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19 December 2024

**The Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra
Australian Capital Territory 2601**

By email

Dear Director,

Hyundai Steel Company Response to SEF 642 and Liberty Primary Steel submission

As you know we represent Hyundai Steel Company (“Hyundai”) with respect to this review.

On 29 November 2024, the Commission released Statement of Essential Facts 642 (“SEF”) in relation to hot rolled structure steel sections (“HRSS”) from Korea, Thailand, Japan and Taiwan (“the Review”).¹ The SEF recommends that the dumping duty notice currently in place have effect in relation to the exporters from the subject countries as if different variable factors had been ascertained.² In relation to Hyundai, the SEF recommends that the dumping duty rate established by Continuation Inquiry 637, which came into effect on 20 November 2024, is changed to 7.0%. Such recommendation is based on the new variable factors determined for the review period of the Review.

On 22 November 2024, Liberty Primary Steel made a submission (“LPS” and “LPS submission”) on the accuracy of the export price determination and form of measures for Hyundai Steel Company. This submission was not considered for the purposes of the SEF but will be subject to further consideration by the Commission for the purpose of preparing the final report.³

¹ See EPR 642-12.

² EPR 642-12, page 4.

³ EPR 642-12, page 14.

In this submission, we provide Hyundai's comments in relation to both the SEF and the LPS submission. For the reasons and explanations that follow in this submission, Hyundai submits that in relation to the SEF:

- Hyundai's export price should be determined having regard to both final or anticipated final duty payable, instead of the full amounts of interim dumping duty ("IDD") paid which are subject to ongoing assessment and refund proceedings.
- Any changes to the variable factors associated with exports from Hyundai should reflect changes in export price and normal value, rather than the amount of dumping duty paid by Hyundai;

and in relation to the LPS submission:

- LPS's concerns regarding export price calculation are misguided and should be dismissed;
- LPS's request for a combination method duty against Hyundai are unconvincing, unrealistic, and should be rejected.

A Treatment of interim dumping duty in export price determination

1 Anticipated and finalised dumping duty deduction

The SEF proposes to calculate Hyundai's export price for the review period by incorporating a deduction from Hyundai's DDP based export price, based on the full amount of IDD paid by Hyundai with respect to those shipments, in accordance with section 269TAB(1)(c) of the *Customs Act 1901* ("the Act"):

Specifically, the commission recommends calculating an FOB export price using the DDP invoice price, less:

- ...
- *interim dumping duty or final duty payable.*

Hyundai submits that, for the purpose of determining up to date variable factors, the Commission should remove the effect of such deduction to the extent the amount of refundable IDD:

- has been finalised since the SEF; or
- can be reasonably quantified and expected in light of existing duty assessment procedures.

Failure to do so would result in variable factors that are not accurately assessed and updated, and the dumping margin and proposed new dumping duty would exceed the level necessary to address the true level of dumping and any injury caused.

In relation to the first category, we refer to DA0263. The final order for refund under section 269Y(1) of the Act was made on 11 December 2024. As such, the amount of refund should be removed from the deduction for the purpose of export price calculation for this Review. Hyundai notes that doing so will reduce the dumping margin for the review period from 7.0% to **[CONFIDENTIAL TEXT DELETED – dumping margin]**%.⁴

In relation to the second category, we refer to DA0271 and DA0275. In relation to DA0271, the duty assessment application for this procedure was submitted on 17 May 2024. Similar to Continuation 637, the Commission requested, and Hyundai provided the information necessary to ensure that the information collected and verified as part of Review 642 would also serve the purpose of allowing the Commission to complete duty assessment for DA0271. The Commission conducted the verification in July 2024. Subsequently, the Commission extended the due date for preliminary determination for

⁴ **CONFIDENTIAL** Attachment 1 – 642 – Hyundai – Appendix 4 – Dumping margin_DA0263 reflected.

DA0271 by 128 days to 24 February 2025. This is to **[CONFIDENTIAL TEXT DELETED – extract of communication between Commission and Hyundai]**.⁵ All consignments of DA0271 are included in the review period, and the relevant information pertaining to which has been verified by the Commission. Therefore, the Commission can readily apply the normal value determined in Review 642 to the DA0271 consignments, in order to generate a preliminary dumping margin calculation for DA0271. Based on the dumping margin calculation for the SEF, and by filtering for the DA0271 shipments, Hyundai notes that the dumping margin calculation for DA0271 would be **[CONFIDENTIAL TEXT DELETED – dumping margin]**%.⁶ This dumping margin can be used as the expected amount of final duty payable. Hyundai notes that, applying the **[CONFIDENTIAL TEXT DELETED – dumping margin]**% anticipated final dumping duty payable for the amount for deduction in export price calculation would further reduce the dumping margin for the review period from **[CONFIDENTIAL TEXT DELETED – dumping margin]**% to **[CONFIDENTIAL TEXT DELETED – dumping margin]**%.⁷

Lastly, with respect to DA0275, Hyundai notes that the preliminary determination date is 6 February 2025, which falls before the due date of REP 642 on 10 February 2025. The exporter questionnaire for DA0275 was duly lodged on 24 October 2024, and the data of over four months of the six-month importation period has already been fully verified by virtue of its overlap with Review 642. Hyundai respectfully urges the Commission to undertake the necessary procedures to progress and finalise the preliminary determination of DA0275 for timely consideration in the dumping margin of Review 642 prior to the final report. Based on the normal value determination of this review, which would cover exports during November 2023 up until March 2024 and Hyundai's estimation adopting the same methodology, Hyundai anticipates the dumping margin for DA0275 would likely to be **[CONFIDENTIAL TEXT DELETED – dumping margin]**%.⁸ This dumping margin can be used as the expected amount of final duty payable. Hyundai notes that, applying the **[CONFIDENTIAL TEXT DELETED – dumping margin]**% anticipated final dumping duty payable as the amount for deduction in export price calculation would further reduce the dumping margin for the review period from **[CONFIDENTIAL TEXT DELETED – dumping margin]**% to **[CONFIDENTIAL TEXT DELETED – dumping margin]**%.⁹

It is entirely appropriate and reasonable for the Commission to properly take into account the likely impact of duty refund as a relevant circumstance affecting Hyundai's exports in carrying out its duty-deduction based export price determination under section 269TAB(1)(c) of the Act. This is because, in the circumstances of this review, an export price that is calculated by deducting IDD is affected by the very measure that is subject of the review. If the Commission intends to recommend that the dumping duty notice reflect different variable factors, then the Commission should ensure the changes to variable factors appropriately and accurately reflect the changes and are up to date, and not in excess of the actual dumping margin or more than necessary to offset dumping that is causing injury.

It is unsafe for the Commission to recommend the Minister to fix different variable factors, knowing that the export price and dumping margin are susceptible to the outcome of the duty assessment that the Commission is conducting at the same time. This is particularly the case when the Commission has the necessary information to either finalise or to preliminarily ascertain the likely impact of those duty assessments in order to minimise, if not fully eliminate, such impact.

If required, the Commission could also seek an extension of time for providing the final report to the Minister so that the Commissioner could either finalise or preliminarily ascertain the outcome

⁵ Email from Commission to Hyundai, dated 31 October 2024.

⁶ **CONFIDENTIAL** Attachment 2 – 642 – Hyundai – Appendix 4 – Dumping margin_DA0271 margin.

⁷ **CONFIDENTIAL** Attachment 3 – 642 – Hyundai – Appendix 4 – Dumping margin_DA0263 DA0271 reflected.

⁸ **CONFIDENTIAL** Attachment 4 – DA0275_Attachment B-2 Australian Sales Listing_Review 642 reflected.

⁹ **CONFIDENTIAL** Attachment 5 – 642 – Hyundai – Appendix 4 – Dumping margin_DA0263 DA0271 DA0275 reflected.

of the duty assessment procedures prior to finalising the Review. This would allow for any changes to variable factors with respect to Hyundai's exports to be accurate and unlikely to be susceptible to changes associated with the duty assessments. Unlike Continuation 637, where both the Commissioner and the Minister are subject to inflexible statutory deadlines, there is no such restriction for this variable factors review.

In the alternative, it would also be reasonable for the Commission to recommend that the dumping duty notice remain unaltered with respect to Hyundai's exports, on the basis that:

- The dumping duty and variable factors have only just been changed on 22 November 2024;
- The current variable factors are determined using data from the inquiry period of Continuation 637, which overlap with the review period by 6 months;
- The dumping duty determination for Hyundai adopted by Continuation 637 is presently subject to a review by the Anti-Dumping Review Panel, being ADRP Review No. 172. It will be reasonable for the Commission to refrain from recommending the Minister to fix new variable factors based on methodological and legal premises which might be inconsistent with the outcome of the ADRP review.

2 Complete removal of IDD

Hyundai finds itself compelled to note that all the above complication and complexity arising from duty assessment could also be completely resolved via an alternative method – which is to determine an export price without any deduction of interim dumping duty, whether paid or payable.

Section 296TAB(1)(c) would also be compatible with the complete excise of interim dumping duty from the export price calculation method. This would avoid the updated duty rate being affected by the existence of the measure itself. This would result in the most appropriate dumping margin for duty rate updating purpose, which maintains the dumping duty only to the extent necessary to offset the true margin of dumping and any injury caused by dumping to the domestic industry.

For the record, Hyundai notes that complete removal of the interim dumping duty would result in a dumping margin for the review period at **[CONFIDENTIAL TEXT DELETED – dumping margin]**%.¹⁰

B LPS submission should be rejected

1 LPS comments regarding export price determination are misguided

LPS submission raises several questions regarding the nature of Hyundai's "commercial invoice price" that the Commission relied upon for the purpose of export price determination. These questions appear to give little regard to the findings and explanation contained in the Commission's verification report for Hyundai as well as SEF 642. The Commission's verification report contains adequate information regarding its finding that Hyundai's Australian sales and sales prices were at arm's length as defined under section 269TAA, as well as necessary and applicable deductions, and adjustments adopted by the Commission for the purpose of determining export price, and ultimately, dumping margin. LPS's submission does not identify any issue which the Commission has not considered or addressed. Such concerns are therefore misguided and should be dismissed, as they are already easily explained and allayed via the Commission's complete and clear explanations of the export price calculation methodology in SEF 642.¹¹

¹⁰ **CONFIDENTIAL** Attachment 6 – 642 – Hyundai – Appendix 4 – Dumping margin_no IDD

¹¹ EPR 642-25, page 45 and 46.

2 LPS demand for a combination duty method should be rejected

Hyundai notes LPS has repeated its requests for dumping duty to be imposed on a combination method in respect of Hyundai’s exports. LPS made the same claim in Continuation 637, claiming that such form of measure “is never punitive to the importer”.¹²

Commission should reject this request and leave the *ad valorem* duty method for Hyundai unchanged, consistent with its most recent determination in Report 637, which came into effect less than one month ago.

LPS’s claim is nonsensical and removed from commercial reality.

Firstly, the salient circumstances and likely trend into the near future as recognised in Report 637 continue to apply. The trend of falling market price has continued to materialise both during the review period and as to date:

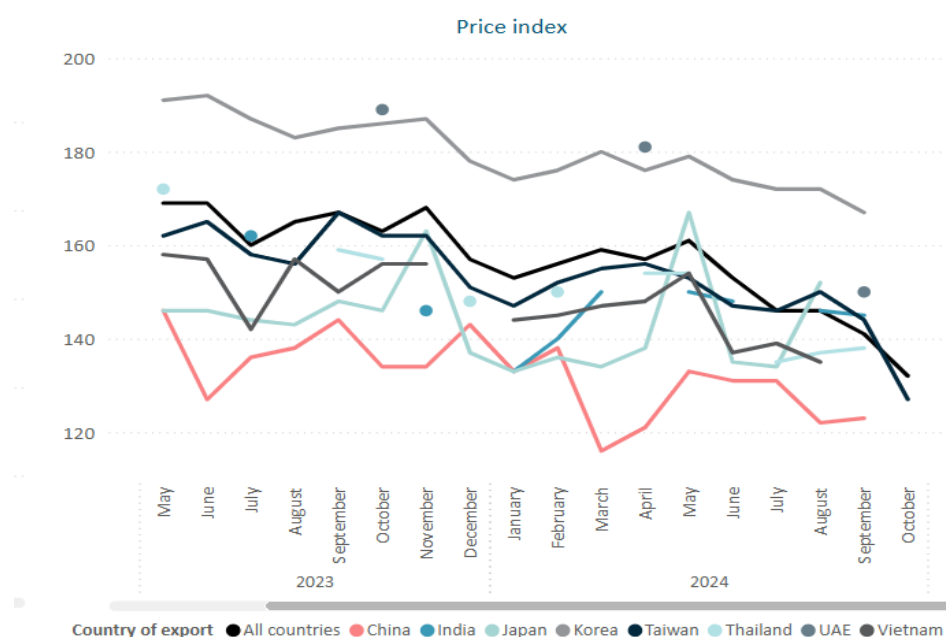


Figure 1: Price index of HRSS imports from 2022 to 2024¹³

As noted in Hyundai’s recent submission in Continuation 637, given that LPS claims to rely on import parity pricing, it would be reasonable to expect the falling import prices also directly reflect the price trend in the Australian domestic market.¹⁴ There is no evidence that this has changed since Report 637.

Secondly, as acknowledged by the ADC’s guidelines on the application of forms of dumping duty,¹⁵ imposing a combination duty method in such market conditions would effectively cause the price of the goods to be “fixed” at a high level. It is all too clear that such price floor effect would have an adverse impact on Hyundai and the Australian customers – if the market price is at a lower level.

Further, Hyundai refers the Commission to its submission in Continuation 637 with respect to the recent developments concerning LPS’s ability and reliability to manufacture and supply HRSS in the Australian

¹² EPR 642-09, page 8.

¹³ Anti-Dumping Commission, Trade Remedy Index (TRINDEX), <https://www.industry.gov.au/publications/trade-remedy-index-trindex>, retrieved on 18 December 2024.

¹⁴ See EPR 637-21, page 2.

¹⁵ See https://www.industry.gov.au/sites/default/files/2021-06/adc_guideline_forms_of_dumping_duty-november2013.pdf, page 4 and page 6.

market.¹⁶ At that time, LPS had already been undergoing prolonged periods of shutdown for its blast furnace mill, and facing financial difficulties due entirely to the operational and management issues of the broader corporate group.¹⁷ Despite its repeated attempts to suggest otherwise, it is reported that LPS's blast furnace mill remains offline as recently as a week ago.¹⁸ It has been reported that LPS faces issues with raw material and steel product delivery, with its rail operators suspending rail haulage due to late payment issues.¹⁹ Meanwhile the broader GFG Alliance group is also severely affected internationally by a variety of financial troubles from reduced production to bankruptcy proceedings and creditors' pursuits.²⁰ As such, one would expect that LPS understands the real impact of the cost of money, financing and cashflow in business operation. LPS cannot be serious in asserting that a high price floor based combination duty method for HRSS, as a major steel product widely used for building and construction, in the middle of an inflationary economy "*is simply not punitive to an importer under any circumstance*".²¹ Such claim is plainly false and self-serving and completely removed from any commercial reality. The Commission should dismiss LPS's claims.²²

C Conclusion

In conclusion, Hyundai respectfully submits the Commission revise its recommendation with respect to the variable factors determination in accordance with Hyundai's proposal detailed in Part A of this submission. The Commission should consider to (a) redetermine dumping margin by fully taking into account finalised and the likely final dumping duty payable as a result of the existing duty assessment proceedings; (b) recommend for the variable factors and dumping duty for Hyundai to remain unchanged; or (c) recommend the dumping duty to be changed to reflect a dumping margin without any deduction of dumping duties from export price. Further, Commission should dismiss or reject the claims made in the LPS submission.

In light of current situation of LPS, Hyundai urges the Commissioner to ensure, in making the recommendation, that long term and responsible exporters such as Hyundai are not hindered by anti-dumping duties which exceed the minimum level necessary to offset the injurious effect of dumping. The variable factors must be updated accurately, both in light of the legislative requirements of a review procedure, and to avoid unduly impacting the local market and supply of structural steel.

¹⁶ See EPR 637-24, included as an attachment to this submission again for the purpose of this submission. See Attachment 7 – 20240927 Ltr to Commission re updates on Australian industry.

¹⁷ See EPR 637-24, page 2.

¹⁸ Attachment 8 – Iron ore mining has resumed at Whyalla while rail haulage is still offline, page 1, retrieved from <https://www.theaustralian.com.au/business/mining-energy/iron-ore-mining-has-resumed-at-whyalla-while-rail-haulage-is-still-offline/news-story/3973bb734ddf0c724c73f43928a1dc16>.

¹⁹ Attachment 8, page 1.

²⁰ Attachment 9 – Infrabuild woes worsen as Gupta moves cash around stricken empire, retrieved from <https://www.afr.com/companies/manufacturing/infrabuild-woes-worsen-as-gupta-moves-cash-around-stricken-empire-20241202-p5kv1c>.

²¹ EPR 642-09, page 7.

²² With respect to LPS's further comments that collection of excessive interim dumping duty is rendered harmless by virtue of employing a trade consultant, Hyundai has already addressed such baseless claim in its submission in Continuation Inquiry 637 in response to the same comments from LPS. Please see EPR637-23, pages 4 and 5.

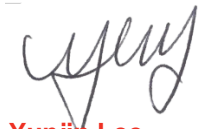
Submitted on behalf of Hyundai Steel Company

Yours sincerely



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