

**INVESTIGATION INTO THE ALLEGED
DUMPING OF HOT ROLLED COIL**

**EXPORTED TO AUSTRALIA FROM JAPAN,
THE REPUBLIC OF KOREA, MALAYSIA AND
TAIWAN**

**REBUTTAL BRIEF ON THE NEWLY REVISED
DUMPING MARGIN CALCULATION IN
CONNECTION WITH THE STATEMENT OF
ESSENTIAL FACTS NUMBER 188 AND
PRELIMINARY AFFIRMATIVE
DETERMINATION 188
FOR HYUNDAI STEEL COMPANY**

Hyundai Steel Company's Rebuttal Brief on the Newly Revised Dumping Margin Calculation in Connection with the Statement of Essential Facts Number 188 and Preliminary Affirmative Determination 188

Hyundai Steel Company (hereinafter "the Company" or "Hyundai Steel") hereby submits its rebuttal brief on the newly revised dumping margin calculation which resulted in 2.1% of the dumping margin in connection with the "Statement of Essential Facts Number 188 Preliminary Affirmative Determination 188" (hereinafter "the SEF") published by the Australian Customs and Border Protection Service (hereinafter "the CBP") dated 3 October 2012.

1. Error in Calculating a Normal Value for Domestic Market Sales

"The Company" found a clerical error in "Domestic sales" file ("hereinafter "NV Calculation File-2.1%"). The [redacted] [column title] (Invoice value net of credits) in "NV Calculation File-2.1%" indicates an invoice value net of credited invoice value. Thus, the basic formula stated in [redacted] [column title] is [redacted] [formula]. However, it should be noted that the formula stated in [redacted] [column title] mistakenly applied a wrong row number. For example, with respect to a row number "28" ([redacted] [confidential information regarding invoice details]), the applied formula in [redacted] [column title] is as follows;

[redacted] [the formula used by the "CBP"]

That is, with respect to the transaction in row number "28", "the CBP" applied the transaction in row number "30" in calculating the invoice value net of credited value for the transaction in row number "28". The formula in [redacted] [column title] for the transaction in row number "28" should have been stated as follows;

[redacted] [the formula that should have been used by the "CBP"]

Due to the above-mentioned error, with respect to the transaction in row number "28", the value in [redacted] [column title] became [redacted], in spite of the fact that the value in [redacted] [column title] was [redacted] and the value in [redacted] [column title] was [redacted] regarding the transaction in row number "28". That is, it appears that the value in [redacted] [column title] for the transaction in row number "28" was based on the value in [redacted] [column title] for the transaction in row number "30".

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While reviewing the “NV Calculation File-2.1%”, “the Company” noted that the above-mentioned error was made to “all” of the transactions. Also, it should be noted that the normal value for certain “Customs Product ID” was overstated due to the above-mentioned error, and consequently resulted in an unduly overstated dumping margin.

In this regard, a normal value calculation file correcting the above-mentioned error has been provided by “the Company” for “the CBP’s” reference. (File Name : [redacted]) “The Company” has provided the corrected invoice value net of credits in [redacted] [column title] in “NV Calculation File-2.1%”. Due to the correction of the invoice value net of credits (Column Name : Invoice value net of credits), the other following related columns should be also corrected;

[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted] [confidential information regarding the columns that should be corrected]

It should be noted that the corrected columns have been colored in purple in “Domestic Sales” sheet of [redacted] file. Also, a sheet showing the corrected normal value for “Customs Product ID” has been newly added. (Sheet Name : Corrected Summary NV)

As the above-mentioned error caused an unduly overstated dumping margin for Hyundai Steel, “the Company” respectfully requests that “the CBP” correct the dumping margin for Hyundai Steel immediately.

2. Price Adjustment between [redacted] [specification] and [redacted] [specification]

“Sheet3” of “120911 DM calculation draft” file (hereinafter “DM Calculation File-2.1%”) indicates that “the CBP” made a price adjustment between [redacted] [specification] and [redacted] [specification]. In “sheet3”, “the CBP” states as follows;

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“Price differential between [redacted] [specification] and [redacted] [specification] based on [redacted] [document title] : USD [redacted] = [redacted] KRW”

The price difference stated on the [redacted] [document title] between [redacted] [specification] and [redacted] [specification] can be far remote from the actual price difference between the two specifications (grades), because the primary purpose of the [redacted] [document title] is [redacted] [redacted] [confidential information regarding the purpose of the said document for "the Company"]

The actual price comparison between the two specifications based on the export sales to Australia made by “the Company” during the investigation period is as follows;

Specification	Unit Gross Invoice Value (USD)	FOB Unit Export Price (KRW)
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

In contrast to “the CBP’s” assertion that the price of [redacted] [specification] should be higher than [redacted] [specification] by [redacted] KRW, the actual price related to “the Company’s” export sales to Australia during the investigation period clearly shows that the unit gross invoice value as well as the unit FOB export price for [redacted] [specification] is much higher than [redacted] [specification].

For a more meaningful comparison between [redacted] [specification] and [redacted] [specification], the actual price comparison between the two specifications under the same customer, period, and Customs product ID is as follows;

Customer name	Customs Product ID	2012 1Q	
		Unit Gross Invoice Value (USD)	FOB Unit Export Price (KRW)
[redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	Difference	[redacted]	[redacted]

The above table shows that the actual price difference between [redacted] [specification] and [redacted] [specification] is very insignificant. As a result, instead of using the price difference between the two

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grades on the [redacted] [document title], “the Company” believes that “the CBP” should have used the actual price difference between the two grades, i.e., [redacted] [amount of price difference in USD].

In consideration of the fact that the purpose of the adjustment of the price difference is to ultimately adjust normal value, the alternative methodology could be that “the CBP” uses a price difference on the [redacted] [document title] between the two grades for domestic market sales. Per [redacted] [document title] for domestic market sales which have been already provided for “the CBP”, the price difference on the [redacted] [document title] for domestic market sales between [redacted] [specification] and [redacted] [specification] would be very similar to the price difference on the [redacted] [document title] for export market sales between [redacted] [specification] and [redacted] [specification]. Pursuant to the [redacted] [document title] for domestic market sales, the price difference between [redacted] [specification] and [redacted] [specification] is [redacted] [amount of price difference in KRW]. Therefore, for purpose of adjusting normal value between [redacted] [specification] and [redacted] [specification], as an alternative, “the Company” believes that “the CBP” could use [redacted] [amount of price difference in KRW] as a price adjustment for normal value between [redacted] [specification] and [redacted] [specification].

3. Logical Flaw in Changing Model Classification

(1) Background for Creating “Product Code”

As clearly stated on the responses to the original questionnaire, before submitting its responses to the questionnaire, “the Company” sent an email to the “CBP” to inquire of model matching criteria, and received a reply from [redacted] [name and title of the "CBP" officer] stating that [redacted] [confidential information regarding the "CBP's" response] Furthermore, the “CBP” sent a revised format for “Australian Sales” and “Domestic Sales” listings in order to newly reflect “Thickness Range”, “Width Range”, “Pickling and Oiling”, “Edge Treatment” and “Skinpass”.

It is obvious that the comparison between the export price and the normal value for a reasonable calculation of dumping margin should be made for “identical” product. Also, in determining whether certain products are identical each other, several factors such as application, physical properties, and chemical compositions should be considered. In this regard, in consideration of [redacted]

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[confidential information regarding "the Company's" product code], "the Company" created a "product code" for a fair comparison between the export price and the normal value, respecting the "CBP"s email on the product hierarchy and the revised sales listings format. It should be noted that the factors used in creating a "product code" are very commonly used ones in classifying products in a steel-making industry.

(2) Article 2 of the WTO Agreement (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994)

Pursuant to Article 2.1 of the WTO Agreement, it is stated

"For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country." (emphasis added)

The WTO Agreement obviously states that a product is to be considered as being dumped if the export price is less than the comparable price of the "like product". That is, it is unquestionable that the comparison between the export price and the normal value should be made for the "like product".

Also, Article 2.6 of the WTO Agreement defines the "like product" as follows;

"Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration." (emphasis added)

That is, the WTO Agreement primarily presumes that whether a certain product is the "like product" should depend on the characteristics of the "like product". Also, it can be interpreted that the characteristics relate to application and physical properties. In this regard, it is unquestionable that "the Company's" product code hierarchy is exactly consistent with Article 2.6 of the WTO Agreement. However, "the CBP" disregarded "the Company's" product code hierarchy, simply because "no information was provided by Hyundai to demonstrate whether other factors have impacted prices." However, it should be noted that the WTO Agreement does not regulate in any Articles that the impact on prices should be considered in whether a certain product is the "like product".

Rather, as stated above, the "impact on prices" is related to "Due Allowance" for a fair comparison. In accordance with Article 2.4 of the WTO Agreement, it is stated

"A fair comparison shall be made between the export price and the normal value. This comparison

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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 above Article 2.4 of the WTO Agreement clearly states that affecting price comparability is a matter of “due allowance” for a fair comparison between the export price and the normal value. Thus, whether certain factors impact on prices should be considered in due allowance for a fair comparison, not in the matter of the “like product”.

Furthermore, as will be explained later, “the CBP’s” statement that “no information was provided by Hyundai to demonstrate whether other factors have impacted prices.” is entirely false and misleading, and consequently “the CBP’s” new methodology should be withdrawn in the final determination.

(3) Customs Act 1901 (Cth)

Section 269T of the Customs Act defines "like goods" as goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration. This reflects the same position in the WTO Agreement; that whether a certain product is a "like product" depends on the characteristics of the "like product". Accordingly, "the Company's" product code is also consistent with the Customs Act and should not have been disregarded by "the CBP".

"The CBP's" *Dumping and Subsidy Manual*, August 2012, clearly states that it is "the CBP's" policy to interpret the Customs Act in a manner consistent with the WTO Agreement. As mentioned above, it is not a requirement of the WTO Agreement (or the Customs Act) to consider other factors that impact on the price of the goods when determining whether a product is a "like product". It is "the CBP's" policy to determine whether the goods have characteristics closely resembling the goods under consideration by considering factors such as physical likeness, commercial likeness, functional likeness and production likeness. It is not "the CBP" policy to consider other factors that affect price when determining "like goods" and indeed, this would be entirely inconsistent with the WTO Agreement and the Customs Act and a breach of "the CBP's" own policy.

In addition, the Customs Act (s 269TAC(8) and (9)), the WTO Agreement and the *Dumping and Subsidy Manual* identify that factors affecting price comparability should be considered in the "due allowance" stage and not the "like goods" stage. "The Company" therefore considers that factors

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that affect the price of the goods have no bearing on a determination as to whether certain products are "like goods" to the goods under consideration. Factors that affect price should be considered at the due allowance stage, where any relevant adjustments can be made. This occurs after a determination on "like goods" has been made. Accordingly, "the Company" considers that "the CBP" should not have dismissed "the Company's" product code hierarchy on the basis that "no information was provided by Hyundai to demonstrate whether other factors have impacted prices", as this information is not relevant for determining whether particular products are "like goods" to the goods under consideration.

4. Clerical Error in Calculating Constructed Value

While "the Company" was reviewing "DM Calculation File-2.1%", it noted that "the CBP" made two clerical errors in calculating the constructed value.

(1) Failure of Deducting "Credit Cost" in Calculating Constructed Value

In calculating the normal value for domestic market sales, "the CBP" deducted the "credit cost" from the domestic market sales price. However, it should be noted that such "credit cost" was not considered in calculating the constructed value. As either the domestic market sales price or the constructed value is one of the normal value, the "credit cost" should be consistently considered in calculating the constructed value.

"Constructed NVs" sheet of "DM Calculation File-2.1%" shows how the constructed value was calculated. However, as stated above, only [REDACTED] and [REDACTED] expenses [confidential information regarding expenses considered by the "CBP"] were considered, while the "credit cost" is included in [REDACTED] [confidential information regarding where credit costs were considered by the "CBP"]. In this regard, for purpose of calculating the unit credit cost for domestic market sales, "the Company" used the following formula;

[REDACTED]
[REDACTED] KRW/MT [confidential information regarding the formula used by

[REDACTED]
[REDACTED] [confidential information regarding the formula used by "the Company"]

[REDACTED]
[REDACTED] [confidential information regarding the formula used by "the

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·"The CBP" made clerical errors in calculating the normal value and consequently caused an unduly overstated dumping margin for Hyundai Steel.

·"The CBP" should have applied the actual price difference in the export sales to Australia in adjusting the price difference between [redacted] [specification] and [redacted] [specification]. As an alternative, "the CBP" should have used the price difference between [redacted] [specification] and [redacted] [specification] stated on the [redacted] [document title] for domestic market sales for purpose of adjusting the price difference between the two specifications (grades).

· Also, "the CBP" failed to fully demonstrate that "the Company's" proposed product code hierarchy is not reasonable in matching the export price to the normal value. Whether certain factors impact prices should be a matter of "due allowances", not a matter of "product code" hierarchy, as clearly demonstrated in the WTO Agreement, the Customs Act and "the CBP" *Dumping and Subsidy Manual*.

·Nevertheless, "the Company" fully demonstrated during the on-the-spot verification that there are other factors which have impacted prices in addition to the specifications.

·Lastly, "the CBP" made a clerical error in calculating the constructed value by disregarding the credit cost and used a wrong profit ratio.

Therefore, "the Company" respectfully requests that "the CBP" withdraw its revised dumping margin calculation methodology and recalculate the dumping margin for "the Company" based on "the Company's" above-mentioned reasonable arguments.