



9 October 2019

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

BY EMAIL: investigations2@adcommission.gov.au

Dear Director,

Public Record Case Nos. 499 and 505 - Hot rolled structural steel sections from Japan, Korea, Taiwan and Thailand

AUSTRALIAN INDUSTRY RESPONSE TO TUNG HO'S STEEL SUBMISSION

OneSteel Manufacturing Pty Limited, trading as 'Liberty Primary Steel' (**Liberty Primary**), the applicant for Review of anti-dumping measures and Continuation of a Dumping Duty Notice in this matter refers to the latest submission of Tung Ho Steel (**THS**) dated 2nd October 2019.

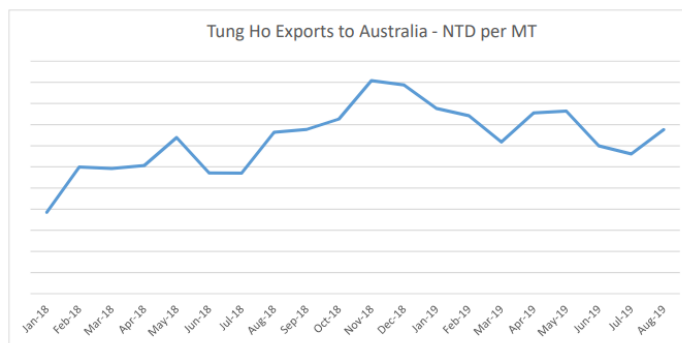
The primary purpose of this submission is to refute the incorrect claim by THS that when Liberty Primary made its submission dated 23 September 2019, that:

...Liberty Primary Steel failed to provide the most recent publication of the Commission's Trade Remedies Index [TRINDEX], as follows: -

This claim is inaccurate. THS have incorrectly misapplied the date of 11 September 2019 appearing on the Trindex publication as the date that it was made publicly available. Whilst Liberty Primary is unaware of the exact date that the September issue of TRINDEX was published, it was certainly a date **after** 23 September 2019, and as such Liberty Primary could not have had regard to it when making its submission.

Form of Measure

As THS observes, the September edition of TRINDEX shows a dip in the weighted average export price of August imports into Australia. However, having said this, one (or even two) data points do not make a trend. In fact, the most recent graph supplied by THS itself shows that their August export prices (September arrivals) are again increasing in price.



That said, the direction of the market is not the most relevant consideration before the Commission in terms of deciding which form of measure to apply. The primary obligation of the Commission is to apply the form of measure that best fulfils the intent of the legislation, that is, to remove the injurious effects of future dumping.

Unlike the original investigation, the Commission now has before it an extensive history of the behaviour of each of the major exporters, with interim duty calculated and collected using a number of forms of duty calculation (i.e. floor prices, ad valorem and the combination method). In addition, the Commission is now aware that anti-circumvention legislation designed to prevent exporters lowering their prices to avoid the intended effect of the duty, is incapable of remedying increased dumping if the importer simply pays a lower amount of interim duty calculated from a reduced FOB export price. Unfortunately, the guidelines on the forms of anti-dumping duties that were published in 2013 which stated:

Another potential disadvantage of the ad valorem duty method stems from the fact that where prices are lowered the importer pays less duty. In some cases this may lead to circumvention because the export price may be deliberately lowered in order to minimise the effects of the duty. However, any artificial lowering of export prices can be detected through monitoring of the measures and be subject to an anti-circumvention inquiry.¹

proved an inaccurate prediction as subsequent once tested in *Anti-circumvention Inquiry 452*² concerning rebar exported from Korea determined:

The Commission has found that:

- *following the imposition of measures, Daehan's [exporter] export price has been lowered;*
- *Stemcor's [importer] FIS selling prices in Australia for the inquiry period were influenced by the lower export price from Daehan and were lower than those for the original investigation period.*

Based on these findings, the Commissioner is satisfied that the importer of the goods (Stemcor), whether directly or through an associate or associates, sold the goods in Australia by increasing the price commensurate with the total amount of duty payable under the Dumping Duty Act.

¹ GUIDELINES ON THE APPLICATION OF FORMS OF DUMPING DUTY - November 2013

² EPR 452/016 p 5

In examining the forms of measures that have been effective in preventing ongoing dumping causing injury there is only one that has done so, the combination method. When measures were originally imposed in November 2014, the Commission recommended the imposition of the ad valorem method of duty calculation for all the exporters. Hyundai a behemoth Korean steel producer with an estimated 400,000 tonnes plus of excess H beam capacity and serial dumper into the Australian and other markets, in *Review No. 465* was subsequently found to have increased their rate of dumping from 2.5% up to 9.9%³. Appropriately following *Review No. 465* the Commission imposed the combination method. The current *Review No. 499* has preliminarily found that since the imposition of the combination method Hyundai's rate of dumping has been contained to 9.5% despite a number of its other key markets (i.e. the United States via section 232 tariffs and the European Union via safeguard measures) restricting the volumes that Hyundai is able to sell to and facing heavy competition from alleged dumped Vietnamese H beams in their own market.⁴

SYS, another serial dumper into the Australian market and Dragon Steel both had a floor price method of duty imposed as a result of *Review No. 346* and *Accelerated Review No. 359*. Having achieved zero margins as a result of either low volume exports (SYS) or by virtue of not exporting during the original investigation period, the market has been rising since the imposition of their floor prices in October 2016 and the measures became ineffective. The ineffectiveness of the floor price preventing the reoccurrence of dumping was confirmed by the preliminary findings in the SEF for *Review No. 499*, specifically that that both recommenced dumping at rates of 5% and 9% respectively. The only exporter for which the floor price appears to have achieved its intended effect is Tung Ho. Therefore, for the reasons outlined by the Commission in SEF 499 it is appropriate that the floor price remains in order to prevent the recurrence of dumping from occurring.

The only criticism of the combination method made by exporters and importers of dumped goods, is that the form of measure is "punitive". However, there is no evidence in *Review No. 499* and *Continuation Inquiry No. 505* that this is the case. Exporters oppose the combination method, not because it is punitive but because they know it effectively prevents them from lowering the export price without the risk of being required to pay the full amount of dumping duty.

If affected exporters are unable to compete in the Australian market at undumped prices, they are free to either export their goods to markets in which they are able to compete without dumping, or seek to be more competitive in their own domestic market. In addition, if at any period of time there is a sustained movement in prices, exporters are able to seek a *Review of Measures* to have their variable factors reassessed. To Liberty Primary's knowledge, no exporter has been denied this option. Claims that the combination method is punitive to the exporter of hot rolled structural sections is not supported by fact or evidence.

There is also no evidence that the floor price component of the combination method is punitive for importers of hot rolled structural sections. Importers have been aware since the publication of the SEF in early August that the Commission intends to recommend the combination method. The *ad*

³ EPR 465/26

⁴ Refer <http://www.businesskorea.co.kr/news/articleView.html?idxno=34480> (accessed 9 October 2019)

valorem component of the measures has been published for some time now, and the importer is able to find out what the floor price component is. With this knowledge importers are free to choose to continue sourcing goods from exporters found to be dumping and recover any excess interim dumping collected via the duty assessment process, or seek new supply from exporters not found to be dumping. Whilst the combination method of duty collection may be *inconvenient* for importers whose business models rely solely on dumped goods, *inconvenience*, however, should not be mistaken for being *punitive*.

Summary

In light of the above evidence concerning the behaviours of the various exporters and the effectiveness of the various forms of interim duty calculation, we urge the Commission to maintain its proposed recommendation of the combination form of duty.

To consider the application of an ineffective form of measure such as the *ad valorem* method, is as dangerous as a physician knowingly prescribing a placebo to a seriously injured patient. The stakes for the Australian industry's Whyalla operations are too high for the Commission to chance achieving the intended effect of the legislation via a placebo effect, with the goods constituting nearly 75% per cent of total finished goods production and a direct workforce of over a 1,000 in the balance.

Should the Commission seek clarification of any of the matters raised in this submission, please do not hesitate to contact the Australian industry representative on record.

FOR AND ON BEHALF OF

THE AUSTRALIAN INDUSTRY APPLICANT