Mr Adam Yacono
Manager
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VICTORIA 3008

Dear Adam.

Reference is made to the submission made by Roger Simpson and Associates on behalf of Siam Yamoto Steel on 6th of August and also by Onesteel of the same date.

Included within these submissions were various representations putting forward a view on the appropriate form of any dumping duty **IF** it is found to be payble.

Sanwa also has a view on this and would like to indicate its position on the subject.

By way of reference to the ***Guidelines on the Application of Forms of Dumping Duty*** **(The Guidelines)** published by the Anti Dumping Commission in November 2013 we highlight and note as follows :

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The new Regulation provides that the forms of duty available to the Minister now include:
• combination of fixed and variable duty method1 ('combination' duty);
• fixed duty method;
• floor price duty method; and
• ad valorem duty method.

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""certain forms of duty will better suit the particular circumstances of some dumping cases more so than other forms of duty. ""

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(iv) Ad valorem duty method – Regulation 5(7)
Key considerations
• The simplest and easiest form of duty to administer when delivering the intended protective effect.
• It has an advantage where there are many models or types (it does not require an ascertained export price or ascertained floor which may not be meaningful where models show significant price variation).
• It has an advantage for goods which are subject to significant price variationsover time because:
a) the ad valorem duty method does not show the same variability in the 'effective rate' of the duty – as export prices fluctuate - that arises under the other methods; and
b) the ad valorem duty method may require less frequent reviews than these other duty methods in this situation.

• It may not be the most appropriate duty method when applied to goods which may have high priced varieties or models of the goods, particularly where a particular variety of goods was not causing injury to the Australian industry.
• It has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty. That said, where such behaviour is observed when monitoring the measures an anti-circumvention inquiry can commence12.

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It should be noted, however, that the Commission examined the incidence of such behaviour in countries commonly using an ad valorem duty. The ommission found that there had only been a limited number of reviews to examine circumvention behaviours after the imposition of an ad valorem duty i.e. price manipulation under ad valorem duties is not a widespread problem

The Guidelines do not offer a presumption that any one form of Dumping Duty should be applied but rather "*certain forms of duty will better suit the particular circumstances of some dumping cases more so than other forms of duty.* ""

Sanwa's view is that the only appropriate form of Dumping Duty in the action against Tung Ho (in the event that one ends up being applied) is a singular Ad Valorem Duty. The fixed duty method; and or the floor price duty method; and possibly in combination with the ad valorem duty method all suffer from complexities and lack of simplicity. However far more importantly they immediately lose either relevance or equity as market and foreign exchange prices move either upwards or downwards.

The Guidelines point to three real advantages that the Ad Valorem Only method has over the alternatives.
It is the simplest and easiest to administer. (Surely one of the the most important considerations)
It has advantages where there are different models or types. (There are more than 30 different sections/footweights and they do not all have a standard price per tonne.)
It has advantage for goods which are subject to significant price variations over time. (Variations of between one or three percent between different months are common and very material. Variations over the quarters/years have at times been much more than this.).

The Guidelines point to two possible disadvantages when Ad Valorem duties alone may not be appropriate.
1 Where a high priced model of the goods in question exist.
2 Because it is still open to circumvention by dropping prices to pay less duty.

Dealing with 1 is easy because the difference between the top and bottom prices is always [redacted]. IE No high priced models exist.
2 Seems to be raised as lip service because it acknowledges that*, "" any artificial lowering of export prices can be detected through monitoring of the measures and be subject to an anti-circumvention inquiry""* and in any event *"" The Commission found that there had only been a limited number of reviews to examine*

circumvention behaviours after the imposition of an ad valorem duty i.e. price manipulation under ad valorem duties is not a widespread problem.""

There is no reason, as outlined by the Commission, as to why a fixed duty method, floor price method or a combination of these plus ad valorem duty might be more suitable. Importantly even Onesteel have not suggested that the Tung Ho / Sanwa company structures are complicated or that the parties are anything other than at "arms length", so I presume this point is not in dispute.

The Guidelines spend a substantial amount of time explaining the problems with adopting a Floor pricing or fixed duty or a combination of these with Ad Valorem. In spite of this very clear and detailed analysis the parties or representatives of Onesteel and SYS would appear to be unconvinced. Whilst their motives can be surmised I would like again to very clearly make the following points :

Structural Steel prices are inherently and regularly volatile based on normal supply/demand market forces and input costs.
Exchange rates are inherently and regularly volatile.
Sanwa negotiates purchase pricing on each occasion and at least every month.
Sanwa's sale pricing can change daily or more often.
Sanwa pays and charges different base prices for a range of different sizes and shapes of structural section.
Sanwa is a private company without any common shareholding with Tung Ho and dealing at arms length at all times.
Tung Ho has no related companies in Australia.

Where the parties are very clearly at arms length, the company structures are very simple and "the playing field has been levelled" by the imposition of the appropriate and specific ad valorem duty, then WHY is more needed.

Perhaps it is because as Onesteel say: *""the proposed recommendation that measures be based on ad-valorem rates does not deter exporters from reducing export prices to increased injurious levels;""*

I read with some surprise that Onesteel are arguing that it should be possible for Tung Ho to reduce prices to reduce the duties being paid as it seems to miss a basic point of our free market capitalist system. That is that companies are in business to maximise their own company profits. The deterrence, which Onesteel does not acknowledge, is that by the company dropping the prices, it makes less money or indeed loses money.

Perhaps it is because as Onesteel say : ""*An ad valorem form of duty is applied to the actual export price ("DXP") of the goods. Where the actual export price of the goods falls below the Ascertained Export price ("AEP") from the investigation period, the ad valorem duty is based upon the lower DXP. Reductions in export prices will result in further material injury to the Australian industry – an outcome the imposition of measures was intended to prevent. ""*

However they seem to forget that the largest cost determinant is the scrap price / iron ore price and whilst they may be very happy to pay high scrap and iron ore prices (to the separate division within their own group) unfortunately most of the rest of the world is not in this situation. Accordingly whilst it is conceded that the actual export price may in the future fall below the Ascertained Export Price this is simply a reflection on the fact that “market pricing” does change. In the normal course any falls would be on the back of a fall in the price of inputs such as scrap or iron ore which would compensate for the falls in the finished product. In Onesteel’s ideal world, they would always happily pay high (above market) scrap and iron ore prices to their own internal divisions knowing that the profits were still being made within the group.

The reality is that an Ad Valorem duty is the only form of dumping duty which is appropriate, if dumping duties are found against Tung Ho. There is a reason why the Guidelines comment *“The most common form of duty in other main jurisdictions imposing dumping duties is the ad valorem duty.””* and the circumstances of this case give no reason to suggest that it should not be singularly applied in this case also.

Thankyou.

Regards

David Roberts

General Manager / Trading Director, Sanwa Pty Ltd