

Canberra

6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
ACT 2609 Australia
+61 2 6163 1000

Brisbane

Level 4, Kings Row Four
235 Coronation Drive
Milton, Brisbane
QLD 4064 Australia
+61 4 3367 6900

Adelaide

Level 21
25 Grenfell Street
Adelaide
SA 5000 Australia
+61 8 8424 2352



commercial + international

26 March 2025

**Mr David Latina
Commissioner
Anti-Dumping Commission
GPO Box 2013
Canberra
Australian Capital Territory 2600
Australia**

by email

Dear Commissioner

**Hyundai Steel Company
Issues affecting ADC Review 642, Duty Assessment No 271 and No
275**

As you know we act for Hyundai Steel Company (“Hyundai”) in the abovementioned proceedings. In relation to these proceedings, Hyundai respectfully submits that the Commission should:

- Disregard or disagree with the findings of the Anti-Dumping Review Panel (“ADRP”) in ADRP Report 172, to the extent that the ADRP considered Hyundai was not the importer of the goods that it exported under DDP terms; and
- Request an extension of time for providing final report in Review 642, commensurate to any extensions of time the Commission obtained or will obtain with respect to DA0271 and DA0275.

The reasons for Hyundai’s requests are detailed as follows.

Firstly, the ADRP Report 172 purported to find that the Minister and the Commission were incorrect in determining that Hyundai was both the exporter and the importer of the goods, and that export price determination should not be conducted pursuant to s269TAB(1)(c) of the Act. This finding is *ultra vires*,

because the question of whether the export price determination should be performed under s269TAB(1)(c) of the Act was not within the grounds of review. As ADRP Report 172 itself recognises:¹

Review Panel's conduct of the review, including its consideration of whether the Minister's decision was the correct or preferable decision, is confined and constrained in certain respects. In particular, the Review Panel must conduct the review in relation to the reviewable grounds and no other grounds.

Hyundai's ground of review, in so far as export price determination is concerned, was confined to the determination to be conducted *under* s269TAB(1)(c), not whether it applies.

Secondly, the ADRP recommended, and the Minister accepted, to affirm the reviewable decision. The reviewable decision was the Minister's decision made under ADN2024/071, which accepted and adopted the reasons and recommendation of the ADC Report 637. As such, the determinations in ADN2024/071 and Report 637 remain the only effective legal findings, that is:²

...the Minister determine:

...

Pursuant to section 269TAB(1)(c), having regard to all the circumstances of the exportation of the goods from Hyundai Steel to Australia, that the export price is as set out in Confidential Attachment 5

Thirdly, the ADRP Report 172 incorrectly relied upon the judgement in *Companhia Votorantim de Cellulose e Papel v Anti-Dumping Authority and Others* ("*Celpav*"), and the textbook of *Benjamin's Sale of Goods* to find that Hyundai should not be considered as the importer of the goods because of the "L/C at sight" based payment term. This is deeply problematic.

The ADRP, unlike the ADC, has overlooked the actual *contractual term* and *commercial arrangement* between Hyundai and the buyer in reaching its conclusion. The contracts between Hyundai and the buyers intended for the transfer of title to be determined under "Delivery of Material", and to ensure Hyundai to be recognised as the importer of the goods, as the contractual party who is both responsible for the payment of IDD, and entitled to seek duty assessment.

If relevant, Hyundai would also like to point out that the issue at question in *Celpav* was who was the *exporter* of the goods, rather than who is the *importer* of the goods. There was no dispute as to who was the importer in *Celpav*. However, if the very standard that the ADRP unduly relies on for importer determination was applied, being the timing of payment, then it would suggest that the importer in *Celpav* could not be regarded as the importer. This is because, in *Celpav*, the payment term between the Dai Ei (the trader, who claimed to be the exporter of the goods) and the "importer" customer was 90 days after

¹ ADRP Report 172, para 27, citing *Yara AB v Minister for Industry, Science and Technology* (2022) FCA 847 52 [182].

² ADC Report 637, page 104.

the bill of lading.³ An application of the ADRP's view that payment term determines who is importer would have produced a confounding result in which the undisputed importer in *Celpav* would have been deprived of its importer status, because payment would not have been made until well after the goods have arrived in Australia. If the ADRP's approach is adopted, then it could cast doubt in the status of every importer in Australia, whenever the parties agreed to a payment term that allowed for a longer period of credit term than the time required for shipping the products to Australia.

Fourthly, Hyundai is disappointed to note that the Commission has decided to further delay the conclusion of DA0271 and DA0275, which were expected to be concluded by 24 February 2025. Hyundai understands that the reason for the extension is to "*consider the outcome of ADRP Decision 172 (the review of ADC case 637) and how it might affect these duty assessments*". That is, but for the disruption caused by the ADRP decision, both DA0271 and DA0275 would have been able concluded, and capable of being considered as part of the Commission's final report for Review 642. As such, Hyundai respectfully request that the Commission at least afford an equal treatment of Review 642 and the duty assessments, by requesting an extension for finalising the report for Review 642 by the same length as the extension allowed for DA0271 and DA0275.

We are grateful of your consideration of the above requests. Hyundai respectfully seeks the Commission's response as to whether it intends to accept Hyundai's requests. This would allow Hyundai to consider the possible impact on Hyundai's interests and any further necessary actions it might consider to undertake.

Yours sincerely



Charles Zhan
Partner

³ *Companhia Votorantum de Celluse e Papel v Anti-Dumping Authority* (1996) 141 ALR 297, 300.