Given the applicant's obvious market power it is clear from the evidence that rather than use that power to effect price increases at the ex -Whyalla level of sale, it continues to claim that it has to accept IPP as a base price plus a flexible domestic price premium for selected customers which in a normal market situation poses the question of motivation.

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459

PO Box 867, Bacchus Marsh, Vic., 3340

Ph +61 (0) 459 212 702

PUBLIC RECORD VERSION

COMMISSION'S SEF 505 PROPOSED RECOMMENDATION:

TKM rejects the Commission's proposed recommendation that the Minister take steps to secure the continuation of the anti-dumping measures and that the dumping duty notice remain unaltered on the basis that whilst some dumping may continue, that dumping is not considered to be the cause of any material injury to the applicant and the continuation of measures would be an historic mistake given the applicant's related party transactions and the current Australian economic climate.

It would not be understating the situation that if dumping duty measures were to continue beyond 20th November 2019 and those measures were to comprise the applicant's default position of fixed and variable duty measures then it would only reward and compensate the applicant for its own self inflicted injury but more importantly it could, for reasons expressed by both the Federal Treasurer and Reserve Bank Governor in August 2019 in relation to the Government's investing substantial funds in defence infrastructure and on maintaining existing infrastructure, prove to be damaging to Australia's overall economy and future prosperity because our falling Australian Dollar and local capacity constraints.

REQUESTS:

As stated previously TKM is aware of the applicant's owner seeking financial assistance from the Federal Government and whilst that request should be assessed on the basis of an economic cost benefit test such assistance would be preferable to what is essentially de-facto protectionism by use of the anti-dumping system and which is only punitive in respect to most alternative supply sources, namely imports.

Should however the Commission maintain its recommendation to impose measures beyond the 20th November 2019, then those measures should be based on a non-injurious Australian Dollar FOB export price which would be the current lowest non dumped price of the Taiwan exporter Tung Ho Steel Enterprise Corporation

Reasons obviously include the inability of the applicant to meet current and future demand and the fact that all imports compete in the same single Australian market.

The possible exception to this single market is that the West Australian market could be considered to be a separate market due to it being supplied only by imports.

We note that the applicant has dismissed the need for Australian Government Ministers to make decisions in the National Interest rather than in the interests of a single Australian business which in this case is the sole domestic producer and despite receiving the assistance of past dumping measures, continues to claim to be unprofitable.

TKM can only conclude that the cause of their being unprofitable is other than the third party imports during the I.P. of Case 499.

Please contact the writer for any clarification of matters raised in this submission.

Regards,
M J Howard.