



*CUSTOMS ACT 1901 - PART XVB*

**ANTI-DUMPING COMMISSION REPORT  
NO. 465**

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO  
CERTAIN HOT ROLLED STRUCTURAL STEEL SECTIONS**

**EXPORTED FROM THE REPUBLIC OF KOREA**

**November 2018**

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## ABBREVIATIONS

ABF	Australian Border Force
ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901</i>
the applicant	OneSteel Manufacturing Pty Ltd
the then Assistant Minister	the then Assistant Minister for Science, Jobs and Innovation
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Dumping Duty Regulation	<i>Customs Tariff (Anti-Dumping) Regulation 2013</i>
Dragon Steel	Dragon Steel Corporation
EPR	electronic public register
FOB	free on board
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
Hyundai	Hyundai Steel Company
IDD	interim dumping duty
Korea	the Republic of Korea
the Manual	<i>Dumping and Subsidy Manual</i>
MCC	model control code
the Minister	the Minister for Industry, Science and Technology <sup>1</sup>
Mitsubishi	Mitsubishi Australia Ltd
NIP	non-injurious price
OneSteel	OneSteel Manufacturing Pty Ltd
REP 223	<i>Anti-Dumping Commission Report No. 223</i>
the review period	1 January 2017 to 31 December 2017
SEF	statement of essential facts
SYS	Siam Yamato Steel Co. Ltd
Thailand	the Kingdom of Thailand
Tung Ho	Tung Ho Steel Enterprise Corporation
USP	unsuppressed selling price

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<sup>1</sup> The Hon Karen Andrews MP was sworn in as Minister for Industry, Science and Technology on 28 August 2018.

## 1 SUMMARY

### 1.1 Introduction

This report sets out the recommendations of the Commissioner of the Anti-Dumping Commission (the Commissioner) to the Minister for Industry, Science and Technology (the Minister) in relation to a review of the anti-dumping measures (in the form of a dumping duty notice) applying to certain hot rolled structural steel sections<sup>2</sup> (HRS or the goods) exported to Australia from the Republic of Korea (Korea).

This review of measures is in response to an application from OneSteel Manufacturing Pty Ltd (referred to as the applicant or OneSteel) for a review of the anti-dumping measures applying to HRS exported to Australia from Korea.

The application for review is based on a change in the variable factors<sup>3</sup> relevant to the taking of the anti-dumping measures in relation to exporters from Korea. The variable factors are the normal value, export price and non-injurious price (NIP). The applicant claims that the normal value and export price of the goods have changed since last ascertained, as part of the original investigation.

### 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>4</sup> sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for a review of anti-dumping measures. The division, among other matters:

- sets out the circumstances in which applications for the review of anti-dumping measures can be brought;
- sets out the procedure to be followed by the Commissioner in dealing with such applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the measures covered by the application.<sup>5</sup>

### 1.3 Findings

The Commissioner finds that, in relation to exports to Australia of HRS made by all exporters of the goods from Korea during the review period (1 January 2017 to 31 December 2017):

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<sup>2</sup> Refer to section 3.3 of this report for a full description of the goods.

<sup>3</sup> Subsection 269T(4E).

<sup>4</sup> All legislative references are to the *Customs Act 1901*, unless otherwise specified.

<sup>5</sup> Subsection 269ZC(4).

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- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the ascertained NIP should be set equal to the ascertained normal value, meaning that the ascertained NIP has changed.

### **1.4 Recommendations**

The Commissioner recommends to the Minister that the dumping duty notice have effect as if different variable factors (being the export price, normal value and NIP) had been ascertained in respect of:

- Hyundai Steel Company (Hyundai), who participated in the review; and
- uncooperative and all other exporters from Korea.

The Commissioner recommends to the Minister that the amount of interim dumping duty (IDD) payable in respect of all exports of the goods to Australia from Korea be calculated by reference to the combination fixed and variable duty method.<sup>6</sup>

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<sup>6</sup> Subsections 5(2) and (3) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Dumping Duty Regulation).

## 2 BACKGROUND

### 2.1 Application and initiation

On 27 February 2018, an application was lodged by OneSteel requesting a review of the anti-dumping measures as they apply to all exporters of HRS to Australia generally from Korea.

Following consideration of the application, the Commissioner decided not to reject the application and initiated a review of the anti-dumping measures applying to HRS exported to Australia from Korea. *Consideration Report No. 465* (CON 465) was published on the Commission's website and provides the reasons for not rejecting the application.

Notification of the initiation of the review was made in Anti-Dumping Notice (ADN) No. 2018/44, which was published on the Anti-Dumping Commission's (the Commission's) website on 19 March 2018.

Among other things, ADN No. 2018/44 outlined that:

- the review period to be examined is 1 January 2017 to 31 December 2017;
- the statement of essential facts (SEF) would be placed on the public record by 9 July 2018 (or such longer period as allowed); and
- a recommendation to the Minister would be made in a report on or before 21 August 2018 (or such longer period as allowed).

Further details are available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

### 2.2 Existing measures

On 24 October 2013, the Commissioner initiated a dumping investigation into HRS exported to Australia from Japan, Korea, Taiwan and the Kingdom of Thailand (Thailand) following an application lodged by OneSteel, a manufacturer of HRS in Australia.

In that investigation, as outlined in *Anti-Dumping Commission Report No. 223* (REP 223),<sup>7</sup> it was found that:

- the goods exported to Australia from Japan, Korea, Taiwan and Thailand were dumped, with margins ranging from 2.20 per cent to 19.48 per cent;
- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

Particulars of the dumping margins established for each of the exporters, and the effective rates of duty, are set out in the following table:

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<sup>7</sup> See Electronic Public Record (EPR) 223, Document 096.

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Country	Manufacturer/exporter	Dumping margin and effective rate of duty	Duty Method	Method to establish dumping margin
Japan	JFE Bars and Shapes Corporation	12.15%	Ad valorem	Weighted average export prices were compared with corresponding normal values over the investigation period in terms of s. 269TACB(2)(a).
	Uncooperative Exporters	12.23%	Ad valorem	
Korea	Hyundai Steel Company	2.52%	Ad valorem	
	Uncooperative Exporters	3.24%	Ad valorem	
Taiwan	Dragon Steel Corporation	N/A	Floor price	
	TS Steel Co Ltd	4.68%	Ad valorem	
	Tung Ho Steel Enterprise Corporation	N/A	Floor price	
	Uncooperative Exporters	7.89%	Ad valorem	
Thailand	Siam Yamato Steel Co Ltd	N/A	Floor price	
	Uncooperative Exporters	19.48%	Ad valorem	

**Table 1 — Dumping margins established in REP 223**

The findings and recommendations in REP 223 were provided to the then Parliamentary Secretary to the Minister for Industry (the then Parliamentary Secretary), recommending the publication of a dumping duty notice in respect of the goods. Notice of the then Parliamentary Secretary's decision to accept the recommendations in REP 223 was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette*. Interested parties were also advised of this outcome in ADN No. 2014/127 on 20 November 2014.<sup>8</sup>

On 7 August 2015, following a review by the Anti-Dumping Review Panel of the decision to impose these dumping duties, the dumping duty notice was varied so that the effective rate of duty for HRS exported to Australia by Siam Yamato Steel Co Ltd (SYS) was varied from 18.28 per cent to 18.00 per cent with effect from 20 November 2014.

### 2.3 Previous review of measures

#### ***Review 345 – exports of the goods from Taiwan by Tung Ho Steel***

On 21 March 2016, Tung Ho Steel Enterprise Corporation (Tung Ho) lodged an application for a review of the dumping duty notice applying to HRS exported to Australia from Taiwan, claiming that the variable factors relevant to the taking of the anti-dumping measures had changed. *Anti-Dumping Commission Report No. 345* recommended that the dumping duty notice have effect in relation to Tung Ho as if different variable factors had been ascertained relevant to the determination of duty. The then Parliamentary Secretary's decision to alter the notice as it applied to Tung Ho was published on the Commission's EPR 345 on 19 October 2016.

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<sup>8</sup> See EPR 223, Document 098.

***Review 346 – exports of the goods from Thailand by Siam Yamato Steel Co Ltd***

On 23 March 2016, SYS lodged an application for a review of the dumping duty notice applying to HRS exported to Australia from Thailand, insofar as it affected SYS. *Anti-Dumping Commission Report No. 346* recommended that the dumping duty notice have effect in relation to SYS as if different variable factors had been ascertained relevant to the determination of duty.

The then Parliamentary Secretary's decision to alter the notice as it applied to SYS was published on the Commission's EPR 346 on 19 October 2016.

***Accelerated review 359 – exports from Taiwan by Dragon Steel Corporation***

On 9 June 2016, Dragon Steel Corporation (Dragon Steel) lodged an application for an accelerated review of the dumping duty notice applying to certain HRS exported to Australia from Taiwan, insofar as it affected Dragon Steel. *Anti-Dumping Commission Report No. 359* recommended that the dumping duty notice have effect in relation to Dragon Steel as if the then Parliamentary Secretary had fixed different variable factors relevant to the determination of duty.

## **2.4 Current review process**

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,<sup>9</sup> or the Minister may request that the Commissioner conduct,<sup>10</sup> a review of those measures if one or more of the variable factors has changed.

The Minister may initiate a review at any time. However, a request for review by an applicant cannot be lodged earlier than 12 months after publication of the dumping duty notice<sup>11</sup> or countervailing duty notice or the notice(s) declaring the outcome of the last review of the dumping or countervailing duty notice.<sup>12</sup>

Within 110 days of the initiation of a review, or such longer time as allowed, the Commissioner must place on the public record a SEF on which he proposes to base his recommendations to the Minister concerning the review of the anti-dumping measures.<sup>13</sup>

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as allowed, to conduct a review and report to the Minister on the review of the anti-dumping measures.<sup>14</sup>

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<sup>9</sup> Subsection 269ZA(1).

<sup>10</sup> Subsection 269ZA(3).

<sup>11</sup> Subsection 269ZA(2)(a).

<sup>12</sup> This last occurred on 19 October 2016.

<sup>13</sup> Subsection 269ZD(1).

<sup>14</sup> Subsection 269ZDA(1).



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During the course of a review, the Commissioner will examine whether the variable factors have changed.

Variable factors in this particular review are a reference to:

- the export price;
- the normal value; and
- the NIP.

In making recommendations in his final report to the Minister, the Commissioner must have regard to:<sup>15</sup>

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the review.<sup>16</sup>

At the conclusion of the review, in respect of the dumping duty notice, the Commissioner must provide a final report that makes a recommendation to the Minister that the dumping duty notice:<sup>17</sup>

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

Following the Minister's decision, the Minister must give notice of the decision.<sup>18</sup>

## 2.5 Extensions granted

The Commission was granted three extensions in relation to this review. The reasons for the extensions are outlined in ADN Nos. 2018/107, 2018/139 and 2018/164.<sup>19</sup>

ADN No. 2018/107 extended the due date for the SEF until 30 July 2018 and the final report until 11 September 2018. ADN No. 2018/139 extended the due date for the final report until 30 October 2018. ADN No. 2018/164 extended the due date for the final report until 20 November 2018.

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<sup>15</sup> Subsection 269ZDA(3)(a).

<sup>16</sup> Subsection 269ZDA(3)(b).

<sup>17</sup> Subsection 269ZDA(1)(a).

<sup>18</sup> Subsection 269ZDB(1).

<sup>19</sup> See EPR 465, Documents 008, 019 and 021.

## **2.6 Statement of essential facts**

On 30 July 2018, the Commissioner placed on the public record the *Statement of Essential Facts No. 465* (SEF 465)<sup>20</sup> to inform all interested parties of the essential facts on which the Commissioner proposed to base his final recommendations on in relation to this review.

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<sup>20</sup> See EPR 465, Document 011.

### 3 THE GOODS AND LIKE GOODS

#### 3.1 Findings

The Commissioner finds that, during the review period, Hyundai exported the goods to Australia and sold like goods in its domestic market.

#### 3.2 The goods subject to the anti-dumping measures

The goods to which the current anti-dumping measures apply (the goods) are:

*Hot rolled structural steel sections in the following shapes and sizes, whether or not containing alloys:*

- *universal beams (I sections), of a height greater than 130 mm and less than 650 mm;*
- *universal columns and universal bearing piles (H sections), of a height greater than 130 mm and less than 650 mm;*
- *channels (U sections and C sections) of a height greater than 130 mm and less than 400 mm; and*
- *equal and unequal angles (L sections), with a combined leg length of greater than 200 mm.*

*Sections and/or shapes in the dimensions described above, that have minimal processing, such as cutting, drilling or painting do not exclude the goods from coverage of the investigation.*

*The measures do not apply to the following goods:*

- *hot rolled 'T' shaped sections, sheet pile sections and hot rolled merchant bar shaped sections, such as rounds, squares, flats, hexagons, sleepers and rails; and*
- *sections manufactured from welded plate (e.g. welded beams and welded columns).*

#### 3.3 Tariff classification

Goods identified as hot rolled non-alloy steel sections (meeting the specified shapes and sizes set out above) are currently classified to the tariff subheading in Schedule 3 of the *Customs Tariff Act 1995*:

- 7216.31.00 statistical code 30 (channels — U and C sections);
- 7216.32.00 statistical code 31 (universal beams — I sections);
- 7216.33.00 statistical code 32 (universal column and universal bearing piles — H sections); and
- 7216.40.00 statistical code 33 (equal and unequal angles — L sections).

Goods identified as hot rolled alloy steel sections, as per the shapes and sizes described above, are classified to tariff subheading 7228.70.00 (statistical codes 11 and 12) in schedule 3 of the *Customs Tariff Act 1995*.

## 4 EXPORTER AND IMPORTER INFORMATION

### 4.1 Findings

The Commission is satisfied that the information provided by Hyundai (the exporter) and Mitsubishi Australia Ltd (Mitsubishi, an importer) for the purposes of this review is accurate, relevant and complete.

### 4.2 Exporter questionnaires and verification

Following initiation, the Commission provided Hyundai, the largest Korean exporter, with an exporter questionnaire to complete. Hyundai completed the exporter questionnaire and the Commission conducted an on-site verification of the information Hyundai provided.

The Commission is satisfied as to the accuracy, relevance and completeness of the data provided by Hyundai following the verification undertaken.

The exporter verification report for Hyundai is available at the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Upon initiation, the Commission also placed a copy of the exporter questionnaire on the Commission's website. No exporters, other than Hyundai, completed the exporter questionnaire.

### 4.3 Importer questionnaires and verification

The Commission performed a search of the Australian Border Force's (ABF) import database and identified importers of HRS from Korea during the review period.

An importer questionnaire was sent to the two largest importers of HRS from Korea (by volume) for the review period. One importer verification visit was conducted in respect of Mitsubishi.

The Commission is satisfied as to the accuracy, relevance and completeness of the data provided by Mitsubishi following the verification undertaken.

The importer verification report is available at the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

## 5 VARIABLE FACTORS – DUMPING DUTY NOTICE

### 5.1 Findings

The Commissioner finds that the variable factors relevant to the taking of anti-dumping measures in relation to HRS exported to Australia have changed.

The Commissioner recommends to the Minister that the dumping duty notice have effect in relation to:

- Hyundai as if different variable factors, the export price, the normal value and the NIP, had been ascertained; and
- uncooperative and all other exporters from Korea as if different variable factors, the export price, the normal value and NIP, had been ascertained.

### 5.2 Model matching

#### 5.2.1 Commission's approach in the original investigation

As part of REP 223, in order to compare the export price of goods to the corresponding normal value of like goods for the purpose of assessing whether dumping had occurred, the Commission examined a number of model matching factors. These model matching factors were applied as appropriate, on an exporter by exporter basis and took into account:

- mechanical and chemical properties set out in the relevant standards;
- actual physical specifications of the goods;
- steel grades of HRS sold in the exporter's domestic market;
- production processes, in particular, whether goods were produced from the same semi-finished product, for example blooms; and
- cost and selling price information.

Hyundai was the sole exporter from Korea that cooperated with the original investigation. The following model matching criteria, which was developed by Hyundai, was applied by the Commission:

1. The model (shape): identifying whether the product is shaped as an H beam, Channel or Angle. Three codes (A, B and C) denoted this feature.
2. Grade Code: Grade Code A relates to goods with a tensile strength of less than 400 MPa; Grade Code B relates to goods greater than or equal to 400 MPa and less than 450 MPa; Grade Code C relates to goods greater than or equal to 450 MPa and less than 500 MPa; and Grade Code D relates to goods greater than or equal to 500 MPa. The strengths referred to are *minimum* tensile strengths.
3. Dimension: this characteristic identifies the web height. Code A denoted goods with a web height less than 230 mm; and Code B described a web height greater than or equal to 230 mm.

Hyundai's exports of HRS to Australia comprised of various shapes and dimensions, all of which were certified to the Australian Grade G300. The Australian Grade G300 has an equivalent minimum tensile strength falling within Grade Code B.

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 demonstrated by the specifications achieved and shown on mill certificates.

The Korean SS400 grade falls in the same Grade Code B as the Australian G300 grade, however, the Korean SM490 grade falls within Grade Code C.

The Commission's finding in REP 223 was that the SS400 grade was the most comparable grade to the Australian G300 grade and therefore the closest subset of like goods for calculating normal values.

While the SS400 grade was found to be the most comparable grade to the Australian G300 grade by the Commission, the two grades are not identical in all respects. Therefore, where cost differences were able to be quantified, between the SS400 grade sold by exporters on their respective domestic markets and the Australian G300 grade, an upwards adjustment to the normal value was applied on the basis of physical differences.

In the case of Hyundai, a physical adjustment was made to the normal value for observed differences in the cost of production for the Korean domestic grades within Grade Code B and the Australian G300 grade. This cost difference, consistent with the Commission's *Dumping and Subsidy Manual* (the Manual), was multiplied by Hyundai's gross profit margin on the relevant goods to ensure that the adjustment to normal value reflected the market value of the cost difference.

### **5.2.2 Submissions regarding model matching prior to the SEF**

Prior to the publication of the SEF, OneSteel submitted that:

- the Commission dealt with product grading issues incorrectly in Investigation 223 (the original investigation relevant to this Review 465).
  - Grade should be defined by the Standard to which the product has been produced and certified (as indicated on the test certificate), rather than assessing test results on a test certificate to decide which standard's specifications those specific results for an individual batch will meet.
- Korean grade SM490A is a closer match to the Australian G300 grade than Korean Grades SS400 and SM400A/B, since the 400 grades do not meet the minimum yield strength, chemical composition or tensile strengths required by the Australian G300 grade.
- standards, rather than mill test certificate results, should be used as the basis for price comparability.

In response to OneSteel's submission, Hyundai indicated during the verification visit that:

- the SS400 grade, though not identical, was the most comparable grade;
- the yield strength required by the Korean SS400 grade increased in 2016, with effect from 1 January 2017; and
- as a result the Korean SS400 grade now has a yield strength of 245–275 MPa, which is closer to that of the Australian G300 grade.

### **5.2.3 Commission's approach to model matching in the SEF**

In the SEF, the Commission noted that Hyundai had provided a coding system with three main features identified, which was broadly consistent with the original investigation:<sup>21</sup>

1. The model: shape identifying whether the product is shaped as an H beam, Channel, Angle or I beam. Four codes A, B, C and D denoted this feature.
2. Grade Code: Grade Code A relates to goods with a tensile strength of less than 400 MPa; Grade Code B relates to goods greater than or equal to 400 MPa and less than 450 MPa; Grade Code C relates to goods greater than or equal to 450 MPa and less than 500 MPa; and Grade Code D relates to goods greater than or equal to 500 MPa. The strengths referred to are minimum tensile strengths.
3. Dimension: this characteristic identifies the web height. Code A denoted goods with a web height less than 230 mm; and Code B described a web height greater than or equal to 230 mm.

### ***Consideration of Hyundai's grade code classification for model matching purposes***

In the SEF, the Commission considered the appropriateness of Hyundai's grade code classification on the basis of a comparison between the Korean and Australian standards and costing information.

The Commission found that:

- The SM490 grade is regarded as a specialised grade in the Korean market, which attracts a price premium as compared to the SS400 grade;
- The SM490 grade is sold in relatively small quantities by Hyundai on the Korean market, when compared to the SS400 grade, particularly for certain shapes;
- The SM490 grade is of a higher comparative standard than the Australian G300 grade in terms of tensile strength. It is equivalent in terms of yield strength;
- The SS400 grade specifications in Korea have increased in respect of yield strength and tensile strength since the original investigation. The Commission notes that the grades have been renamed in the new Korean standard. They are now named based on yield strength, whereas previously they had been named based on ultimate tensile strength. SS275 (formally SS400) relates to Korean

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<sup>21</sup> For the current review, Hyundai identified four model classifications rather than three. The Commission has accepted this new model classification with respect to shape. The verification visit report for Hyundai contains further information regarding this matter.



standard KS D 3503:2016 and SM355 (formally SM490) relates to Korean standard KS D 3515:2016.

- The comparability of SS275 (formerly SS400) with the Australian G300 grade has been enhanced as a result of this change but remains of a lower comparative standard than the Australian standard on the basis of yield strength. It is equivalent in terms of tensile strength;
- A small, but not immaterial, cost difference was observed between the cost to produce the Australian G300 grade and the other Korean domestic grades within Grade Code B, which includes grade SS400; and
- The cost difference observed between the Australian G300 grade and the Korean domestic grades within Grade Code B (which includes the SS400 and SM400 grades over the review period) was far less than the cost difference observed between the cost to make the Australian G300 grade and the Korean SM490 grade.

Based on this evidence, the Commission considered in the SEF that the model determined in REP 223 for Hyundai in respect of grade was appropriate for determining normal value for the present review.

In recognition of the observed differences in the cost of production between the Australian G300 grade and the Korean domestic grades within Grade Group B, an adjustment to the normal value was made for physical differences. This adjustment applies the gross margin of profit in order to estimate the market price effect of the production cost difference. The Commission was satisfied in the SEF that the observed cost difference in production was an appropriate basis on which to make an adjustment to ensure a fair comparison between the export price and normal value, consistent with subsection 269TAC(8).

#### **5.2.4 Submissions regarding model matching on the basis of standards post SEF**

Following publication of the SEF, OneSteel requested a meeting with the Commission. The Commission met with OneSteel representatives on 22 August 2018.<sup>22</sup> In summary, OneSteel made the following submissions regarding model matching at this meeting:

- the Commission has the ability in this review to change its assessment of which domestically produced models are most directly comparable to models sold to Australia, on the basis that its recently introduced model control code (MCC)<sup>23</sup> enables the Commission to consider changes to the model matching criteria applied in the original investigation;
- the Commission should compare the weldability and yield strength between the Australian and Korean standards for hot rolled steel as the primary considerations for model matching;
- rather than provide an adjustment for the cost differences observed between grades, the Commission could compare the price between welded and general structural products where other factors are identical (for example SS400 and SM400 could be compared and SS490 and SM490 could be compared);

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<sup>22</sup> See EPR 465, Document 017.

<sup>23</sup> [ADN No. 2018/128](#) refers.



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- because the Korean standards applied concurrently for the review period, the most comparable model, in its view, has changed.
  - For product sold under the previous standard, the SM490A grade would be the most comparable model to the Australian G300 grade.
  - For product sold under the updated standard, the closest comparable model would now be SM275 grade.
- Following this meeting, OneSteel provided a public version of the presentation it provided to the Commission and made two further submissions regarding model matching. These submissions reiterated the points above.
- In its submission dated 24 August 2018, OneSteel also provided its detailed comparison of the properties of HRS grades (chemical composition, mechanical properties) with respect to the old and new Korean standards and in comparison to the properties of G300 under the Australian standard.
- In its submission dated 31 August 2018, OneSteel also provided documentation in the form of a price list from an inspection agency to evidence its contention that weldable grades of HRS attract a price premium on the Korean market.

In response, in a submission dated 23 October 2018, Hyundai indicated that:<sup>24</sup>

- it does not sell products that are identical to those exported to Australia so it is not meaningful to identify a product that is identical or strictly complies with all the requirements of the Australian standard;
- The consideration of like goods requires a thorough examination of a wide range of relevant factors (yield strength, tensile strength, shape, dimension, cost differences, cost, the actual physical specification, etc.). However, OneSteel is requesting that the Commission focus on one or two narrow criteria – by yield strength and now weldability; and
- The like goods identified, whether SS400 or SM400, are weldable.

### 5.2.5 Commission's approach to model matching in this Final Report

The Commission considered OneSteel's submissions in relation to model matching and price comparability between welded and general HRS goods and advises as follows:

- On 9 August 2018, the Commission advised that a MCC structure would be implemented on new investigations, reviews of exporters generally or continuations for cases initiated after this date.<sup>25</sup> While the Commission noted that it may consider applying a MCC structure to single exporters on a case by case basis, the Commission does not consider it appropriate in the present case as it was initiated prior to 9 August 2018. As interested parties in this review were not advised of a change to MCC prior to 9 August 2018, the Commission does not consider changing the MCC appropriate in this case. While the Commission has not established a MCC for this product, the Commission has reviewed the claims made by OneSteel, as set out below.

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<sup>24</sup> See EPR 465, Document 020.

<sup>25</sup> [ADN No. 2018/128](#) refers.

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- The Commission reviewed the Korean standards for rolled steels for general structures (KS D 3503) and rolled steels for welded structures (KS D 3515) and compared them to the Australian standard (AS/NZS 3679.1). The Australian standard indicates that all grades specified are suitable for welding in accordance with AS/NZS 1554.1 and all grades are provided with a carbon equivalent (CE) value, which supports OneSteel's assertion that the Australian standard requires all steel to have a CE below a certain threshold. The Korean standard for welded structures relates specifically to weldable steels and as such specifies CE values for all grades. The Korean standard for general structures does not specify a CE value.
- The Commission sought to conduct a comparative price analysis between welded and general HRS for SS400/SM400 and SS490/SM490, that is, a comparison on the basis of weldability for models otherwise having identical mechanical properties, across the old and new standards.
  - Before conducting this analysis, the Commission inquired whether it was possible for Hyundai to distinguish sales of HRS produced under the old and new Korean standard over the review period.
  - Hyundai stated that it used the grade designation relating to the old and new standard interchangeably. Hyundai also stated that goods produced to the old standard already exceeded the requirements of both the old and the new standard such that it was not necessary to amend its production to comply with the new standard. Hyundai provided evidence in the form of mill certificates (refer to **Confidential Attachment 3**).
  - As a result of the evidence provided, the Commission was not able to distinguish between sales made under the old and new standards. The Commission considers that it is unlikely that differences between the old and new standard would significantly affect price comparability on the basis that production was not required to be amended to meet the new standards.
- A price premium for welded products was not consistently observed. Where price differences were observed between welded and the general structures, the differences were small but material (refer to **Confidential Attachment 3** for the Commission's analysis). However, the price difference could be explained by other factors (e.g. volume effects). In this regard, the Commission notes that volumes differed markedly between the welded and general HRS grades.
- The Commission reviewed the inspection agency price list provided by OneSteel to support its contention that weldable grades of HRS attract a price premium on the Korean market. While the price list shows price extras for strength and weldability for HRS on the Korean market, the Commission is of the view that the most pertinent evidence of price comparability remains the verified domestic sales data, which formed part of this review, since this indicates prices actually achieved.

In view of the above considerations, the Commission does not consider an adjustment based on price differences between welded and general HRS products to be warranted. The Commission remains of the view that the appropriate basis for adjustment for physical differences be made on the basis of observed differences in the verified production cost data of Hyundai.

### **5.2.6 Submissions regarding model matching in relation to shape post SEF**

At the meeting of 24 August 2018, OneSteel inquired as to whether universal beams (I-beams) and universal columns (H-beams) were included in the Commission's model matching for H-beams, and whether only tapered flange I-beams were classified as I-beams.

### **5.2.7 Clarification regarding model matching in relation to shape post SEF**

The Commission clarified this matter with Hyundai and confirmed that the designation of I-beam includes only tapered flange I-beams. As such, only tapered I-beams have been excluded from the H-beam shape grouping.

## **5.3 Hyundai variable factors**

### **5.3.1 Export price**

During the review period it was established that all of the goods were exported to Australia otherwise than by the importer in arms length transactions (e.g. they were exported by Hyundai who the Commission considers to be the exporter). Some of the goods were purchased directly by the importer from the exporter. For other goods, there was a trader involved between the exporter and importer.<sup>26</sup>

The export price for exports made by Hyundai during the review period was established under:

- subsection 269TAB(1)(a), in respect of direct sales to the importer, using the price paid by the importer to the exporter less transport and other costs arising after exportation; and
- subsection 269TAB(1)(c), in respect of sales made indirectly through a trader, as the price that the Minister determines having regard to all the circumstances of the exportation (in this case using the price paid by a trader to the exporter less transport and other costs arising after exportation).

The export price for HRS exported by Hyundai has changed since last ascertained, as part of the original investigation.

Details of the export price calculations for HRS exported by Hyundai are at **Confidential Appendix 1**.

### **5.3.2 Normal value**

Normal values were established in accordance with subsection 269TAC(1), using Hyundai's domestic invoice prices for like goods, by shape, grade and size, sold in the ordinary course of trade in arms length transactions.

Adjustments to the normal value were made under subsection 269TAC(8) to ensure a fair comparison with the export price. Adjustments made for the review of measures were

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<sup>26</sup> See EPR 465, Document 010.

broadly consistent with the approach undertaken in respect of Hyundai as part of the original investigation.<sup>27</sup>

A summary of the adjustments is included in the table below. Further details of these adjustments are contained in the exporter verification visit report for Hyundai, which is available from EPR 465.

Adjustment Type	Deduction/addition
Domestic credit expenses	Deduct the cost of domestic credit expense
Domestic inland freight	Deduct the cost of domestic inland freight
Domestic advertising expenses	Deduct the cost of domestic advertising expense
Merchandise difference	Add the merchandise difference
Export inland freight	Add the cost of export inland freight
Export handling and other costs	Add the cost of export handling and other costs

Table 2 — Summary of normal value adjustments for Hyundai

The normal value for HRS exported by Hyundai has changed since last ascertained, as part of the original investigation.

Details of the normal value calculations for HRS exported by Hyundai are at **Confidential Appendix 4**.

### 5.3.3 Submissions made post SEF regarding normal value – date of sale

During the verification visit, Hyundai claimed that, while the invoice date reflected the date of sale for domestic sales, the sales order date should be regarded as the date of sale for export sales, and therefore an adjustment was required for sales occurring at different times. However, based on the evidence provided, the verification team determined that the invoice date best establishes the material terms of sale and that a downwards adjustment for sales occurring at different times had not been substantiated.<sup>28</sup> In its submission dated 24 August 2018, Hyundai stated that:<sup>29</sup>

- the date of sale is the date upon which the material terms of the sale were established;
- the sales order date best establishes the date of sale since it is the document generated to confirm all essential terms of the transaction constituted by any particular purchase order;

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<sup>27</sup> In REP 223, a warehousing adjustment was applied. This adjustment has not been applied for the purposes of this review. The verification visit report for Hyundai contains further information regarding this matter.

<sup>28</sup> See EPR 465, Document 010.

<sup>29</sup> See EPR 465, Document 016.

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- the Commission's approach of favouring the date of invoicing as the date of sale is flawed and is inconsistent with real world commercial practices and basic principles of contract law;
- the sales order records the final agreement on the material terms of the sale between Hyundai Steel and its customer;
- the sales order recites and records the material terms of sale that have been made being:
  - the name of the customer,
  - specification of the goods, including the size and grade;
  - price;
  - quantity;
  - shipping terms;
  - payment terms (including the requirement to provide a letter for credit, if applicable); and
  - destination of the sale.

In response, in a submission dated 31 August 2018, OneSteel:<sup>30</sup>

- noted the various findings of the visit report regarding date of sale;
- observed that, during the original investigation, Hyundai had indicated that its date of sale was the invoice date; and
- stated that Hyundai had indicated, within the context of a recent US steel investigation, that it reported the earlier of the shipment date or the date of invoice as the appropriate date of sale.

In response, in a submission dated 23 October 2018, Hyundai indicated that:<sup>31</sup>

- it has changed its view regarding the date of sale for its Australian sales, indicating that circumstances have changed in respect of a certain importer customer; and
- it has approached the date of sale issue in the US investigation differently to the present review due in part to the particular regulatory requirements in the US jurisdiction and since each market has its own characteristics.

### 5.3.4 Commission's approach to date of sale

Section 14.2 of the Manual notes that adjustments will be made if there is evidence that a particular difference affects price comparability. In establishing the date of sale, the Manual states that Commission will normally use the date of invoice as it best reflects the material terms of the sale and also usually approximates the shipment date for the goods exported. However, where a claim is made that a date other than the date of invoice better reflects the date of sale, the Commission will examine the evidence provided.<sup>32</sup>

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<sup>30</sup> See EPR 465, Document 018.

<sup>31</sup> See EPR 465, Document 020.

<sup>32</sup> *Dumping and Subsidy Manual*, April 2017, p.62.

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The Commission has reviewed the information provided by Hyundai as part of its verification as well as the analysis undertaken by the verification team and makes the following observations:

- the material terms of Hyundai's sales include price, quantity, payment and delivery terms;
- the final quantity is not set by the purchase order:<sup>33</sup>
  - the verified purchase orders have a significant quantity tolerance;
- the delivery date is not set by the purchase order:
  - a significant proportion of export sales that were verified were shipped to the port after the requested shipment date specified on the sales order;
  - in over half of these cases the delay was in excess of 80 days;
- Hyundai recognises shipment date as the date of sale in its accounting system:
  - Hyundai did not provide the shipment date for all sales, however on the basis of the export sales verified, the shipment date is reasonably close to the invoice date.

these issues were discussed at length in the visit report, however no further evidence or information was provided by Hyundai regarding the determination of these terms of sale. In these circumstances, the Commission considers that the invoice date is the appropriate date of sale and that the claim for an adjustment has not been substantiated.

### 5.3.5 Submissions made post SEF regarding normal value – sustained exchange movements

During the verification visit, Hyundai claimed that:

- there was a downward movement in the Korean won (KRW) to the US dollar (USD) exchange rate from the second half of January 2017 to early April 2017; and
- this downward movement was sustained through to June 2017.

Therefore, Hyundai requested that the exchange rate used to convert the USD export price of all sales on and between 1 February 2017 and 31 March 2017 be converted at the average exchange rate for January 2017. However, based on the evidence provided the verification team determined that Hyundai's claim was not substantiated.<sup>34</sup>In its submission dated 24 August 2018, Hyundai stated that:

- The Commission erred in applying a standard of determination wherein a 'sustained movement' is a period of eight consecutive weeks of unusual movement, where the weekly average exceeded the benchmark rate by more than five per cent in each week. This interpretation of 'sustained movement' is extremely restricted, and is inconsistent and unsupported by the ordinary language of section 269TAF(4);
- The standard of determination that the Commission applied is not specified in the Act, the Anti-Dumping Agreement or the Commission's Manual;

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<sup>33</sup> Hyundai is claiming sales order date as the date of sale. A 'sales order' is simply an electronic record of the customer purchase order in Hyundai's accounting system.

<sup>34</sup> See EPR 465, Document 010.



- The standard of determination that the Commission applied derives from the US anti-dumping system, but this methodology is specific to, and reflective of, the US anti-dumping system;
- It is not open to the Commission to adopt a highly restrictive approach relied upon in a foreign jurisdiction when it appears to contradict the plain words of the Australian law concerned;
- Accordingly, the Minister should determine that there was a sustained exchange movement;
- The exchange rate used to convert the USD export price of all Hyundai's Australian sales of the goods should be fixed for a period of 60 days on and from any days between 18 January and 1 February 2017;
- it has not over emphasised the exchange movements and their significance cannot be diminished by the Commission using a large scale to flatten the chart; and
- the Commission's own analysis shows that the average weekly USD to KRW exchange rate was consistently lower than the prior eight week moving average.

### **5.3.6 Commission's approach to sustained exchange movements**

The Commission has tested whether there was a sustained exchange rate movement in the review period by applying the methodology used previously by the Commission.<sup>35</sup> The Commission developed its methodology from a review of other comparable administrative authorities, in particular the United States anti-dumping authority.<sup>36</sup>

The Commission's methodology is as follows:

- calculate weekly averages of actual daily exchange rates;
- calculate an eight week moving average of those weekly rates (benchmark rate);
- where the weekly average deviates from the benchmark rate by more than five per cent, that week is identified as a period of unusual movement; and
- count the number of consecutive weeks of unusual movement.

The Commission considered the following:

- In principle, subsection 269TAF(4)<sup>37</sup> and its source in Article 2.4.1 of the Anti-Dumping Agreement are to avoid findings of dumping based on a technicality, i.e., where the dumping resulted from movements in currency that occur after an export price has been agreed to and that price has become payable.
- As stated in the Manual, 'the notion of a "sustained movement" suggests something outside of a normal range of fluctuation. There must have been a

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<sup>35</sup> See Investigations 240 and 341.

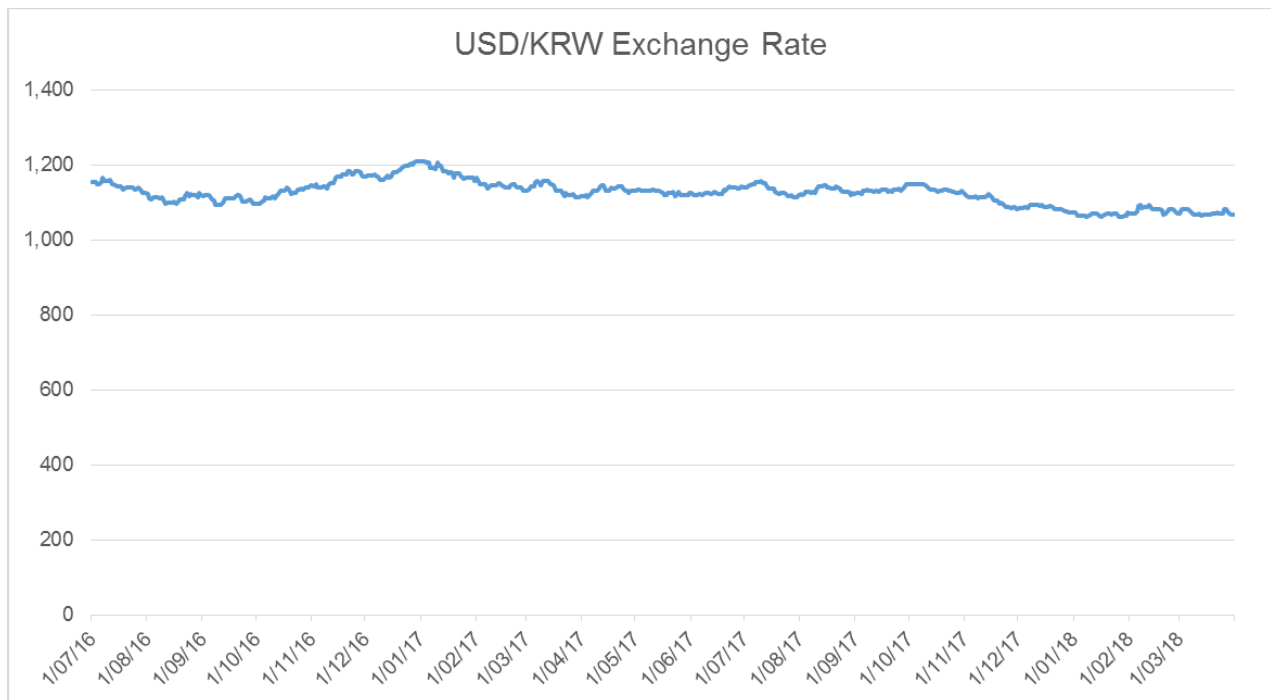
<sup>36</sup> United States *Enforcement and Compliance Antidumping Manual* at pages 81 to 83.

<sup>37</sup> Subsection 269TAF(4) provides that where a conversion of currencies is required under subsection 269TAF(1) and there is a sustained movement in the rate of exchange between those currencies, the Minister may, by notice published on the Commission's website, declare that this subsection applies with effect from a day specified in the notice and, if the Minister does so, the Minister may use the rate of exchange in force on this day for the purpose of that comparison during the period of 60 days starting on that day.

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“movement”, and this “movement” must have been “sustained” throughout subsequent periods.<sup>38</sup>

- The Commission considers its interpretation of a “sustained movement” to be a reasonable methodology to assess currency exchange rate movement and reflective of the ordinary terms of subsection 269TAF(4). This methodology has been used in previous cases and has been endorsed by the Anti-Dumping Review Panel in a previous case.<sup>39</sup>
- As detailed in the verification report, the Commission’s analysis of exchange rates in respect of the present case using this methodology indicates that the USD to KRW movement did not deviate from the benchmark rate by more than five per cent so that there were no unusual weeks in the review period.
- This pattern can be observed in the KRW to USD exchange rate chart from the Commission’s verification report, which is produced by the Commission below:<sup>40</sup>



- As noted in the verification report, the chart provided by Hyundai had a vertical axis starting at 950 KRW. The Commission maintains that setting the vertical axis at a value above zero can be useful for observing how different variables interact however it tends to overemphasise the magnitude of changes in observed variables. It is for this reason the Commission’s normal practice to start the vertical axis at zero and, if it does not do so, to expressly note that it has not done so.
- The following chart further shows that, for the review period according to the Commission’s methodology, there were no weeks of unusual movement during the

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<sup>38</sup> *Dumping and Subsidy Manual*, April 2017.

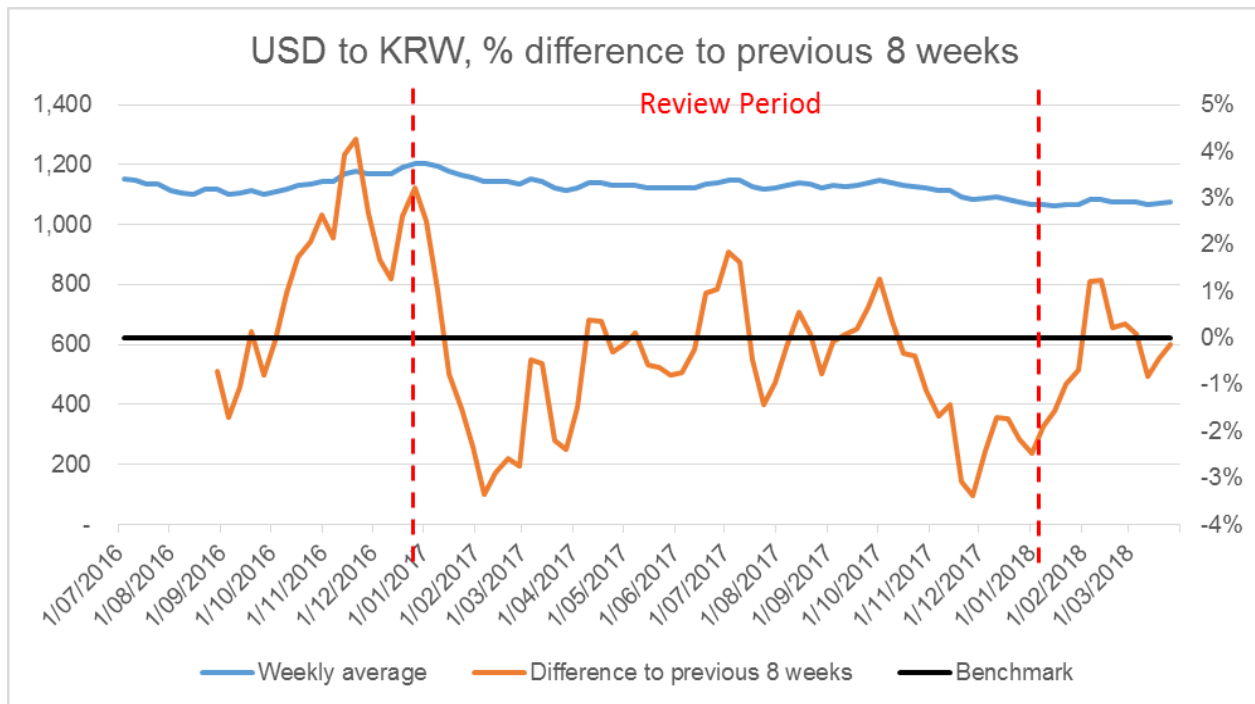
<sup>39</sup> ADRP Report No. 55 at paragraph 287.

<sup>40</sup> This chart was first included in EPR 465, Document 010.



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review period (i.e., no weekly average exchange rate deviations of more than five per cent from the benchmark – it is not a peak to trough measurement.)<sup>41</sup>



- The changes in the average weekly USD to KRW exchange rate depicted in the Commission's chart above is not regarded as a sustained exchange rate movement since the weekly average has not deviated from the benchmark rate by more than five per cent.

On the basis of the above, the Commission does not consider there to have been a period of sustained movement in the KRW to USD currency exchange rates sufficient for the Minister to invoke subsection 269TAF(4).

### 5.3.7 Dumping margin

The Commission compared the quarterly weighted average of export prices over the whole of the review period with the quarterly weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a).

The Commission calculated a dumping margin of 9.9 per cent in respect of HRS exported to Australia by Hyundai during the review period.

Details of the dumping margin calculations for HRS exported by Hyundai are at **Confidential Appendix 5**.

<sup>41</sup> This chart was first included in EPR 465, Document 010, it has been modified to clarify the benchmark.

### **5.3.8 Non-injurious price**

As outlined in section 6 below, the Commission considers that the approach to determining the NIP in REP 223 remains valid for the purpose of this review.

In REP 223, the NIP was ascertained to be equal to the normal value for each exporter.

The NIP for exports of HRS from Korea made by Hyundai has changed since last ascertained, as part of the original investigation.

## **5.4 Uncooperative and all other Korean exporters**

As provided for in subsection 269TACAB(1), for uncooperative exporters, export price and normal value were worked out in accordance with subsection 269TAB(3) and subsection 269TAC(6) respectively by having regard to all relevant information.

### **5.4.1 Export price**

For uncooperative and all other exporters of HRS from Korea, the Commission established export prices pursuant to subsection 269TAB(3), having regard to all relevant information. Specifically, the Commission considers that export prices be determined based on verified information of cooperating exporters over the review period is the most relevant information available for this review. Accordingly, the Commission used Hyundai's export price, given that Hyundai was the sole cooperative exporter.

The export price for uncooperative and all other exporters of HRS from Korea has changed since last ascertained, as part of the original investigation.

### **5.4.2 Normal value**

For uncooperative and all other exporters of HRS from Korea, normal values were established pursuant to subsection 269TAC(6), having regard to all relevant information. Specifically, the Commission considers that verified information of cooperating exporters over the review period is the most relevant information available for this review. The Commission calculated the normal value using Hyundai's normal value, given that Hyundai was the sole cooperative exporter. In using Hyundai's normal values, the Commission removed all downwards adjustments.

The normal value for uncooperative and all other exporters of HRS from Korea has changed since last ascertained, as part of the original investigation.

### **5.4.3 Dumping margin**

The Commission compared the quarterly weighted average of export prices over the whole of the review period with the quarterly weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a) of the Act.

The dumping margin for uncooperative and all other exporters of HRS from Korea is 13.9 per cent.

#### **5.4.4 Non-injurious price**

As outlined in section 6 below, the Commission considers that the approach to determining the NIP in REP 223 remains valid for the purpose of this review.

In REP 223, the NIP was ascertained to be equal to the normal value for each exporter.

The NIP for uncooperative and all other exporters of HRS from Korea has changed since last ascertained, as part of the original investigation.

## 6 NON-INJURIOUS PRICE

### 6.1 General

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause material injury to an Australian industry producing like goods. The level of dumping duty imposed cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

Under subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), the Minister must specify a method for calculating the IDD payable. In doing so, the Minister must, if the NIP is less than the normal value, have regard to the desirability of specifying a method of calculating the IDD such that the sum of the IDD payable and the ascertained export price is not greater than the NIP (lesser duty rule). Subsection 269TACA(a) identifies the NIP of the goods exported to Australia as the minimum price necessary to prevent the injury or a recurrence of the injury caused by the dumping.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to derive a NIP that is expressed in similar delivery terms to export price and normal value (e.g. FOB).

Where the NIP is lower than the normal value, the duty is calculated with respect to the difference between export price and NIP, thereby giving effect to the lesser duty rule.

### 6.2 Original investigation

In REP 223, the Commission considered that there was no suitable method of determining the USP and so considered an alternative approach to establishing the NIP.

The Commission considered that the NIP for Hyundai and other exporters, would be a price equal to the respective normal value. As a result, the then Parliamentary Secretary was not required to consider the lesser duty rule.

### 6.3 Assessment of the NIP

The Commission considers that the approach to determining the NIP in REP 223 remains valid for the purpose of this review.

The NIP for Hyundai and the NIP for uncooperative and all other exporters has been set equal to the respective normal values. As outlined in section 5, the normal values have changed since last ascertained. As a consequence, the NIP has also changed since last ascertained.

This means that the lesser duty rule does not come into effect and IDD will be taken at the full margins of dumping.

## 7 FINDINGS AND EFFECT OF THIS REVIEW

### 7.1 Findings

The Commissioner has found that, in relation to exports of HRS to Australia from Korea made by Hyundai during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the ascertained NIP should be set equal to the ascertained normal value, meaning that the ascertained NIP has changed.

The Commissioner finds that in relation to uncooperative and all other exporters of HRS to Australia from Korea for the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the ascertained NIP should be set equal to the ascertained normal value, meaning that the ascertained NIP has changed.

### 7.2 Effect of the review

If the Minister accepts the Commissioner's recommendations, exports of HRS from Korea made by:

- Hyundai will attract IDD at the rate of 9.9 per cent; and
- uncooperative and all other exporters will attract IDD at the rate of 13.9 per cent.

A summary of the variable factors is at **Confidential Attachment 1 – Summary of variable factors**

## 8 FORM OF MEASURES

### 8.1 Form of measures imposed in the original investigation

The form of measures that was imposed in the original investigation was ad valorem. This form of measures applies generally to exporters of HRS from Japan, Korea, Taiwan and Thailand.<sup>42</sup>

This form of measures was imposed on the basis that an ad valorem rate is more appropriate in view of the cyclical nature of the HRS market, which involves price fluctuations.

### 8.2 Commission's approach to form of measures in the SEF

The Commission did not receive any submissions regarding the appropriate form of measures to be adopted following this review prior to the publication of the SEF.

Consistent with the original investigation, it was stated in the SEF that the Commissioner was intending to recommend to the Minister that the form of measures be ad valorem for Korean exporters as a result of this review.

### 8.3 Consideration of form of measures in this review

Following publication of the SEF, the Commission received various submissions on the appropriate form of measures from OneSteel and Hyundai. In ADN No. 2018/164, the Commission advised affected parties that an extension to the review had been granted by the Commissioner to consider this issue. The ADN outlined that the Commissioner will assess submissions lodged by 7 November 2018 regarding the form of measures in the final report.

In response to these submissions, the Commission conducted further analysis about the appropriate form of measures to be adopted following this review.

#### 8.3.1 Changes in HRS exports originating from Korea since the original investigation

The Commission notes that:

- the quantity of HRS exported by Hyundai to Australia during the review period (1 January – 30 December 2018) is more than triple the quantity of HRS it exported during the original investigation period (1 October 2012 – 30 September 2013);
- Of those exporters subject to measures, Hyundai was by far the largest exporter of the goods to Australia, accounting for over 70 per cent of exports during the review period;

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<sup>42</sup> Exports made by Tung Ho, SYS and Dragon Steel are subject to a floor price as a result of Review 345, Review 346 and Accelerated Review 359 respectively.

- Hyundai's export prices and normal value have fallen since the original investigation with the dumping margin having increased, which indicates that Hyundai's export price has fallen by a greater degree than its normal value;
- Korea is the most significant source of exports of the goods to Australia; and
- Korea is a significant exporter of steel to the US and its exports of steel are now subject to a US quota.<sup>43</sup>

### 8.3.2 Submissions regarding form of measures received post SEF

In its meeting with the Commission on 22 August 2018<sup>44</sup> and its subsequent submissions to the Commission on 24 August 2018 and 25 October 2018,<sup>45</sup> OneSteel stated the following:<sup>46</sup>

- Hyundai's dumping margin between the original investigation and SEF 465 has increased, i.e., dumping has continued and the current ad valorem measures have been ineffective;
- the ad valorem rate of duty has failed to achieve its purpose of removing the full injurious effects of dumping as the exports from Korea during the review period were consistently entered at the largest volumes and lowest prices. This resulted in a 7.38 per cent under-collection of dumping duties and lost Commonwealth revenue in the review period;
- the combination duty would be more effective at deterring dumping, because combination duties can capture additional IDD if the exporter further reduces the export price, unlike an ad valorem measure;
- adopting a combination duty would not disadvantage importers as they would have the option of applying for a duty assessment and obtaining a refund if they did not sell dumped goods; and
- therefore, a combination form of measures should be imposed.

In response, in submissions dated 23 October 2018 and 7 November 2018,<sup>47</sup> Hyundai indicated that:

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<sup>43</sup> US Customs and Border Protection Quota Bulletin 18-126 states that, as of 1 June 2018, Korea is subject to quotas on steel mill and aluminium articles under section 232 of the *Trade Expansion Act of 1962*, 19 USC ch 7. Although differences between Australian and US tariff code descriptions create some uncertainty in determining which US tariff numbers apply to the goods in this review, the US quota on Korean HRS appears to have been largely or entirely exhausted for calendar year 2018 at or before 5 July: see 'South Korean Quota Estimates' for tariff number 9903.80.48 in Quota Bulletin 18-126, available online at <https://www.cbp.gov/trade/quota/bulletins/qb-18-126-absolute-quota-aluminum-products-argentina-brazil-south-korea>. Descriptions of tariff numbers can be found in the US Harmonized Tariff Schedule, available online at <https://hts.usitc.gov/>.

<sup>44</sup> EPR 465, Document 017.

<sup>45</sup> EPR 465, Document 015.

<sup>46</sup> A further submission was received from OneSteel on 12 November 2018, refer to EPR Document 021. The Commissioner is not obliged to have regard to any submission made in response to the SEF if received after the period referred to in the SEF, pursuant to subsection 269ZDA(4), if to do so would have, in the opinion of the Commissioner, prevented the timely preparation of this report. The Commissioner considers that the incorporation of this submission would prevent the timely preparation of this report. Accordingly, this submission has not been considered as part of this report.

<sup>47</sup> EPR 465, Document 020.

- the dumping margin is not accurate and it is significantly overstated due to the incorrect determination of the date of sale and the exchange rate used;
- references by OneSteel to under-collection of dumping duties and lost Commonwealth revenue have no basis in either fact or law. Dumping duties collected during the review period were done so according to a notice published under subsection 269TG(2); as long as duties were paid and collected according to that notice and the normal customs requirements, there is no over collection or under collection of revenue;
- dumping duty collected during a review period might not reflect the spontaneous dumping margin of the same period, but the legislation provides ways of addressing the gap via duty assessments and variable factors reviews — the current review being an example of the latter;
- contrary to OneSteel's submission, the form of measures is not intended as a pathway to address the contemporaneity of dumping margins;
- assessing the impact of measures to OneSteel's profitability involves an injury analysis, which is outside the scope of the current review. Even if profitability were considered, OneSteel contributed substantially to imports of the goods from Hyundai during the review period. Therefore, OneSteel would have benefitted directly from any of Hyundai's export prices being too low;
- OneSteel is best placed to explain the increase in the volume of imports of HRS from Hyundai. This increase may be because OneSteel could not meet the demand in the domestic market;
- Hyundai has consistently cooperated with anti-dumping cases, and has been a long-term and responsible supplier of product at fair prices in Australia to its customers. The risk of a sharply increased dumping margin following a review is disruptive to Hyundai's interest in being a long-term supplier. Therefore, Hyundai has no intention to supply the Australian market at dumped prices or take advantage of ad valorem measures; and
- a combination duty is likely to impose significant price inflexibility and costs with a market known to be cyclical nature, when OneSteel could not, and still cannot, meet demand. An upfront payment of duty impacts upon the importer's business by fixing its costs of import at a high level, making pricing inflexible and unfairly prevents the importer from competing in a falling market.

### **8.3.3 Commission's approach to the form of measures in this final report**

In determining the form of measures to be imposed the Commission has had regard to the *Guidelines on the Application of Forms of Dumping Duty* (the Guidelines),<sup>48</sup> submissions from interested parties, and relevant factors influencing the HRS market.

The Guidelines set out a number of factors to be considered when deciding upon the form of duties to be imposed.

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<sup>48</sup> These may be accessed at:  
<https://www.adcommission.gov.au/accessadsystem/investigations/Documents/Guidelineformsofdumpingduty-November2013.pdf>.



***The application of the Guidelines to this review***

The key considerations in deciding whether an ad valorem or combination duty is appropriate include:

- whether there are a large number of export models with significantly different prices;
  - For some commodities there can be a large number of models and the difference between the lowest and highest prices in the product range can be well over 100 per cent); and
  - In such a situation, the ascertained export price (which is a weighted average of all models) can be too generic and therefore inappropriate as a basis for setting measures.
- whether there are complex company structures with related parties and whether price manipulation or circumvention of measures is likely; and
- the effect of this form of measures in a rising and falling market:
  - There is the potential for a combination duty to be unreasonably punitive in a falling market. However, the fixed portion of the combination duty – when set at an ad valorem rate – ensures that the combination duty does not become ineffective in a rising market.

As noted in the Guidelines, all forms of dumping duty calculation have the purpose of removing the injurious effects of dumping.

**Number of export models and significance of price differences**

Based on Hyundai's model matching criteria, there were a small number of models exported to Australia during the review period by Hyundai. The same models were exported during the original investigation period.

From the large quantity and large number of sales made by Hyundai during the review period, the Commission has determined that that the different models display only a small variation in price. The small variation in price was judged on the basis of the concentration of sales around the mean export price. The Commission also compared the mean and standard deviation between each model. The Commission found that, not only does the mean price differ by a small amount, but the "spread" of the data is small.

The Commission observed that one model was a slight outlier, however, the mean price for this model was above the ascertained export price.

On this basis, the combination duty is considered to be suitable for the different models exported by Hyundai (refer to **Confidential Attachment 3** for the Commission's analysis).

**Existence of complex company structures and risk of price manipulation or circumvention**

Hyundai does not sell to related parties in Australia. No circumvention activity has been identified by the Commission in respect of the HRS market. No evidence of circumvention as defined in the Act has been identified as part of this review and no circumvention cases have arisen in relation to HRS more broadly.

Consequently, this factor is neutral in the Commission's determination of the form of duty.

*Potential for a combination duty to be unreasonably punitive*

In REP 223, it was observed that HRS market is cyclical, with prices fluctuating in particular in response to movements in underlying raw material costs.

The Commission observes that Hyundai's export prices have:

- trended downwards since duties were imposed in the original investigation. This is consistent with the ascertained export price for Hyundai in this review being lower than that determined in the original investigation; and
- been trending upwards since the end of the review period (refer to **Confidential Attachment 3** for the Commission's analysis).

In light of this, the Commission considers that the form of measure recommended in the original investigation (ad valorem) was appropriate at the time.

However, the ascertained export price for this review is at a relatively low point in the price cycle, therefore there is a reduced risk that the combination duty will be unreasonably punitive.

***Other issues raised in submissions***

*Commonwealth revenue*

In the Australian system interim dumping duty is assessed and paid on each entry of goods the subject of a dumping duty notice.

The Commission agrees with Hyundai's submission, that as long as duties were paid and collected according to that notice and the normal customs requirements, there is no over collection or under collection of revenue. In these circumstances, OneSteel's claim made about lost Commonwealth revenue is an irrelevant consideration in determining the form of measures for this review.

*Duty assessment system*

Importers may subsequently apply for a dumping duty assessment pursuant to Division 4 of Part XVB of the Act, within six months after a particular importation period. If the final duty assessed is less than the IDD paid, then a refund is paid. If the final duty assessed is more than the IDD paid, then the excess is waived. Importantly, if none of the goods are dumped during the relevant assessment period, then all of the IDD will be refunded.

**8.3.4 Commission's conclusion regarding form of measures**

The Commission considers that there have been significant changes in the HRS market since the original investigation. In respect of this review, the Commission considers that a combination duty is appropriate on account of:

- the analysis of export models and price differences; and
- the general trend of prices and the ascertained export price relative to prices observed over the market cycle.

## 9 RECOMMENDATIONS

The Commissioner recommends that the Minister, after considering this report, **declare**, by notice published on the Commission's website, that:

- in accordance with subsection 269ZDB(1)(a)(iii) and the Dumping Duty Act, the dumping duty notice is taken to have effect from the date of publication in relation to Hyundai, and uncooperative and all other exporters from Korea, as if different variable factors had been fixed relevant to the determination of duty.

The Commissioner recommends that the Minister **determine**:

- being satisfied that subsection 269TAB(1)(a) applies, that the export price of goods exported to Australia from Korea by Hyundai, in respect of direct sales to Australian importers, is the price paid or payable for the goods by the relevant importers, other than any part of that price that represents a charge in respect of any other matter arising after exportation;
- being satisfied that subsection 269TAB(1)(c) applies, that the export price of goods exported to Australia from Korea by Hyundai, in respect of sales to Australian importers made through a trader, having regard to all the circumstances of exportation of the goods, being the price paid by the trader to Hyundai, less transport and other costs arising after exportation;
- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in Korea in sales that are arms length transactions by Hyundai, that the normal value of goods exported to Australia from Korea is the price paid or payable for like goods; and
- in accordance with subsection 269TACB(2)(a), that the goods exported to Australia from Korea are dumped, and that the dumping margins in respect of those goods is the difference between the weighted average export prices of the goods over the review period and the weighted average of corresponding normal values over that period.

The Commissioner recommends that the Minister be **satisfied**:

- in accordance with subsection 269TAB(3), that the export prices for exports of the goods by uncooperative and all other exporters from Korea be determined having regard to all relevant information; and
- in accordance with subsection 269TAC(6), that normal values for exports of the goods by uncooperative and all other exporters from Korea be determined having regard to all relevant information.

The Commissioner recommends that the Minister **direct**:

- in accordance with subsection 269TAC(8), that the price paid or payable for like goods sold in Korea be taken to be such a price adjusted for differences between like goods sold in Korea and export sales to Australia.

## **PUBLIC RECORD**

The Commissioner recommends that the Minister, by signed notice, **determine**:

- pursuant to subsection 8(5) of the Dumping Duty Act, that the dumping duty payable on the good exported to Australia by Hyundai, and un-cooperative and all other exporters from Korea is an amount that has been worked out in accordance with the combination fixed and variable duty method as provided for in subsections 5(2) and (3) of the Dumping Duty Regulation, with effect from the date of publication of the signed notice.

<b>10 LIST OF APPENDICES AND ATTACHMENTS</b>
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<b>Confidential Appendix 1</b>	Hyundai – Export price calculation
<b>Confidential Appendix 2</b>	Hyundai – Cost to make and sell
<b>Confidential Appendix 3</b>	Hyundai – Domestic sales calculation
<b>Confidential Appendix 4</b>	Hyundai – Normal value calculation
<b>Confidential Appendix 5</b>	Hyundai – Dumping margin calculation
<b>Confidential Appendix 6</b>	Uncooperative and all other exporters – Normal value calculation
<b>Confidential Appendix 7</b>	Uncooperative and all other exporters – Dumping margin calculation
<b>Confidential Attachment 1</b>	Summary of variable factors
<b>Confidential Attachment 2</b>	Schedule of determinations
<b>Confidential Attachment 3</b>	Commission analysis of price comparability – relevant to model matching.
<b>Confidential Attachment 4</b>	Commission analysis regarding form of measures