



17 February 2020

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Panel Member Fisher  
Anti-Dumping Review Panel  
C/- Legal, Audit & Assurance  
Department of Industry, Science, Energy & Resources  
10 Binara Street  
Canberra City ACT 2601

Dear Panel Member,

**ADRP Review No. 121: Hot Rolled Structural Steel Sections exported from Japan, the Republic of Korea, Taiwan (except for exports by Feng Hsin Steel Co Ltd) and the Kingdom of Thailand**

**SUBMISSION OF THE AUSTRALIAN INDUSTRY**

OneSteel Manufacturing Pty Limited, trading as 'Liberty Primary Steel' (**Liberty Primary**), an applicant for *Review of a Ministerial decision* made under subsection 269ZDB(1)<sup>1</sup>, specifically, the decision of the Minister following an inquiry into whether the continuation of the anti-dumping measures in the form of a dumping duty notice applying to the goods, ADN 2019/126.<sup>2</sup> Liberty Primary is the sole member of the Australian industry producing like goods to the goods the subject of this Ministerial decision, and makes the following submission in response to the applications of the exporters, Siam Yamato Steel Co Ltd and Hyundai Steel Co., Ltd.

**A. SIAM YAMATO STEEL CO LTD (SYS)**

***Ground One: The normal value was incorrect as the Commission failed to base normal value on relevant quarterly domestic sales of identical goods and absent relevant identical domestic sales, on the most directly comparable quarterly domestic sales to the goods exported to Australian in accordance with s.269T which defines 'like goods'.***

The applicant exporter appears to be arguing that the identification of like goods for the purpose of the ascertainment of normal value under s.269TAC(1) need only include 'identical' goods where in sufficient volumes in the ordinary course of trade (OCOT):

<sup>1</sup> All legislative references in this submission are to the *Customs Act 1901*, unless otherwise stated.

<sup>2</sup> Published on 11 November 2019

“SYS contends that where there are relevant domestic sales of identical goods then the normal value needs to be determined on those identical goods provided they satisfy the sufficiency and OCOT tests.”<sup>3</sup>

The idea that like goods that are not “identical”, but “closely resembling those goods under consideration” may be entirely ignored has no basis in either domestic in domestic law or WTO jurisprudence. The following observation was recently made by Senior Member Fitzhenry on the question of the proper treatment of like goods within the determination of the normal value under s.269TAC(1):

“In *Anti-Dumping Authority & Anor v Degussa AG & Anor* [[1994] FCA 677] the Full Court of the Federal Court confirmed that sales which fell within s.269TAC(1) could not be ignored on the basis of some criteria not found in the legislation. It is the words of s.269TAC(1) to which regard must be had.”<sup>4</sup>

Therefore to narrow the scope of s.269TAC(1) to have regard to only “identical goods”, and not the broader definition of “like goods” which includes “goods closely resembling” is incorrect. Clearly, a correct interpretation of the term “like goods” and its use within s.269TAC(1) cures the problem identified by both the Commission and applicant exporter in that there were insufficient domestic sales of “identical goods” in the third and fourth quarter of the investigation period. In these latter quarters, the determination of normal values having regard to “goods closely resembling” with necessary adjustments in the OCOT would presumably be sufficient.

Therefore, the applicant exporter’s argument regarding the Commission’s use of like goods to ascertain the normal value should be rejected.

***Ground Two: The normal value was incorrect as whilst the Commission determined the normal value for Siam in accordance with s.269TAC(1) of the Act, and correctly accepted the need to adjust normal value to reflect domestic credit costs in accordance with s.269TAC(8) of the Act, the Commission wrongly considered a hypothetical rate of domestic credit rather than the actual effective rate.***

The exporter applicant disputes the interest rate applied by the Commission to calculate an amount for an adjustment to the normal value under s.269TAC(8) for its claimed domestic credit expense. However, the exporter applicant’s claim ignores that the primary focus when making adjustments is to ensure that due allowance is made for differences that affect price comparability, as reflected in s.269TAC(8).

Therefore, only differences in contracted credit terms that in fact exist between domestic and export sales may attract an adjustment. Observed differences in actual *settlement* terms (c.f. *credit* terms), not in fact agreed to when the price was set, cannot be said to affect price comparability, as the existence of the implicit credit expense was not anticipated by either party when agreeing to price.

<sup>3</sup> ADRP Case No. 120, Application for Review – SYS, p. 7.

<sup>4</sup> ADRP Case No. 100, Letter to ADC (4 July 2019), pp. 5-6 at [15].

In other words, the exercise when determining whether credit terms affect price comparability would involve firstly comparing the agreed credit term days for particular domestic sales, to export sales, and if a difference exists, then determine the amount of difference, if any, that those different credit terms have on the price. The amount of any credit adjustment should not necessarily be calculated with regard to a particular reference rate, unless it can also be shown that such a credit/interest reference rate does in fact affect price outcomes/negotiations.

Applied here, the Commission in fact concluded that “[it] did not find that the actual credit costs as claimed by SYS were incurred”,<sup>5</sup> which strongly indicates that any difference between credit terms, agreed on the date of sale, did not in fact affect price comparability, as it was not likely an expense within the actual contemplation of the exporter applicant. In other words, there is no difference in price irrespective of the *agreed* credit terms, or *observed* settlement terms.

Therefore, the correct or preferable decision would be to not allow the making of any credit expense adjustment to the normal value.

***Ground Three: The normal value was incorrect as whilst the Commission determined the normal value for Siam in accordance with s.269TAC(1) of the Act, and made adjustments to the normal value, it should not have included an export credit adjustment in the ascertained normal value.***

Liberty Primary considers that the following statement by the Commission may be relevant to the question of whether differences in *agreed* credit terms, in fact affected the exporter applicant’s pricing decisions:

“The Commission notes that a substantial proportion of sales did not allow payment on credit terms. The Commission has reviewed its calculations and considers that in establishing export credit terms, it had appropriately taken into account sales that were not subject to payment terms as well as payments in respect of Australian export sales that were subject to payment terms.”<sup>6</sup>

***Ground Four: The ascertained normal value was incorrect. Certain quarterly domestic sales of the most directly comparable goods that on a total weighted average net selling price when compared to the total weighted average cost to make and sell were profitable. It was open to the Commission to properly consider if those actual sales at a loss were in fact recoverable within a reasonable period of time in accordance with s.269TAAD(3) of the Act and accordingly should have been included in the consideration of domestic selling prices under s.269TAC(1) of the Act.***

The OCOT of domestic sales is not tested on a weighted average basis of quarterly sales, but rather on a sale by sale basis against the quarterly average cost to make and sell of those goods (by model). Therefore, it would not be the correct or preferable decision for individually unprofitable and

<sup>5</sup> Report No. 499, p. 46.

<sup>6</sup> *ibid.*



unrecoverable sales to be ‘cured’ and to be in the OCOT on the basis that they form part of a quarterly population of sales that on a weighted average basis represent a value that even if not profitable is recoverable “within a reasonable period”.

Therefore, the applicant exporter’s argument regarding the Commission’s conduct of the OCOT should be rejected.

## B. HYUNDAI STEEL CO., LTD (HYUNDAI)

***Ground One: The Minister did not apply physical difference-based (non-identical goods) adjustments in arriving at the normal value under s.269TAC(8) of the Act in a consistent manner.***

Subsection 269TAC(8) does not support the exporter applicant’s claim for an adjustment under it. The provision enacts the obligation under Article 2.4 of the WTO *Anti-Dumping Agreement* (**the WTO Agreement**) to make a fair comparison between the export price and normal value when determining dumping. As such s.269TAC(8) refers to the making of adjustments in circumstances where “*price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price*”.

Relevantly, Article 2.4 provides:

“A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. **Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability...**” [emphasis added]

The WTO jurisprudence on the circumstances in which adjustments are to be made for ‘physical characteristics’, must be related to differences which are demonstrated to affect price comparability.<sup>7</sup>

Therefore, the exporter applicant is wrong at law to assert that the Commission is obliged to make an adjustment for physical characteristics under s.269TAC(8) that is not proven to affect price comparability, but only cost differences.

The suggestion by the exporter that there is a “*need for a physical adjustment to be made to reflect the quantifiable cost differences and the associated market value of those differences, as the Commission has done in Report 223 and Report 465*” is entirely wrong at law and under WTO jurisprudence as Panel Member Blumberg correctly and helpfully highlighted in ADRP Report No. 80 (*Steel Reinforcing Bar Exported to Australia from Greece et Ors*) in response to the ground raised by the same representative firm for Hyundai (in that case acting for the exporter, Nervacero S.A), that the

<sup>7</sup> Appellate Body Report, *US – Hot-rolled Steel*, at [177].



exporter was entitled to a physical adjustment to its normal value based on cost differences between the domestic sales of like goods and the goods exported to Australia:

“329. I refer again to the Panel’s statement in *EC – Fasteners (China)* referred to above that, although the obligation to make a fair comparison lies with the investigating authorities, it is for the exporters, who would be expected to have the necessary knowledge of the product in question, to make substantiated requests for adjustments in order to ensure such comparison, and that if it is ‘*not demonstrated to the authorities that there is a difference affecting price comparability, there is no obligation to make an adjustment*’.<sup>8</sup>

“330. It appeared to me that the ADC’s refusal to grant the adjustment based on lack of supporting evidence in Nervacero’s own records of accounts, was reasonable in the circumstances. Nervacero’s sub-ground of review relating to its claim for adjustment to account for physical differences between exported goods and the like goods therefore fails.”

Therefore, to make an adjustment to the normal value as the exporter asserts on the basis of cost differences with no demonstration that the differences affect price comparability is not the correct or preferable decision and was correctly resisted by the Commission.

Furthermore, relevant to this claim for adjustment, the exporter applicant’s assertion of a comparison being made between Grade AS/NZS 300 goods exported to Australia and the “mostly SS400” goods sold by the exporter in the Korean domestic market would serve to perpetuate a model matching error made for this exporter in INV 223 and REV 465 solely for the sake of “consistency”. As referenced by the exporter applicant, the Commission’s findings in REV 465 stated:

“In the original investigation, various submissions from interested parties debated which grade sold by exporters on their respective domestic markets was most comparable to the Australian Grade G300. OneSteel submitted that the Korean SM490 was the grade most comparable to Australian Grade G300 on the basis of its specified yield strength and chemical requirements. Hyundai maintained that the Korean SS400 grade was most comparable to the Australian Grade G300 since Korean SS400 produced by Hyundai exceeded the minimum requirements for tensile and yield strength, **which was which was demonstrated by the specifications achieved and shown on mill certificates.**”<sup>9</sup> [emphasis added]

Liberty Primary has consistently argued that a comparison of mill certificates against minimum export Standard requirements is fundamentally technically flawed<sup>10</sup> and has led to a highly erroneous finding that grade **SS400**, which has a minimum yield strength (the mandatory strength category in the MCCs) of **235-245MPa and no chemistry specifications** can be considered “most comparable” to **Grade AS/NZS**

<sup>8</sup> Original fn 138 [European Communities — *Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* (WT/DS397/R), Para. 7.298.]

<sup>9</sup> REP 465 at p. 14.

<sup>10</sup> EPR Folio No. 505/004 and EPR Folio No. 505/020

300 with a minimum yield strength of 280-320MPa and enforces chemistry control for weldability through the specification of a maximum carbon equivalent value.

During this review inquiry, the Commission tested the claims of the exporters in relation to mill test certificates and their relevance:

“In this review, the Commission has verified the original purchase orders and other relevant documentation related to sales and has conducted discussions with representatives of steel manufacturers. On the basis of this evidence, the Commission considers that it is the **usual practice for steel products to be manufactured, bought and sold on the basis of the grade of steel that is required and of the specifications in the standard that must be met**. The subsequent provision of mill test certificates may be requested by customers or relevant authorities to confirm that the required minimum specifications have been met.”<sup>11</sup> [emphasis added]

Based on the evidence obtained, the Commission correctly concluded:

“In this review, the Commission has not found evidence that indicates that purchasers place their orders for steel on the basis of mill test certificates. The Commission does not consider that mill test certificates provide sufficient indication of what a customer’s requirements are, or of the negotiated terms of the sale. Despite a mill test certificate providing confirmation that the steel has satisfied the requirements of a particular grade, prices of steel and other terms of sales are not negotiated on the basis of those certificates. As such, **the Commission considers that the evidence found in this review indicates that it is not appropriate to classify like goods on the basis of mill test certificates.**”<sup>12</sup> [emphasis added]

Having applied the appropriate model match grade comparison based on Standard requirements here, the Commission correctly concluded that:

“The Commission has found in this review that despite the presence of physical differences between various models of HRS, the Commission did not find in Hyundai’s verified sales data, or in other evidence, that physical differences of models within respective MCC groups influenced prices.

“Further, the Commission could not identify;

- a consistent correlation between the cost to make for the models sold domestically and the Australian models and the selling prices; and
- a physical characteristic that resulted in the cost differences between the Australian export model and the equivalent domestic model to support Hyundai’s submission that changes to the Korean standard may explain these cost differences.”<sup>13</sup>

<sup>11</sup> SEF 499, p. 15 at [5.2.3]

<sup>12</sup> *ibid.*, p. 16.

<sup>13</sup> *ibid.*, p. 22 at [5.5.1.6]

Therefore, the applicant exporter's claimed adjustment to its normal value should be rejected.

***Ground Two: The Minister made errors relating to the determination of the domestic sales of like goods in the ordinary course of trade (OCOT) under s.269TAAD(3) of the Act.***

The exporter applicant's claim that the Commission's testing of the profitability and recoverability of individual transactions should occur at the 'delivered' level of trade, compared to the ex-works level is unsound. It is not fair or reasonable for the Commission to compare 'high value' delivered transactions (based on distance of customer or logistical complexity), to a weighted average 'delivery' expense across all domestic sales. To follow the approach proposed by the exporter would mean that domestic sales that are on an ex-works basis unprofitable and unrecoverable, are nevertheless treated as being within OCOT just because of the disproportionate value attributed to the transportation of the goods in the 'delivered' price agreed. Again, this is not the correct or preferable approach for the Commission to observe and is not consistent with Article 2.4 of the WTO Agreement, in relevant part:

"A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time." [emphasis added]

***Ground Three: The Minister incorrectly determined the export price with respect to the goods that were exported by Hyundai to Australia and imported by Hyundai into Australia.***

Liberty Primary does not consider the parallels drawn with the practices of the US Department of Commerce on this issue either helpful or relevant. With respect, the United States administration operates a retrospective duty collection system based on the taking of cash deposits, not interim duties. On the other hand, the Australian system operates prospectively. Indeed, when the export price is determined deductively under s.269TAB(1)(b), the domestic law is clear on the deduction of taxes and duties paid by the importer as a prescribed deduction (refer s.269TAB(2)(a)).

Acknowledging that for this review of measures, the export price was not determined deductively, but under s.269TAB(1), we nevertheless do not understand how the exporter reasons within its dumping margin calculation table, that the non-deduction of interim duty paid exaggerates the dumping margin. For example, assume the following conditions:

- Ascertained normal value (ANV) = AU\$110
- Ascertained export price (AEP) = AU\$100
- Ad valorem rate = 10%

Therefore, assuming that a single transaction is made following the imposition of duties, i.e. within the first review period at a DDP price of AU\$110 (assuming no other post exportation expenses or GST incurred), then the deductively determined export price would be calculated as follows:



- Price at first point of resale to an unrelated buyer  
in Australia (per unit): AU\$110

***less amounts for:***

- Interim (or final) duty paid: AU\$10  
- Deductive export price (FOB): AU\$100

Assuming the ANV for the Review Period remained fixed at AU\$110, then the dumping margin for the Review Period remains 10%. Therefore, the applicant exporter's claimed approach to export price determination does not support the correct or preferable decision and should be rejected.

***Ground Four: The determination of the non-injurious price was not correct or preferable.***

The exporter applicant makes the complaint that the Commission did not determine the "USP [unsuppressed selling price] during the POI [investigation period]".<sup>14</sup> At the outset it is observed that the method of calculating a NIP is not prescribed in the legislation, however, in practice, the Commission usually uses the Australian industry's USP as the basis for the NIP.<sup>15</sup>

According to the decision in *Siam Polyethylene Co Ltd v Minister for Home Affairs*, per Rares J:

"The non-injurious price had to be calculated by reference to the question of material injury, an assessment of its extent and the establishment of the causal link between dumping and the injury..."<sup>16</sup>

This is precisely the approach finally taken by the Commission. The use of the normal value in preference to prevailing prices in Australia during the investigation period to establish a USP, reflects the Commission's assessment of the material injury in the form of price depression and price suppression found to have been caused to the Australian industry by the exportation of goods at dumped prices during that period.

Whatever the arguments might be for using other methods to calculate the USP to determine NIP, the methodology proposed by the applicant exporter is more problematic.

Specifically, based on the Commission's assessment of market share by source,<sup>17</sup> the volume of undumped goods exported by Tung Ho constituted the minority of overall imports of the goods and as such is unlikely to have influenced overall market prices. This contention is supported by the Commission's finding that where Tung Ho's export prices decreased, Tung Ho's export volumes did not

<sup>14</sup> ADRP Case No. 120, Application for Review – Hyundai Steel, Attachment 2, p. 21.

<sup>15</sup> Dumping and Subsidy Manual (November 2018), p. 138.

<sup>16</sup> [2009] FCA 837 at [113].

<sup>17</sup> Report 505, p. 22 [Figure 7]





necessarily increase, in spite of the high degree of price elasticity in the Australian market for the goods.<sup>18</sup> The same could not be said of Hyundai:

“The Commission considers that it is likely that the expiration of anti-dumping measures would improve the competitiveness of HRS exported to Australia from Korea and that this would encourage importers to acquire HRS from Korea at dumped prices and in greater volumes.”<sup>19</sup>

Indeed, even Tung Ho stated that the dumped goods exported by Hyundai and others were suppressing their prices:

“We submit the contrary would apply, due to the measures recommended in SEF for other exporters. Business acumen would evoke THS (likewise Liberty Steel) to be in a position to charge a higher competitive price to Australia...”<sup>20</sup>

Therefore, to calculate a NIP for Hyundai on the basis of a USP derived from the sales prices into the Australian market of the goods exported by Tung Ho, would not necessarily indicate a value which no longer causes injury to the Australian industry.

Furthermore, Hyundai expresses a misunderstanding of the operation the Australian industry’s import parity pricing (**IPP**) mechanism when it suggests that “*Tung Ho’s prices will become the benchmark for any such IPP exercise*”.<sup>21</sup> This is an entirely incorrect description of the operation of the Australian industry’s IPP pricing model, which determines a customer specific, not market-wide, price based on unique offers made to customers, specifically. As the Commission has correctly stated it:

“In the original investigation (223), the Commission found that OneSteel sets its prices by applying an Import Parity Pricing (IPP) process in which it must negotiate prices with reference to offers made in the HRS market for imported goods. It was found that HRS exported to Australia from the subject countries at dumped prices required Liberty Steel to match those prices. This resulted in OneSteel achieving lower prices than it might have otherwise and consequently experiencing material injury.

“In its application for the continuation of measures, Liberty Steel stated that it continues to apply the IPP process and that pricing in the Australian market is driven by prices of HRS exported from Japan, Korea, Taiwan and Thailand. Liberty Steel also stated that known import offers in the market are used as a tool by customers to negotiate lower prices from Liberty Steel.

<sup>18</sup> Report 505, p. 36.

<sup>19</sup> *IBID.*, p. 34.

<sup>20</sup> EPR Folio No. 505/039, p. 2.

<sup>21</sup> ADRP Case No. 120, Application for Review – Hyundai Steel, Attachment 2, p. 21.

“The verification team found that Liberty Steel does continue to apply the IPP process and that the processes of price setting and negotiation described in REP 223 and in Liberty Steel’s application remain in place.”<sup>22</sup>

Therefore, it is not open to the exporter applicant to suggest that Tung Ho prices will necessarily form the new price for the Australian industry.

***Ground Five: It was not correct or preferable for the Minister to continue the measure because there was no probable likelihood of material injury that the measure is intended to prevent as there was:***

***(a) Flawed economic analysis of the Australian industry; and  
(b) Incorrect treatment of ‘other factors’;***

The exporter applicant suggests that the “*impact on the Australian market*” of the InfraBuild Group’s acquisition of Steelforce Holdings Pty Ltd (**Steelforce Group**) is a relevant consideration for the Commission when assessing whether “*the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent*” under s.269ZHF(2).

In its application the exporter applicant offers no substance to its claim that the acquisition will have an “*impact on the Australian market*” apart from the unfounded claim that the Steelforce Group will likely increase competition between Liberty Primary and InfraBuild Steel Centre (formerly Metalcentre). The suggestion that Liberty Primary indiscriminately “*reduce its prices to its other related company, ‘InfraBuild’, at the ex-factory level*” is entirely wrong and unsupported by the consistently verified findings of the Commission that Liberty Primary operates within a competitive price model to related and independent customers based on import parity prices.<sup>23</sup> Furthermore, the exporter applicant’s conclusion overlooks the verified reality that since transitioning from public company ownership to a private company there has been no fundamental change in the trading relationship between Liberty Primary and any related customers at the distribution level of trade. Internal prices have not become decoupled from market forces - it has been consistently found by the Commission that the sales prices of both related and external customers are equally suppressed by the exporter applicant’s dumped goods.

The exporter applicant all but confirms that sales from Liberty Primary to the Steelforce Group will be arm’s length transactions when it stated during the inquiry:

*“Considering that Steelforce has been purchased by the ‘InfraBuild Group of companies’, [fn 7] as stated by the Applicant, there is little basis to believe it will operate, in its interaction with the Applicant, any differently to OneSteel Trading.”<sup>24</sup>*

<sup>22</sup> EPR Folio No. 505/008, p. 9.

<sup>23</sup> EPR Folio No. 505/008, pp. 9-10.

<sup>24</sup> EPR Folio No. 505/054, p. 2.

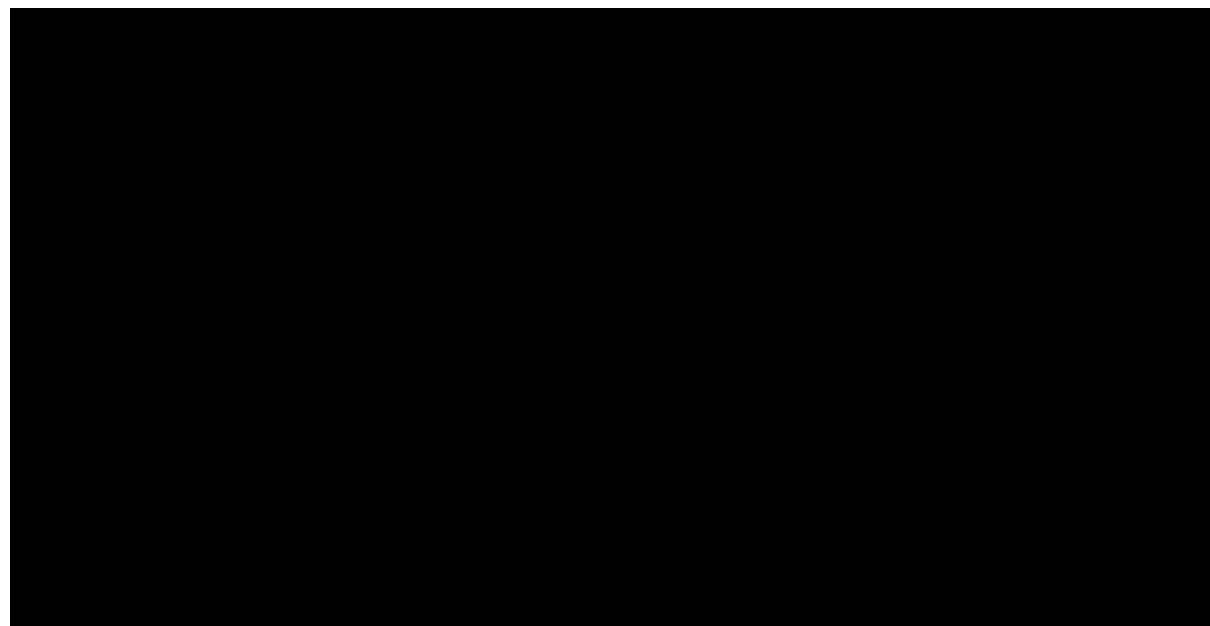


The arm's length nature of sales by Liberty Primary to InfraBuild Steel Centre (formerly Metalcentre) were confirmed in this review and inquiry by the Commission.<sup>25</sup>

Furthermore, the exporter applicant's belief that Liberty Primary is "shifting... production priority to rail products, which is a form of structural steel sections" is not only without foundation, but also indicates an erroneous interpretation of 'like goods'.

Firstly, rail products are entirely different products, sold into starkly different markets with completely different end uses. The fact that they may be produced within the same facility does not make them 'like goods'.

Secondly, the exporter applicant incorrectly suggests that growth in rail products demand comes at the expense of a loss of production capacity for the like goods. Again, this is simply not true. During the inquiry, Liberty Primary led evidence<sup>26</sup>; such as Confidential Figure 1 (below); which clearly demonstrated that although there has been an increase in monthly rail production since January 2018, this has not come at the expense of production of the subject like goods, with output of the latter either tracking at or above historic levels.

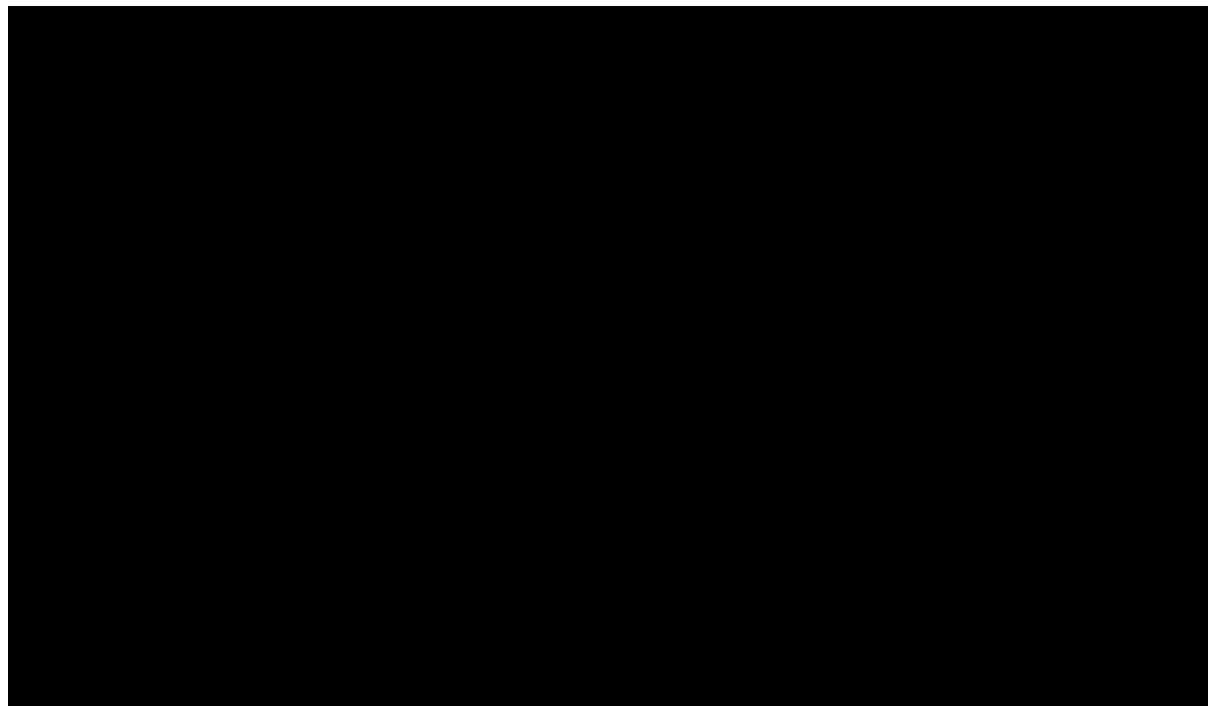


**CONFIDENTIAL FIGURE 1:** *Monthly production of the subject goods and rail products* (Source: EPR Folio 505/031 at CONFIDENTIAL ATTACHMENT 1)

In fact, the domestic industry's sales projections for rail products beyond Fiscal Year (FY) 2019 indicates that sales are to [REDACTED], sales of the subject like goods are projected to increase strongly in FY 2020, and then grow in subsequent fiscal periods (refer Confidential Figure 2, below).

<sup>25</sup> EPR Folio No. 505/008, p. 7.

<sup>26</sup> ERP Folio No. 505/031.



**CONFIDENTIAL FIGURE 2:** *Annual sales (actual and forecast) of the subject goods and rail products by fiscal period* (Source: EPR Folio No. 505/031 at CONFIDENTIAL ATTACHMENT 2)

On the basis of the exporter applicant's wrong belief that sales of rail product have come at the expense of capacity to produce the like goods, during the inquiry it sought to correlate imports of the subject goods to Liberty Primary's decision to reduce its domestic production:

*"Notably, and we would think not coincidentally, the Australian industry started to import HRSS from Hyundai Steel shortly after it was awarded the Adelaide to Tarcoola rail contract in September 2016... This is evidence that OneSteel consciously decided to shift away from producing the GUC, from the September quarter of 2016, thereby creating a supply shortage that exports had to fill.*

*These patterns of trade indicate that the Australian industry has shifted its production and sales strategies since the original investigation. Hyundai Steel surmises that OneSteel is now much less focussed on the production of the GUC for the local market."<sup>27</sup>*

As evidence previously presented at the industry verification visit served to explain, the decision to import preceded the decision to restore an additional (fourth) work shift, not (in contradiction of the exporter's assertion) any growth in the rail products market (refer CONFIDENTIAL FIGURE 1, above).

The exporter applicant's further claim that *"at its full capacity, the Australian industry is not able to full supply the entire Australian HRS market"*,<sup>28</sup> can be set aside as mere casuistry. The additional observation by the applicant that any demand that allegedly cannot be met by Liberty Primary *"must*

<sup>27</sup> EPR Folio No. 505/011, pp. 14-15.

<sup>28</sup> ADRP Case No. 121, Application for Review – Hyundai Steel, Attachment 3, p. 34.



be supplied by imports, whether at dumped prices or not<sup>29</sup> is an incomplete truism which neglects to mention that Australian law requires ‘imports’ avoid dumping the substituted supply and causing injury to the Australian industry.

As indicated in CONFIDENTIAL FIGURE 1, above, there is no evidence to support the exporter applicant’s view that the Australian industry has been “voluntarily reducing capacity utilisation... to give way for the production of premium product such as rails”, in fact the opposite view is true, where an increase in monthly rail production since January 2018 has not come at the expense of production of the subject like goods, with output of the latter either tracking at or above historic levels.

**(c) Incorrect consideration of the likelihood of continued and increased exports at dumped prices by Hyundai Steel.**

Liberty Primary rejects the exporter applicant’s denial of overcapacity and its tendency to increase export volumes of the goods to Australia. Such a view is not supported by the available data of Korean export trade patterns following the introduction of the s. 232 tariffs in the United States (US).

As argued in the inquiry, the South Korean tariff-free quota for steel products imported to the US was set at 70% of the average exports from 2015 - 2017. For the goods (“Structural Shapes Heavy”) the quota was 106,000 tonnes whereas the 2017 volumes were 159,000 tonnes.<sup>30</sup> This effectively meant that 53,000 tonnes of the goods were displaced from supply into the US market. The extract from the U.S. Steel Import Monitoring and Analysis (SIMA) program indicates that South Korea achieved this limit in 2018.<sup>31</sup>

**U.S. Imports of Steel Mill Products**  
FROM KOREA  
Quantity in Metric Tons

[Same Table - Average U.S.](#)  
[Same Table - Monthly Average U.S.](#)

‘C & A’ = Carbon and Alloy products, ‘S’ = Stainless products [Back to H1](#)

Product	Census Data									
	Annual Total Quantity 2011	Annual Total Quantity 2012	Annual Total Quantity 2013	Annual Total Quantity 2014	Annual Total Quantity 2015	Annual Total Quantity 2016	Annual Total Quantity 2017	Annual Total Quantity 2018	Total Quantity YTD Jan through Jul 2018	Total Quantity YTD Jan through Jul 2019
<b>All Steel Mill Products</b>										
All Steel Mill Products	2,574,186	3,336,545	3,457,583	4,967,551	4,402,159	3,456,386	3,401,404	2,507,856	1,752,697	1,478,072
<b>Carbon and Alloy Products</b>										
All Carbon and Alloy Products	2,530,036	3,297,769	3,420,431	4,923,829	4,353,573	3,398,088	3,343,758	2,470,407	1,719,953	1,453,166
Oil Country Goods – C & A	615,579	789,839	895,568	1,440,341	618,404	310,715	1,045,356	455,051	443,554	255,804
Line Pipe – C & A	519,211	724,457	760,167	812,454	720,442	444,505	655,700	428,010	400,186	261,773
Sheets Hot Rolled – C & A	499,503	597,801	602,691	798,124	898,560	715,907	180,847	370,024	172,228	177,182
Sheets & Strip All Other Metallic Coat – C & A	65,319	82,193	148,165	198,542	310,517	286,113	220,978	191,574	92,473	124,420
Plates Cut Lengths – C & A	66,137	191,195	73,573	279,699	300,000	364,075	204,099	199,783	77,910	140,822
Sheets & Strip Cold Hot Dipcoat – C & A	134,967	180,676	202,161	297,044	310,665	209,918	191,959	161,456	81,082	93,048
Plates in Coils – C & A	186,014	208,848	33,579	195,218	289,892	192,354	84,984	107,284	45,950	67,350
Structural Shapes Heavy – C & A	70,888	83,686	107,184	128,327	147,721	150,997	158,918	108,501	85,560	71,268

The surplus 53,000 tonnes that were displaced from the US market were unable to be diverted to the European Union (EU) as, under the safeguards measures imposed there, Korea is an exporting country that has its own quota. The EU monitor of volumes versus quotas for South Korean sourced structural

<sup>29</sup> ibid.

<sup>30</sup> Refer EPR Folio No. 505/049, p. 10, citing <https://www.cbp.gov/trade/quota/bulletins/qb-18-118-steel-mill-articles>

<sup>31</sup> ibid.

goods (extract below)<sup>32</sup> shows that they are exporting above the monthly rate and are likely to hit their quota before the end of the period, i.e. in 2 months they have filled 26% of the quota, which unless reduced would exceed the quota by 56%.

These tightening market access conditions are significantly affecting South Korea's capacity utilisation, as a comparison of export trade volumes between the historic heights of CY 2007 (1,428,253 tonnes) and the projected CY 2019 export volume (1,002,099 tonnes),<sup>33</sup> show over 426,000 tonnes of reduced export volume, which unless are now consumed in the domestic Korean market translate to overcapacity in the country of export identified by the Commission.



Tariff quota details	
Order number	098893
Validity period	01-07-2019 - 30-06-2020
Origin:	Korea, Republic of (South Korea)
Initial amount	26664840 Kilogram
Amount	26664840 Kilogram
Balance	19654312 Kilogram
Transferred Amount	
Exhaustion date	
Critical	No
Last import date	06-08-2019
Last allocation date	08-08-2019
Total awaiting allocation (indicative)	0
Blocking period	
Suspension period	
Allocated percentage at the exhaustion date	100
Associated taric code	7216 31 00 00 7216 32 00 00 7216 33 00 00

Applied here, the exporter applicant has distinguished itself within the Australian market as a consistent exporter of the goods at dumped prices. At every review of its variable factors it has exported the goods at dumped prices with dumping margins of 2.52<sup>34</sup> to 9.9<sup>35</sup> per cent. The outcome of the contemporaneous variable factors review concluded that goods were exported at a dumping margin rate of 4.7<sup>36</sup> per cent. Prospectively, there is no evidence that the exporter applicant's pricing behaviour toward the Australian market will change. Indeed, the evidence we led above during the inquiry and review suggests a renewed probability of recurrence of dumping as a consequence of any decision to discontinue the measures, specifically, the impact of the s. 232 tariffs in the United States, the safeguards measures introduced by the EU and other jurisdictions. Supply/demand economic price modelling would suggest that market equilibrium can only be achieved in light of 426,000 tonnes of excess capacity at reduced prices, as there is no evidence of the shedding of Korean production output.

<sup>32</sup> Refer EPR Folio No. 505/049, p. 10, citing [https://ec.europa.eu/taxation\\_customs/dds2/taric/quota\\_tariff\\_details.jsp?Lang=en&StartDate=2019-07-01&Code=098893](https://ec.europa.eu/taxation_customs/dds2/taric/quota_tariff_details.jsp?Lang=en&StartDate=2019-07-01&Code=098893)

<sup>33</sup> *ibid.*, citing [http://www.kita.org/kStat/byCom\\_SpeCom.do](http://www.kita.org/kStat/byCom_SpeCom.do)

<sup>34</sup> Dumping Investigation No. 223.

<sup>35</sup> Review of Measures No. 465.

<sup>36</sup> REP 499.



For the reasons outlined above, Liberty Primary considers that the grounds for review advanced by SYS and Hyundai as they relate to the Reviewable Decision are unsound and should be rejected.

**FOR AND ON BEHALF OF**

**THE AUSTRALIAN INDUSTRY APPLICANT**