



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

*CUSTOMS ACT 1901 - PART XV B*

**STATEMENT OF ESSENTIAL FACTS  
NO. 499**

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

**EXPORTED TO AUSTRALIA FROM**

**JAPAN, THE REPUBLIC OF KOREA, TAIWAN (EXCEPT FOR  
EXPORTS BY FENG HSIN STEEL CO LTD) AND THE  
KINGDOM OF THAILAND**

**12 August 2019**

**CONTENTS**

**CONTENTS .....I**

**ABBREVIATIONS .....II**

**1 SUMMARY .....1**

1.1 INTRODUCTION .....1

1.2 LEGISLATIVE BACKGROUND .....1

1.3 PRELIMINARY FINDINGS.....1

1.4 PROPOSED RECOMMENDATION .....2

**2 BACKGROUND .....3**

2.1 APPLICATION AND INITIATION .....3

2.2 HISTORY OF THE ANTI-DUMPING MEASURES .....4

2.3 CONTINUATION INQUIRY 505 .....6

2.4 DUMPING MARGINS .....6

2.5 CURRENT REVIEW PROCESS .....7

2.6 RESPONDING TO THIS SEF .....8

**3 THE GOODS AND LIKE GOODS .....10**

3.1 LEGISLATIVE FRAMEWORK .....10

3.2 THE GOODS SUBJECT TO THE ANTI-DUMPING MEASURES .....10

3.3 LIKE GOODS .....11

**4 EXPORTER AND IMPORTER INFORMATION .....12**

4.1 FINDINGS .....12

4.2 EXPORTER QUESTIONNAIRES AND VERIFICATION .....12

4.3 IMPORTER QUESTIONNAIRES AND VERIFICATION .....13

**5 VARIABLE FACTORS.....14**

5.1 FINDINGS .....14

5.2 MODEL MATCHING .....14

5.3 THE COMMISSION’S CONSIDERATION OF SECTION 269TAB(2B) .....23

5.4 JAPAN .....23

5.5 KOREA.....24

5.6 TAIWAN.....32

5.7 THAILAND .....38

**6 NON-INJURIOUS PRICE AND LESSER DUTY RULE .....42**

6.1 GENERAL .....42

6.2 LEGISLATIVE FRAMEWORK .....42

6.3 CALCULATION OF THE NIP .....42

6.4 ASSESSMENT OF THE NIP .....43

**7 EFFECT OF THE REVIEW .....44**

7.1 SUMMARY OF FINDINGS .....44

7.2 EFFECT OF THE REVIEW .....44

7.3 BASIS FOR RECOMMENDATION ON THE FORMS OF MEASURES .....47

7.4 SUBMISSION ON THE FORMS OF MEASURES .....48

7.5 SUMMARY OF PROPOSED RECOMMENDATIONS .....48

**8 LIST OF APPENDICES AND ATTACHMENTS .....50**

**PUBLIC RECORD**

**ABBREVIATIONS**

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the Anti-Dumping Agreement	the World Trade Organization <i>Anti-Dumping Agreement</i>
ADRP	Anti-Dumping Review Panel
AEP	ascertained export price
the applicant	OneSteel Manufacturing Pty Ltd trading as Liberty Steel
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 499	<i>Consideration Report No. 499</i>
Dragon Steel	Dragon Steel Corporation
FOB	Free On Board
the goods	the goods the subject of the application (also referred to as the goods under consideration)
the Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty</i>
Hyundai	Hyundai Steel Co., Ltd
IDD	interim dumping duty
JFE Bars	JFE Bars and Shapes Corporation
Korea	the Republic of Korea
Liberty Steel	OneSteel Manufacturing Pty Ltd trading as Liberty Steel
MCC	model control code
the Minister	the Minister for Industry, Science and Technology
MPa	megapascals
NIP	non-injurious price
OCOT	ordinary course of trade
OneSteel	OneSteel Manufacturing Pty Ltd
the then Parliamentary Secretary	the then Parliamentary Secretary to the Minister for Industry
the Manual	<i>the Dumping and Subsidy Manual</i>
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 223	<i>Anti-Dumping Commission Report No. 223</i>
the review period	1 January 2018 to 31 December 2018
SG&A	selling, general and administration
SEF	statement of essential facts
SYS	Siam Yamato Steel Co. Ltd
Thailand	the Kingdom of Thailand
TS Steel	TS Steel Co Ltd

## **PUBLIC RECORD**

Tung Ho	Tung Ho Steel Enterprise Corporation
USDOC	US Department of Commerce
USP	unsuppressed selling price

# 1 SUMMARY

## 1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner and the Commission, respectively) proposes to base his recommendations 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 exports of hot rolled structural steel sections (HRS or the 'goods') from Japan, the Republic of Korea (Korea), Taiwan (except for exports by Feng Hsin Steel Co Ltd (Feng Hsin)) and the Kingdom of Thailand (Thailand) to Australia.

This review of measures is being conducted in response to an application lodged by OneSteel Manufacturing Pty Ltd trading as Liberty Steel (Liberty Steel)<sup>1</sup> for a review.

The application for review is based on a change in the variable factors,<sup>2</sup> relevant to the taking of the anti-dumping measures in relation to exporters from Japan, Korea, Taiwan and Thailand. 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.

## 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>3</sup> sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for a 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>4</sup>

The Commissioner must, within 110 days after the publication of the notice or such longer period as allowed, place a SEF on which the Commissioner proposes to base his recommendation to the Minister in relation to the review of measures on the public record.<sup>5</sup>

## 1.3 Preliminary findings

The Commissioner finds that, in relation to exports to Australia of HRS made by all exporters of the goods from Japan, Korea, Taiwan (except for exports by Feng Hsin) and Thailand during the review period (1 January 2018 to 31 December 2018):

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<sup>1</sup> On 29 July 2019, Liberty Steel, was re-named. Since that date it is known as OneSteel Manufacturing Pty Ltd trading as *Infrabuild*. In this report, it is referred to as Liberty Steel, the trading name recorded by the company in its application.

<sup>2</sup> Subsection 269T(4E).

<sup>3</sup> All legislative references are to the *Customs Act 1901*, unless otherwise specified.

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

<sup>5</sup> Subsection 269ZD(1).

## PUBLIC RECORD

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

Table 1 shows the current measures and preliminary dumping margins found in this review.

Country	Manufacturer/ exporter	Current rate of dumping duty or other measure	Preliminary dumping margin found in this review
Japan	JFE Bars and Shapes Corporation	12.2%	12.2% (did not cooperate)
	Uncooperative Exporters	12.2%	12.2%
Korea	Hyundai Steel Co. Ltd	9.9%	9.5%
	Uncooperative Exporters	13.9%	12.3%
Taiwan	Dragon Steel Corporation	Floor price	9.0%
	TS Steel Co Ltd	4.7%	-1.6%
	Tung Ho Steel Enterprise Corporation (Tung Ho)	Floor price	-1.6%
	Uncooperative Exporters	7.9%	12.3%
Thailand	Siam Yamato Steel Co Ltd	Floor price	5.0%
	Uncooperative Exporters	19.5%	7.7%

*Table 1 — Current and preliminary HRS dumping margins*

### 1.4 Proposed recommendation

The Commissioner proposes, subject to the consideration of any submissions,<sup>6</sup> to recommend to the Minister that the dumping duty notice be altered in respect of HRS exported to Australia from Japan, Korea, Taiwan (except for Feng Hsin) and Thailand to reflect the preliminary dumping margins found in this review and shown in Table 1.

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<sup>6</sup> The process of making submissions is described on the Commission's website and the timeframe for making a submission in this case is set out in the following chapter.

## 2 BACKGROUND

### 2.1 Application and initiation

On 21 November 2018, an application was lodged by Liberty Steel requesting a review of the anti-dumping measures as they apply to all exporters of HRS to Australia from Japan, Korea, Taiwan (except for exports by Feng Hsin) and Thailand.

The application is not precluded by section 269ZA(2), which provides that an application for review must not be lodged earlier than 12 months after the publication of a dumping duty notice, or a notice declaring the outcome of the last review of measures.<sup>7</sup>

Following consideration of the application, the Commissioner decided to not reject the application and initiated a review of the anti-dumping measures applying to HRS exported to Australia from Japan, Korea, Taiwan (except for exports by Feng Hsin) and Thailand. Notification of the initiation of the review was made in Anti-Dumping Notice (ADN) No. 2019/02,<sup>8</sup> which was published on the Commission's website on 3 January 2019.

*Consideration Report No. 499* (CON 499) was published on the Commission's website on 3 January 2019 and provides the reasons for not rejecting the application.

ADN No. 2019/02 indicated that a SEF will be placed on the public record by 23 April 2019 and that a recommendation to the Minister will be made in a report on or before 7 June 2019.

On 15 April 2019, the timeframe for publishing the SEF and final report was extended under section 269ZHI(3) to enable the verification of information provided by interested parties to be finalised. Notification of this extension was made in ADN No. 2019/55<sup>9</sup> which indicated that this SEF would be published no later than 11 July 2019 and that the Commissioner's recommendations will be made in a report due to be provided to the Minister on or before 30 August 2019.

On 8 July 2019, the timeframe for publishing the SEF and final report was extended under section 269ZHI(3) to consider submissions from interested parties concerning the Commission's approach to model matching. Notification of this extension was made in ADN No. 2019/87<sup>10</sup> which indicated the current deadlines. That is, that this SEF would be published no later than **12 August 2019** and that the Commissioner's recommendations will be made in a report due to be provided to the Minister on or before **1 October 2019**.

Further details are available on the Commission's website.<sup>11</sup>

In a letter of 4 June 2019, the Korean Ministry of Trade, Industry and Energy stated its concern to the Commissioner that Liberty Steel cannot be considered to be a domestic industry because it imports the goods subject to measures from Hyundai and, as such, is not eligible to request a review.<sup>12</sup>

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<sup>7</sup> The most recent notice as at the application date was ADN No. 2016/98, published on 19 October 2016.

<sup>8</sup> Item 3 on the public record refers.

<sup>9</sup> Item 18 on the public record refers.

<sup>10</sup> Item 30 on the public record refers.

<sup>11</sup> <https://www.industry.gov.au/data-and-publications/anti-dumping-commission-current-cases>

<sup>12</sup> Item 23 on the public record refers.

## PUBLIC RECORD

The Commission has conducted two verification visits to Liberty Steel in this review and has found that Liberty Steel's importation of HRS was a temporary measure to resolve production scheduling matters. The importation of HRS by Liberty Steel does not prevent it from also being considered to be a producer of the goods.<sup>13</sup> The Commission has found in this review, and in several other cases, that Liberty Steel is the sole domestic producer of HRS as stated in its application.

## 2.2 History of the anti-dumping measures

### 2.2.1 Original investigation

On 24 October 2013, a dumping investigation into HRS exported to Australia from Japan, Korea, Taiwan and Thailand was initiated following an application lodged by OneSteel Manufacturing Pty Ltd (OneSteel), a manufacturer of HRS in Australia. The investigation period was 1 October 2012 to 30 September 2013.<sup>14</sup>

In that investigation, as described in *Anti-Dumping Commission Report No. 223* (REP 223),<sup>15</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.

The findings and recommendations in REP 223 were provided to the then Parliamentary Secretary to the Minister for Industry (the then Parliamentary Secretary),<sup>16</sup> 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>17</sup>

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<sup>13</sup> For the purposes of section 269T(4).

<sup>14</sup> At that time, the applicant was trading under that name or as *OneSteel*. In 2018, OneSteel began referring to itself as *OneSteel Manufacturing Pty Ltd trading as Liberty Steel*. As stated in Footnote 1 of this report, on 29 July 2019, Liberty Steel was re-named. In this report it is referred to as Liberty Steel, the trading name recorded by the company on its application.

In 2017, OneSteel was acquired by the Liberty House Steel Group and became part of its Liberty Steel Division. The Liberty House Steel Group is an international metals and industrial group, specialising in commodities, metals recycling, and the manufacture of steel, aluminium and engineering products which has its headquarters in London. It is part of the GFG Alliance which is an international grouping of businesses, founded by the British Gupta family.

<sup>15</sup> Item 96 on the public record for Investigation 223 refers.

<sup>16</sup> On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation. For the purposes of Reviews 345 and 346, and for Accelerated Review 359, the Parliamentary Secretary was the relevant decision maker. For the purposes of Review 465, Continuation Inquiry 505 and this review, the Minister is the relevant decision maker.

<sup>17</sup> Item 98 on the public record for Investigation 223 refers.



## PUBLIC RECORD

During the conduct of Investigation 223 and after becoming satisfied that during the investigation period Feng Hsin did not dump HRS, the Commissioner terminated the investigation insofar as it related to that exporter on 31 October 2014. As such, Feng Hsin is exempt from anti-dumping measures. Termination of Investigation Report No. 223 sets out the reasons for this termination and is available on the public record.

On 7 August 2015, following a review by the Anti-Dumping Review Panel (ADRP) of the decision to impose these dumping duties, the dumping duty notice was altered so that the effective rate of duty for HRS exported to Australia by Siam Yamato Steel Co Ltd (SYS) was varied from 18.3 per cent to 18.0 per cent with effect from 20 November 2014.

### **2.2.2 Previous reviews of measures**

#### **2.2.2.1 Review 345 - exports of the goods from Taiwan by Tung Ho Steel Enterprise Corporation**

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. The review period was 1 January 2015 to 31 December 2015.

In *Anti-Dumping Commission Report No. 345*, the Commissioner found that Tung Ho was not dumping and 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 web site on 19 October 2016. The effect of the review was that the measures applying to exports from Tung Ho were altered from a dumping margin of 2.2 per cent (*ad valorem* duty method) to a floor price.

#### **2.2.2.2 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. The review period was 1 January 2015 to 31 December 2015.

In *Anti-Dumping Commission Report No. 346*, the Commissioner found that SYS was not dumping and 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 web site on 19 October 2016. The effect of the review was that the measures applying to exports from SYS were altered from a dumping margin of 18.0 per cent (*ad valorem* duty method) to a floor price.

#### **2.2.2.3 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. The review period was 1 April 2015 to 31 March 2016.

In *Anti-Dumping Commission Report No. 359*, the Commissioner recommended that the dumping duty notice have effect in relation to Dragon Steel as if the then Parliamentary Secretary had fixed specific different variable factors relevant to the determination of duty.

## PUBLIC RECORD

The then Parliamentary Secretary's decision to alter the notice as it applied to Dragon Steel was published on the Commission's web site on 18 October 2016. The effect of the accelerated review was that measures applying to exports from Dragon Steel were altered from a dumping margin of 7.9 per cent (*ad valorem* duty method) to a floor price.

### 2.2.2.4 Review 465 - exports of the goods from Korea

On 27 February 2018, Liberty Steel<sup>18</sup> lodged an application requesting a review of the anti-dumping measures as they apply to all exporters of HRS to Australia from Korea. The review period for Review 465 was 1 January 2017 to 31 December 2017.

In *Anti-Dumping Commission Report No. 465*, the Commissioner recommended that the dumping duty notice have effect in relation to:

- Hyundai Steel Co. Ltd (Hyundai); and
- uncooperative and all other exporters from Korea

as if different variable factors had been ascertained relevant to the determination of duty.

The Minister's decision to alter the notice was published on the Commission's web site on 18 December 2018. The effect of the review was that:

- measures applying to exports from Hyundai were altered from 2.52 per cent (*ad valorem* duty method) to 9.9 per cent (combination of fixed and variable duty method); and
- measures applying to uncooperative exporters from Korea were altered from 3.24 per cent (*ad valorem* duty method) to 13.9 per cent (combination of fixed and variable duty method).

## 2.3 Continuation Inquiry 505

On 21 January 2019, Liberty Steel lodged an application requesting a continuation of the anti-dumping measures as they apply to all exporters of HRS to Australia from Japan, Korea, Taiwan (except for exports by Feng Hsin) and Thailand.

Following consideration of the application, the Commissioner decided not to reject the application and initiated Continuation Inquiry 505. Notification of the initiation of the inquiry was made in ADN No. 2019/21 on 11 February 2019, and, as well as other relevant details, is available on the Commission's website.

## 2.4 Dumping margins

The dumping margins that were found in the original investigation, or altered after subsequent reviews (and are therefore current), and the respective forms of anti-dumping measures are provided in Table 2.

Country	Manufacturer/ exporter	Dumping margin and effective rate of duty	Duty Method	Method to establish dumping margin
Japan	JFE Bars and Shapes Corporation	12.2%	<i>Ad valorem</i>	

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<sup>18</sup> In that application, OneSteel Manufacturing Pty Ltd indicated that it was trading as *Liberty OneSteel*.

**PUBLIC RECORD**

Country	Manufacturer/ exporter	Dumping margin and effective rate of duty	Duty Method	Method to establish dumping margin
	Uncooperative Exporters	12.2%	<i>Ad valorem</i>	Weighted average export prices were compared with corresponding normal values over the investigation period in terms of s. 269TACB(2)(a) of the <i>Customs Act 1901</i> .
Korea	Hyundai Steel Co. Ltd	9.9%	Combination fixed and variable duty method	
	Uncooperative Exporters	13.9%	Combination fixed and variable duty method	
Taiwan	Dragon Steel Corporation	N/A	Floor price	
	TS Steel Co Ltd	4.7%	<i>Ad valorem</i>	
	Tung Ho Steel Enterprise Corporation	N/A	Floor price	
	Uncooperative Exporters	7.9%	<i>Ad valorem</i>	
Thailand	Siam Yamato Steel Co Ltd	N/A	Floor price	
	Uncooperative Exporters	19.5%	<i>Ad valorem</i>	

*Table 2 — Current HRS dumping margins*

## 2.5 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>19</sup> or the Minister may request,<sup>20</sup> the Commissioner to conduct 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 review application must not be lodged earlier than 12 months after publication of the dumping duty notice, the countervailing duty notice or the notice(s) declaring the outcome of the last review of the dumping or countervailing duty notice.<sup>21</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>22</sup>

During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors in this review are a reference to:

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

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<sup>19</sup> Subsection 269ZA(1).

<sup>20</sup> Subsection 269ZA(3).

<sup>21</sup> Subsection 269ZA(2)(a). Anti-Dumping Notice 2016/098, published on 19 October 2016, is the notice declaring the outcome of the last review of the dumping duty notice that was published before receipt of the current application.

<sup>22</sup> Subsection 269ZDA(1).

## PUBLIC RECORD

Within 110 days of the initiation of a review, or such longer time as allowed under section 269ZHI(3), 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>23</sup>

In making recommendations in the final report to the Minister, the Commissioner must have regard to:<sup>24</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;
- this SEF; and
- any submission made in response to this 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>25</sup>

Under subsection 269ZD(3), the Commissioner is not obliged to have regard to any submissions relating generally to the inquiry that are received by the Commissioner after the end of the 37 day period referred to in subsection 269ZD(2) if to do so would, in the Commissioner's opinion, prevent the timely placement of this SEF on the public record.<sup>26</sup>

At the conclusion of the review, in respect of the dumping duty, the Commissioner must provide a final report <sup>27</sup> that makes a recommendation to the Minister that the dumping duty notice:<sup>28</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>29</sup>

## 2.6 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister.

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<sup>23</sup> Subsection 269ZD(1).

<sup>24</sup> Subsection 269ZDA(3)(a).

<sup>25</sup> Subsection 269ZDA(3)(b).

<sup>26</sup> Under 269ZD(3), the Commissioner has not had regard to two submissions that were received by the Commissioner after the end of the 37 day period referred to in subsection 269ZHE(2) because to do so would, in the Commissioner's opinion, prevent the timely placement of this SEF on the public record. These submissions were: a submission from Staughtons Trade Advisory Group Pty Ltd on behalf of Siam Yamato Steel received on 7 August 2019; and a submission from J. Bracic and Associates on behalf of Dragon Steel Corporation received on 9 August 2019. These submissions are on the public record.

<sup>27</sup> As indicated in section 2.1 of this report, on 15 April 2019, the due date for the provision of the Commissioner's recommendations in a report to the Minister was extended to **30 August 2019**.

<sup>28</sup> Subsection 269ZDA(1)(a).

<sup>29</sup> Subsection 269ZDB(1).

## PUBLIC RECORD

This SEF represents an important stage in the review as it informs interested parties of the facts that have been established and allows them to make submissions in response to this SEF.

It is important to note that this SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the dumping duty notice should be varied and the extent of any interim duties that are, or should be, payable.

Interested parties are invited to lodge written submissions in response to this SEF no later than **2 September 2019**.<sup>30</sup> The Commissioner is not obliged to have regard to any submission made in response to this SEF that is received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.<sup>31</sup>

Submissions should preferably be emailed to [investigations2@adcommission.gov.au](mailto:investigations2@adcommission.gov.au).

Alternatively, submissions may be posted to:

The Director – Investigations 2  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601  
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available on the Commission's website.

The public record includes non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. The public record can be viewed online on the Commission's website.

Documents on the public record for this review should be read in conjunction with this SEF.

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<sup>30</sup> The due date of 1 September 2019 falls on a Sunday. The effective date is therefore Monday 2 September 2019.

<sup>31</sup> Subsection 269ZDA(4).

## 3 THE GOODS AND LIKE GOODS

### 3.1 Legislative framework

The Commissioner must be satisfied that 'like' goods to the goods the subject of the anti-dumping measures are produced in Australia.

In making this assessment, the Commissioner must first determine that the goods produced by the Australian industry are 'like' to the imported goods. Section 269T(1) defines like goods as:

*...means 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.*

Section 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with section 269T(3), at least one substantial process in the manufacture of those goods must be carried out in Australia for goods to be considered as partly manufactured in Australia.

### 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).

#### 3.2.1 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);

## PUBLIC RECORD

- 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*.

### 3.3 Like goods

Imported HRS generally meets the requirements of Australian Standard AS/NZA3679.1.

Liberty Steel's standard HRS range is manufactured to 300 megapascals (MPa) yield strength as required by the Australian standard and is branded as 300PLUS. Liberty Steel confirmed that its entire range is manufactured to meet or exceed the Australian standard.

Liberty Steel also manufactures HRS product to 'Grade 350', which has a minimum yield strength of 350 MPa. Liberty Steel only manufactures 'Grade 350' on a custom order basis.

The definition of like goods is relevant in the context of reviews, among other things, in determining the normal value of goods exported to Australia, the NIP and the goods subject to the dumping duty notice. The Commission's framework for assessing like goods is outlined in Chapter 2 of the *Dumping and Subsidy Manual* (the Manual).<sup>32</sup>

The Commission's consideration of whether like goods were sold on the domestic markets in the country of export for each country subject to measures is addressed in Chapter 5 of this report.

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<sup>32</sup> Available on the Commission's website.

## 4 EXPORTER AND IMPORTER INFORMATION

### 4.1 Findings

The Commission is satisfied that the information provided by cooperative exporters from Korea, Taiwan and Thailand for the purposes of this review is accurate, relevant and complete.

The Commissioner finds those exporters that did not provide a response to the exporter questionnaire to be uncooperative.

The Commissioner finds that all exporters from Japan are uncooperative exporters.

### 4.2 Exporter questionnaires and verification

The Commission performed a search of the Australian Border Force (ABF) import database and identified exporters and importers of HRS from Japan, Korea, Taiwan and Thailand during the review period.

Exporter questionnaires were sent to all known exporters of HRS from Japan, Korea, Taiwan and Thailand to Australia.

Section 269T(1) provides that for a review under Division 5 in relation to the publication of a dumping duty notice, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the review and the exporter was not an 'uncooperative exporter' in relation to the review.

At the commencement of the investigation, the Commission contacted known exporters of HRS and each identified supplier of the goods within the relevant tariff subheading for HRS as identified in the ABF import database and by the importers of the goods and invited them to complete an exporter questionnaire.

#### 4.2.1 Cooperative exporters

The Commission received completed exporter questionnaire responses from the following entities and considers these entities to be cooperative exporters:

- Korea;
  - Hyundai
- Taiwan;
  - Dragon Steel
  - TS Steel Co Ltd (TS Steel)
  - Tung Ho
- Thailand;
  - SYS.

The Commission conducted verification visits to the following exporters:

- Korea;
  - Hyundai
- Taiwan;



- Tung Ho
- Thailand;
  - SYS.

The Commission conducted benchmark verification of the data submitted by the following exporters:

- Taiwan
  - Dragon Steel
  - TS Steel.

The respective exporter verification reports are available on the Commission's website.

#### **4.2.2 Uncooperative and all other exporters**

Section 269T(1) provides that for a review under Division 5 in relation to the publication of a dumping duty notice, an exporter is an 'uncooperative exporter' where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the review within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the review.

The Commissioner finds exporters that did not provide a response to the exporter questionnaire to be uncooperative.

The Commissioner considered that JFE Bars and Shapes Corporation (JFE Bars) of Japan did not provide a response considered to be relevant to the review within a period considered to be reasonable.<sup>33</sup> Accordingly, the Commissioner finds that JFE Bars is an uncooperative exporter. No other exporters from Japan provided responses to the exporter questionnaire. Therefore, all exporters from Japan are found to be uncooperative exporters.

### **4.3 Importer questionnaires and verification**

Importer questionnaires were sent to all known importers of HRS from Japan, Korea, Taiwan and Thailand during the review period.

The Commission conducted one importer verification visit at Sanwa Pty Ltd. The Commission is satisfied as to the accuracy, relevance and completeness of the data provided by Sanwa Pty Ltd following importer verification.

The importer verification report is available at the Commission's website.

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<sup>33</sup> Item 17 on the public record refers.

## 5 VARIABLE FACTORS

### 5.1 Findings

The Commissioner finds that the respective variable factors relevant to the taking of anti-dumping measures in relation to HRS exported to Australia from Japan, Korea, Taiwan and Thailand have changed.

The Commissioner proposes to recommend to the Minister that the dumping duty notice have effect as if different variable factors had been ascertained.

### 5.2 Model matching

#### 5.2.1 Background

In REP 223, in order to compare the export price of the goods to the corresponding normal value of like goods for the purpose of assessing whether dumping has occurred, the Commission analysed a number of factors in respect of model matching and considered them on an exporter by exporter basis. These factors included:

- mechanical and chemical properties as 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.

#### 5.2.2 Model Control Code structure

In this review, the Commission has conducted model matching in order to identify key characteristics that will be used to match models of the goods exported to Australia to like goods sold domestically in the country of export.

On 9 August 2018, the Commission advised in ADN No. 2018/128 that a model control code (MCC) structure would be implemented in new investigations, reviews of exporters generally or continuations for cases initiated after that date.

The MCC process aims to provide the best framework possible for comparing normal values with export prices. The new MCC framework has provided stakeholders with transparency and disclosure regarding the model matching criteria used in each case. However, the Commission has an obligation to all stakeholders to balance disclosure with its responsibility to respect and uphold an entity's commercial confidentiality.

In this review, the Commission considers that the most appropriate method of comparing HRS normal values to export prices is to conduct model matching by applying a MCC structure as a framework for comparing goods exported to Australia with similar like goods sold on an exporter's domestic market.

The Commission acknowledges that goods and like goods can vary in a number of respects. In determining the MCC structure for any given case, the Commission has regard to differences in physical characteristics that give rise to distinguishable and material differences in price. However, model matching is not solely concerned with the identification of the most directly comparable like goods sold in an exporter's domestic

## **PUBLIC RECORD**

market. Although it is preferable to identify the most directly comparable like goods on an exporter's domestic market and match these to export sales, this is not always practical. If model matching is applied too narrowly or precisely, this may potentially result in no domestic sales for comparison.

The Commission considers that the introduction of the MCC structure reduces the requirement for adjustments to account for differences between domestic and export models.

The MCC structure is based on information received from the applicant and any other information the Commission considers relevant. The MCC structure has been applied in questionnaire responses provided by interested parties.

The proposed MCC structure was described in ADN No. 2019/02 that initiated this review. Interested parties were encouraged to make submissions on whether proposed modifications to the MCC structure should be accepted by the Commission as soon as was practicable, but no later than the time the responses to the questionnaires were due (11 February 2019). The Commission received no submissions by that date.

### **5.2.3 Classification issues - steel standards and mill test certificates**

In this review, the Commission has found that each HRS product is manufactured to meet the requirements of a certain standard and grade of steel. A single standard may include a range of specifications that relate to different grades of steel. Steel manufacturers are required to obtain certain approvals and certification in order to properly validate whether steel products meet the required specifications as described in the respective standard. Part of a steel manufacturer's process of doing so is to conduct metallurgical analysis and record the results of that analysis on mill test certificates. The nature of manufacturing steel is such that manufacturers take a realistic and conservative approach by aiming to produce steel that exceeds the minimum specifications required in the respective standards to ensure that the entire amount of steel being produced meets the standard. As such, it is common that mill test certificates confirm that the specifications described in a standard have been surpassed.

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

The Commission also understands that, on some occasions, customers may accept steel manufactured to a different grade than that which was originally requested. This occurs where the pertinent specifications related to the customer's requirements are met or surpassed by an alternative grade of steel. In such cases, the price of the steel is determined or negotiated on the basis of the original grade requested and not on the actual grade supplied. As such, the factors that determine price are not necessarily or wholly related to the physical qualities of the steel that has been sold. Rather, the price is also affected by prevailing steel market conditions and the respective circumstances of the sale.

## PUBLIC RECORD

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

### **5.2.4 Submissions on the MCC structure received after 11 February 2019**

The Commission has received submissions in relation to the MCC structure after the deadline requested (11 February 2019) upon initiation of the review in ADN No. 2019/02.

### **5.2.5 Submissions received from SYS**

In its submission of 1 March 2019,<sup>34</sup> SYS:

- sought assurances that the MCC structure may be modified during the conduct of the review where necessary. For example, whether the MCC structure may be modified during exporter verification visits based on the facts and evidence pertaining to a particular exporter;
- stated that the Australian market for both imported and locally produced goods demands that the product satisfy Grade 300 in terms of the minimum yield strength which is in the theoretical range of 280 to 320 MPa. SYS expressed the view that the existing MCC structure, including yield strength subcategories of less than 265 MPa and equal to or greater than 265 MPa, is problematic on the basis of what is described in the relevant Australian standard (AS/NZS 3679.1.2016), which is what the Australian market demands;
- stated that it could provide evidence in the form of mill test certificates to the Commission on the actual average yield strengths for the domestic product it considered to be the most comparable to the 'Grade 300' produced for the Australian market. SYS submitted that the subcategories for yield strength are at odds with Australian market demands and are required to be modified to reflect product and market reality; and
- proposed that the MCC subcategory of minimum yield strength be modified to incorporate further subcategories.

In its submission of 12 March 2019,<sup>35</sup> SYS further submitted that:

- the Commission requires that responses to exporter questionnaires should be provided by a time that may be prior to the resolution of all matters relating to the MCC structure and this causes interested parties to prepare voluminous calculations before knowing the ADC's position on disputed MCC criteria;
- Liberty Steel admits that all Australian customers demand and receive HRS with a yield strength of at least 300 MPa. SYS stated that it does not understand the

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<sup>34</sup> Item 6 on the public record refers.

<sup>35</sup> Item 11 on the public record refers.

## PUBLIC RECORD

reasons for the proposed cut off of above and below 265 MPa, as it has no relevance to the Australian market;

- the approach suggested by Liberty Steel to request copies of the standards to which certain grades of HRS have been produced is not reasonable because steel is often manufactured to exceed the minimum requirements of the respective standards; and
- the Commission should only seek data once the MCC subcategories have been established and where there is reliable data of commercially significant sales in the ordinary course of trade (OCOT). There is no reason for the Commission to call for data on MCC categories of goods not sold to the Australian market as such an approach is inefficient and may result in inaccurate normal value calculations.

### **5.2.5.1 The Commission's assessment**

The Commission notes that matters concerning the MCC structure as they relate to SYS were addressed in the exporter verification visit report, which is on the public record, and in which it is indicated that the Commission did make a modification to the MCC structure to include a further subcategory of minimum yield strength. These modifications were made on the basis of the information received during the exporter verification. The Commission did not accept the precise modification as proposed by SYS in its submission. In this SEF, the Commissioner has accepted the approach to the MCC applied by the Commission's verification team and that was described in its verification report.

The Commission's application of the MCC structure and consideration of mill test certificates are discussed in sections 5.2.2 and 5.2.3 of this report respectively.

The Commission considers that data on MCC categories of the goods not exported to Australia, but sold domestically, is relevant. In circumstances where there are insufficient sales of Australian export models on the domestic market, the Commission may be required to use data in respect of other domestic models to make a specification adjustment for differences between models under section 269TAC(8) or to ascertain normal values under section 269TAC(2).

### **5.2.6 Submissions received from Tung Ho**

In its submission of 5 March 2019,<sup>36</sup> Tung Ho submitted that:

- the optional MCC subcategory of dimension be expanded to incorporate certain forms (including narrow flange and wide flange beams and columns, standard channels, heavy channels, beams and running rails). Tung Ho considered the modifications were merited as it manufactures a wide range of sizes not typical under the standard AS/NZS 3679.1.2016 and to meet the requirements of other standards. Further, some forms are not exported to Australia; and
- the optional MCC subcategory of weldability be expanded to incorporate certain steel grades. The exporter submitted that AS/NZS 3679.1.2016 Grade 300, which is required by the Australian market, is produced from the same semi-finished goods that are used to produce carbon steel for general structures. However, if goods to a different steel grade for the Australian market are requested, they will

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<sup>36</sup> Item 8 on the public record refers.

## PUBLIC RECORD

be manufactured from the appropriate semi-finished goods. Further categorisation of steel grades is necessary to:

- align with its internal product codes;
- align with original investigations, past duty assessments and reviews; and
- accurately compare the goods manufactured from the same semi-finished goods to like goods of a similar standard.

In its submission of 6 March 2019,<sup>37</sup> Tung Ho proposed to amend the optional MCC subcategory of cross-sectional thickness to less than and greater than 12 mm, rather than 11 mm, to reflect the standard sizes produced under the Australian standard and to group like goods in the MCC for fair comparison.

In its submission of 5 July 2019,<sup>38</sup> Tung Ho stated:

- the engagement of an independent expert as proposed by Liberty Steel is not necessary;
- it produces semi-finished goods to exceed minimum specified requirements of like goods of similar groups of standards;
- comparison of minimum specified requirements of various international standards, which are significantly exceeded, is not an accurate assessment of like goods compared to a comparison of actual metallurgical properties (as indicated on mill test certificates) of goods produced and sold during the review period; and
- the MCC structure proposed in relation to minimum yield strength - less than 265 MPa or greater than 265 MPa - was inappropriate, because some HRS produced by Tung Ho with a much higher minimum yield strength (and of higher value and cost) would have been included in comparison with lower value and cost carbon steel for general structures, including HRS produced to meet the requirements of AS/NZS 3679.1.2016.

### 5.2.6.1 The Commission's assessment

The proposed amendments to the optional MCC categories of dimension, thickness and weldability were accepted by the Commission at the time of the verification because it considered that such amendments would result in a more accurate comparison of models. The Commission did not find information to suggest that characteristics related to dimension, thickness and weldability did not have an effect on price for Tung Ho.

The changes to the MCC structure as they pertain to Tung Ho and the reasons for the changes were described in the Commission's exporter verification report.<sup>39</sup>

The Commission acknowledges that in the exporter verification report in respect of Tung Ho it had conducted model matching and subsequent calculation of the preliminary dumping margin on the basis of mill test certificates. As discussed in section 5.2.3 of this report, the Commission considers that the evidence indicates that it is not appropriate in this review to classify like goods on the basis of mill test certificates. The Commission has

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<sup>37</sup> Item 9 on the public record refers.

<sup>38</sup> Item 19 on the public record refers.

<sup>39</sup> Item 31 on the public record refers.

## PUBLIC RECORD

reviewed its calculations of the preliminary dumping margin for Tung Ho. This is further addressed in sections 5.2.8 and 5.6.1 of this report.

The Commission does not consider that engaging an independent technical expert would provide any further benefit regarding determining factors that affect HRS prices or comparability between export and domestic sales.

### 5.2.7 Submissions received from Liberty Steel

In its submission of 19 June 2019 in response to exporter verification reports published on the public record,<sup>40</sup> Liberty Steel stated:

- the Commission should engage an independent expert to resolve current and previous issues regarding model matching;
- the new MCC process has not provided Australian industry with transparency because steel grades are not being disclosed for model matching and therefore Australian industry is denied procedural fairness;
- the Commission rejected Liberty Steel's proposal to include the MCC subcategory chemistry control for weldability as a mandatory category. The exclusion of this category is contradictory to the fundamental concept of matching like goods to the exported goods;
- the verification of Tung Ho's domestic sales was not correct because a number of steel grades were not allocated to the appropriate MCC category. Liberty Steel objected to the grade groupings proposed by Tung Ho because it was an attempt by the exporter to group lower value domestic grades with the exported grades to achieve a favourable dumping margin outcome;
- the steel grade groupings proposed by Tung Ho included a number of anomalies. Liberty Steel proposed a grouping of grades based on the mandatory MCC category for minimum yield strength;
- Tung Ho's request to amend the optional MCC category of cross-sectional thickness to less than and greater than 12 mm rather than 11 mm was not appropriate and the original MCC category thickness conforms to the Australian standard; and
- the Commission accepted changes to Dragon Steel's MCC structure in its exporter questionnaire response but the confidentiality of the details of these changes provide no clarity to the Australian industry regarding the nature of the MCC criteria applied.

The Commission met with Liberty Steel on 27 June 2019.<sup>41</sup> During this meeting, Liberty Steel submitted its views on the Commission's approach to model matching and the MCC structure that is being applied in Review 499. Liberty Steel provided a presentation on these matters. A copy of this presentation is available on the public record.

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<sup>40</sup> Item 16 on the public record refers.

<sup>41</sup> Items 27 and 28 on the public record refer.

## PUBLIC RECORD

Liberty Steel reiterated its views that the Commission should not conduct its model matching on the basis of mill test certificates because customers specify and purchase steel on the basis of the relevant standards and grades.

Liberty Steel reiterated its concerns regarding unpublished information relating to model matching, especially in circumstances where the standards and grades produced by the exporters were already in the public domain.

Liberty Steel reiterated its concerns regarding technical matters pertaining to various categories in the MCC structure that are being applied in this review. Liberty Steel acknowledged the difficult task that Commission staff have in relation to understanding the technical and commercial aspects of varied investigations and proposed that technical experts be engaged where necessary.

In its submission of 25 July 2019 in response to Tung Ho's submission,<sup>42</sup> Liberty Steel stated:

- Tung Ho has not complied with the Commission's MCC structure because it classified HRS sales on the basis of mill test certificates rather than by the values provided in standards which specify minimum yield strength;
- comparing exporter's domestic mill test certificates with export standard requirements is technically flawed and will give incorrect model matching results;
- the key question for the Commission is whether or not a feature such as weldability of HRS affects the price of that product; and
- the Commission should consider the classification provided previously by Liberty Steel of Tung Ho grades based on mandatory minimum yield strength criteria according to the relevant standard.

In its submission of 30 July 2019 in response to the SYS exporter verification report,<sup>43</sup> Liberty Steel:

- stated that it seeks to understand whether SYS has excluded sales of grade SM490 from its domestic sales listing. If standards, rather than the mill test certificates, are compared to one another, it would be concluded that on the basis of minimum yield strength, there would be comparability between SM490 and G300 (G300 is also referred to as AS300. It is the grade exported to Australia and is also sold on the domestic market by SYS);
- noted that there is no overlap between the minimum yield strengths between SS400 and SM400 with G300;
- stated that its inferred understanding is that domestic sales of grades SS400, SS490 and SM400 have been included in the same MCC as AS300; and
- sought clarification in respect of the domestic sales volumes of AS300 and the circumstances of such sales, particularly whether sales of this grade were ordered as AS300 or *offered as non-standard sizes, e.g. 6 metre short lengths*. Liberty

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<sup>42</sup> Item 36 on the public record refers

<sup>43</sup> Item 38 on the public record refers



## PUBLIC RECORD

Steel stated that for the Australian market, HRS is sold predominantly in lengths of 9 metres or greater.

### 5.2.7.1 The Commission's assessment

As discussed in section 5.2.2 of this report, the Commission established the MCC structure on the basis of available information on factors that affect prices of HRS. The Commission had no information on how HRS prices were affected by the chemistry related to the weldability of steel.

As discussed in section 5.2.3 of this report, the Commission considers that the evidence found in this review indicates that it is not appropriate to classify like goods on the basis of mill test certificates.

The Commission does not consider that engaging an independent technical expert would provide any further benefit regarding determining factors that affect HRS prices or comparability between export and domestic sales.

In this review, the Commission reviewed its calculations of dumping margins for all exporters with consideration given to submissions received and to ensure it maintained a consistent approach between all exporters, including Tung Ho and Dragon Steel.

The Commission has determined whether the MCC structure accurately addresses differences in prices between models. It has done so by checking prices and by aligning MCC categories with respective grades and the standards to which they are manufactured. Any amendments to preliminary dumping margins that have been reported in exporter verification reports have been addressed in the sections of this report as they pertain to each respective exporter.

The Commission acknowledges Liberty Steel's statement that the MCC thickness subcategory proposed by Tung Ho does not conform to the Australian standard. However, as indicated in section 5.2.6.1 of this report, the Commission considered that the requested change in thickness would result in a more accurate comparison of models. Further analysis undertaken subsequently by the Commission did not conclusively indicate that thickness had an impact on price comparability in respect of Tung Ho. As such, the Commission considers it appropriate to exclude the optional subcategory of thickness from Tung Ho's MCC structure in amendments to its preliminary dumping margin calculation, which are detailed in section 5.6.1 of this report.

In section 5.6.1 of this report, the Commission indicates that it has reviewed its analysis and has found that in respect of both its domestic and Australian sales, Tung Ho's customers purchased HRS primarily on the basis of the minimum standard required and not on the basis of test results indicated on mill test certificates. As such, the Commission has reclassified MCC subcategories for Tung Ho's domestic sales applying the minimum standard requirements to which the goods are sold. Consequently, the Commission amended Tung Ho's MCC structure and revised its calculation of the preliminary dumping margin that was indicated in the Commission's verification report which is on the public record.

The Commission notes that the application of the MCC structure is in place in this review to facilitate model matching and in a manner that correctly addresses factors that affect prices of HRS.

Dragon Steel included an additional MCC subcategory, *section codes*, in its exporter questionnaire response. The Commission accepted these section codes because they provided details that facilitated the comparison of normal values and export prices. The

## PUBLIC RECORD

Commission notes that these codes are described by Dragon Steel in the public version of its questionnaire response. The Commission considers that this does not support Liberty Steel's assertion that the MCC criteria regarding these codes are confidential.

Regarding Liberty Steel's submission on the MCC structure for SYS, while the Commission confirms that SM490 sales were not excluded by SYS from its domestic sales listing, the Commission considers that the proportion of various grades sold in SYS's domestic market to be commercial in confidence.

The Manual states that in undertaking model matching adopting the MCC structure, the Commission will have regard to *differences in physical characteristics that give rise to distinguishable and material differences in price*.

The Commission would be unable to establish normal values solely on the AS300 grade sold in SYS's domestic market as there would have been insufficient sales of AS300 in the OCOT over the review period. Price analysis of the different grades sold by SYS in its domestic market was undertaken by the Commission to establish the extent to which differences in grades influenced prices (controlling for variables such as shape, level of trade and timing). The Commission found that:

- the differences in physical characteristics between SS(SM)400 and AS300 did not give rise to a distinguishable and material difference in price in the domestic market; and
- sales of some grades were an immaterial proportion of SYS's domestic sales volume, irrespective of whether included in MCC subcategory B or C for minimum yield strength, and have negligible effect on the calculation of the preliminary dumping margin.

In respect of the circumstances of domestic sales of AS300 HRS by SYS, the Commission understands that:

- SYS only produces the goods upon receipt of a customer order and that the grade is specified at the time of the order - SYS does not practise *up-selling* whereby it attempts to achieve higher sales by proposing more expensive products; and
- sales were predominantly of standard sizes (that is, in lengths of 9 metres or greater) over the review period.

### 5.2.8 Commission's findings on the MCC structure

In this review, the Commission has reviewed its calculations of factors related to its dumping margin calculations in light of the submissions it has received regarding the MCC structure and its approach to model matching subsequent to the publication of exporter verification visit reports. The Commission sought and obtained further clarification on steel grades of HRS and the respective standards to which they are produced and sold by exporters in their domestic markets.

A summary of grades and standards used in normal value calculations and the MCC subcategory for minimum yield strength, aggregated for all countries and exporters that cooperated in this review, is at **Non-Confidential Appendix 1**.

The Commission acknowledges that exporters had included some grades and standards with specifications which do not align to the respective MCC subcategory and that are dissimilar to other grades in the same subcategory. In most of these instances, the Commission did not find sufficient evidence that the grade and specification had a

## **PUBLIC RECORD**

material impact on price in that respective MCC subcategory. This was either because the volumes sold were relatively small or certain HRS products may be niche products in that market. The Commission also notes that within certain grades of HRS, there may be various values for minimum yield strength because the requirement for yield strength is dependent on the size of the steel section as well as on other factors, such as the chemistry of the steel.

In some instances, where the minimum yield strength for a particular grade as indicated in the standard was not aligned to the MCC subcategory parameters, and where there was a significant effect on prices, the Commission considered that it was appropriate to amend the dumping margin calculations that are indicated in respective exporter verification reports on the public record.

The Commission found, in some dumping margin calculations reported in verification reports:

- some instances of incorrect designation of steel grades and MCC subcategories to domestic sales; and
- certain optional subcategories incorporated in the MCC structure by exporters, and initially accepted by the Commission, did not influence price comparability.

Accordingly, the Commission considered it appropriate in those instances to amend the preliminary dumping margins for the affected cooperating exporters. Amendments were made to the preliminary dumping margin for the following cooperating exporters:

- Tung Ho; and
- TS Steel.

Details of the amendments are provided in the respective sections for these exporters in this report.

### **5.3 The Commission's consideration of section 269TAB(2B)**

The Commission considered for each cooperating exporter whether the export price may be ascertained under section 269TAB(2B). Section 269TAB(2B) may apply if the Minister determines that there is insufficient or unreliable information to ascertain the export price due to an absence or low volume of exports of the goods to Australia by an exporter having regard to the following:

- previous volumes of exports of those goods to Australia by that exporter;
- patterns of trade for like goods; and
- factors affecting patterns of trade for like goods that are not within the control of the exporter.

This assessment has been made in the following sections of this report for each exporter that has cooperated in this review.

## **5.4 Japan**

### **5.4.1 Uncooperative and all other exporters**

As stated in section 4.2.2 of this report, the Commissioner has determined that all exporters from Japan are uncooperative exporters. Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters.

#### **5.4.1.1 Export price**

The Act specifies that for uncooperative exporters, export prices are to be calculated under section 269TAB(3). The Commission has therefore established an export price under section 269TAB(3) having regard to all relevant information.

The Commission considers that the most reliable and relevant information it possesses in relation to exports of the goods from Japan over the review period is the import data in the ABF import database. This contains detailed importation data from import declarations made by importers to the ABF. Therefore, the Commission has calculated the export price based on the weighted average Free on Board (FOB) export price declared by importers of the goods over the review period from Japan from the ABF import database.

#### **5.4.1.2 Normal value**

The Act specifies that for uncooperative exporters, normal values are to be calculated under section 269TAC(6). The Commission has therefore established the normal value under section 269TAC(6) having regard to all relevant information.

The Commission considers that the most reliable and relevant information it possesses in relation to the normal value of the goods in Japan over the review period is the verified normal value information from the original investigation (Investigation 223). Therefore, the Commission has calculated the normal value based on the normal value of all other exporters from REP 223 and has made an adjustment for the movement in export prices between the original investigation period and the current review period.

#### **5.4.1.3 Preliminary dumping margin**

The preliminary dumping margin for all exporters from Japan was established in accordance with section 269TACB(2)(a) by comparing the weighted average export price and weighted average normal value.

The preliminary dumping margin for all exporters of HRS from Japan is **12.2 per cent**.

Details of the preliminary dumping margin calculations for all exporters from Japan are at **Confidential Appendix 1**.

### **5.5 Korea**

#### **5.5.1 Hyundai**

##### **5.5.1.1 Export price**

###### ***Consideration of section 269TAB(2B)***

The Commission determined that it is not appropriate to determine Hyundai's export price under section 269TAB(2B) after considering the factors in section 269TAB(2A)(b).

The Commission compared previous volumes of goods exported to Australia by Hyundai preceding the original investigation period with exports preceding the review period, and found that export volumes have increased.

The Commission considered patterns of trade of like goods exported by other exporters and found that the volume of Hyundai's exports were much larger than other exporters.

The Commission is not aware of any factors affecting patterns of trade for like goods that were not within the control of the exporter.

***The exporter***

For all Australian export sales during the review period, the Commission is satisfied that Hyundai was the exporter of the goods.

***The importer***

The Commission considers that:

- for sales made direct to Australian customers, the Australian customers were the beneficial owners of the goods at the time of importation and therefore the importers of the goods;
- in respect of a small portion of sales made during the review period by Hyundai to an Australian customer on duty paid terms, the Australian customer was the beneficial owner of the goods at the time of importation and therefore the importer of the goods; and
- for sales made through foreign traders, the Australian customers were the beneficial owners of the goods at the time of importation, and were therefore the importers of the goods.

***Export price – assessment***

In respect of sales made direct to the Australian customer and to the Australian customer on duty paid terms, the export price has been determined under 269TAB(1)(a) as the price paid by the importer to the exporter less transport and other costs arising after exportation.

In respect of Australian sales made through foreign traders, the goods have not been purchased by the importer from the exporter and therefore sections 269TAB(1)(a) and 269TAB(1)(b) do not apply. The export price for these sales was determined under section 269TAB(1)(c) having regard to all the circumstances of the exportation, being the price paid or payable for the goods by the intermediaries less (as appropriate) transport and other post exportation costs.

**5.5.1.2 Normal value**

Normal values were established in accordance with section 269TAC(1) using Hyundai’s domestic sales for like goods sold in the OCOT in arms length transactions.

Table 3 provides a summary of the adjustments that, in accordance with section 269TAC(8), are necessary to ensure a fair comparison of normal values with export prices:

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic credit expenses	Deduction
Domestic inland transport	Deduction
Export inland transport	Addition
Export handling & other costs	Addition

*Table 3 – Hyundai adjustments to normal value*

**5.5.1.3 Preliminary dumping margin**

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

## PUBLIC RECORD

The preliminary dumping margin for Hyundai is **9.5 per cent**. This has been revised from the dumping margin indicated in the exporter verification report for the reasons explained in section 5.5.1.6 of this report.

Details of the variable factors calculations for Hyundai are at **Confidential Appendix 2**.

### 5.5.1.4 Submissions made by Hyundai

In its submission of 13 June 2019,<sup>44</sup> Hyundai raised three matters.

In respect of the first matter, Hyundai stated:

*The Verification Report determined the dumping margin by using the date of the bill of lading with respect to each shipment of Hyundai Steel's sales to Australia as the date of sale of the goods in the shipment. This is wrong.*

.....

*Hyundai Steel has consistently submitted, both in this Review and in the recently concluded variable factors review concerning the same product, that the date of sale should be the sales order date as recorded in Hyundai Steel's financial system.*

.....

*Hyundai Steel provided relevant sales documents... Those documents show that the material terms of the sales, such as specification of the goods, price and quantity as recorded in each of the sales orders, were not subject to further negotiation with customers, and were carried through to the completion of every Australian sale Hyundai Steel contracted with its customers.*

*...Issuance of a bill of lading indicates the physical movement, and is a document of title, and assists to define the point at which risk in the goods passes to the consignee, as per the Incoterm used in the contract. This is a key milestone in the carrying out or completion of a sales contract, especially from the perspective of the seller in the discharge of its contractual obligations. To claim that material terms of a sale are not established until the bill of lading is issued is not legally correct and defies international trade practices.*

In respect of the second matter, Hyundai stated:

*The Verification Report did not adjust the normal value to account for the physical/grade differences between the goods exported by Hyundai Steel to Australia and those sold in the domestic market during the period of review ("POR"). We submit that this is incorrect, and is inconsistent with the established position which formed the basis of the notice that is now being reviewed.*

...

*The use of MCCs in this review does not detract from the need for a physical adjustment to be made to reflect the quantifiable cost differences and the associated market value of those differences, as the Commission has done in Report 223 and Report 465. The physical differences between Hyundai Steel's Australian sales and the relevant domestic sales suitable for normal value purposes in the current review do not*

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<sup>44</sup> Item 24 on the public record refers.

## PUBLIC RECORD

*differ to the situation before the Commission and the Minister in either Review 465 or Investigation 223, either materially or as a matter of principle.*

In respect of the third matter, Hyundai stated:

*Hyundai Steel has identified two issues in the Commission's calculations relating to the ordinary course of trade of Hyundai Steel's domestic sales transactions ("the OCOT test").*

*... the quarterly CTMS [cost to make and sell] was based on the quarterly CTM [cost to make], and the annual average S [selling, general and administrative expenses (SG&A)]. Hyundai Steel submits that the Commission should undertake the OCOT test by using the correct quarter based CTMS for each MCC, to maintain consistency and accuracy in the calculation.*

*Hyundai Steel's domestic sales were made on a "delivered basis"... it is incorrect to "work out" ex-works based prices for each of Hyundai Steel's domestic sales for the purpose of examining the "price paid" or the price for the goods sold by Hyundai Steel in the domestic market. The actual invoice prices charged by Hyundai Steel and paid by its customers must be used.*

In its submission of 27 June 2019,<sup>45</sup> Hyundai referred to the Commission's exclusion of the amount of interim dumping duties (IDD) in the determination of export prices in instances where Hyundai Steel exported the goods on a duty-paid basis. Hyundai submitted that in such circumstances, it is also the importer of the goods and section 269TAB(1)(c) accommodates an approach whereby the Commission need not deduct IDD from the export price.

In its submission of 22 July 2019,<sup>46</sup> Hyundai stated that:

- it rejects comments made by Liberty Steel that Hyundai's position on the date of Australian and domestic sales has been inconsistent. Hyundai reiterated its position that the sales order date best reflects the date of sale and any departure from the original investigation and US investigations have been addressed in Review 465;
- it supports the applicant's call for transparency related to model matching, and careful examination of whether the information provided by interested parties complies with the MCC regime. It urges the Commission to ensure the same requirements of transparency apply to the applicant;
- Review 499 is being conducted on the premise that the variable factors have changed. Unless justified by an actual change in the models concerned, any attempts to challenge and substantially revise the model matching applied in the original decision to impose anti-dumping measures should not be considered;
- in response to Liberty Steel's rejection that a cost and profit based adjustment be made to normal value to account for physical differences between Australian export and domestic models, there is nothing in Australian or other legislation that prohibits such an adjustment where appropriate. The appropriateness of such an adjustment was described in Review 465;

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<sup>45</sup> Item 34 on the public record refers.

<sup>46</sup> Item 29 on the public record refers.

## PUBLIC RECORD

- in relation to the OCOT test, it asks the Commission to adopt a quarterly unit selling, general and administration (SG&A) expense by applying the *annual average ratio of S* [sales costs] to the relevant quarterly sales revenue for the relevant model; and
- transportation costs should be treated on a weighted average basis as mandated by section 269TAAD(3).

### 5.5.1.5 Liberty Steel submission

In its submission of 5 July 2019,<sup>47</sup> Liberty Steel;

- stated its agreement with the Commission's approach of using the bill of lading date as the date of the export sale;
- observed that Hyundai had been inconsistent in respect of its representations as to the appropriate date of sale to be applied. In the original investigation 223 and in Review 465, the dates of sale claimed by Hyundai were the invoice date and sales order date respectively;
- referred to the United States Department of Commerce's (USDOC) investigation concerning certain hot-rolled steel flat products which found that Hyundai's shipment date was the appropriate date of sale;
- stated its disagreement with Hyundai's request to make a physical difference adjustment to the normal value on the basis of cost differences with no demonstration that the differences affect price comparability;
- requested a review of grades mapped to MCCs for Hyundai based on a standards comparison and sought disclosure of grades determined to be most comparable to the export grade;
- stated its disagreement with Hyundai's comments regarding the Commission's approach to allocating SG&A expenses on an annual weighted average basis; and
- stated its disagreement with Hyundai's comments regarding the Commission's approach of testing profitability and recoverability at an ex-works level. According to Liberty Steel, it is not reasonable for the Commission to compare a 'high value' delivered transaction to a weighted average 'delivery' expense across all domestic sales.

### 5.5.1.6 The Commission's assessment

#### ***Date of sale for Australian exports***

The Manual states that the Commission will normally establish the date of sale using invoice date because it best reflects the material terms of the sale and also 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.

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<sup>47</sup> Item 29 on the public record refers.



## PUBLIC RECORD

Hyundai submits that the sales order date as entered in its sales records most accurately reflects the date of sale for Australian exports rather than the bill of lading date as applied by the Commission.

The Commission considers that the material terms of Hyundai's sales include price, quantity, payment and delivery terms. The Commission has found in this review that there are many instances of considerable time lags from the date of receipt of the sales order to the date of exportation. The Commission has also found that volumes and export timeframes that are described in customer orders and contracts were often not met and that this can allow a customer to withdraw its order.

Hyundai's submission highlights the outcomes of the *ADRP Review 2018/80 of Steel Reinforcing Bar exported from Greece, the Republic of Indonesia, Spain (Nervacero S.A), Taiwan (Power Steel Co. Ltd) and the Kingdom of Thailand*, in which it was found for the exporter Nervacero S.A. that the *pro forma* invoice date was more significant than the sales invoice date in establishing the date of sale. *ADRP Report No. 80* stated that a party's accounting practices cannot be considered determinative as to when parties come to an agreement on the sale.

The Commission notes that in respect of *ADRP Review 2018/80*, the *pro forma* invoice date was taken as the date of sale for Nervacero S.A.'s Australian exports and the order confirmation date for its domestic sales, both of which represented similar points in time of the sales cycle. Those circumstances can be distinguished from this review. Hyundai has claimed, and the Commission has accepted, that in respect of its domestic sales, the commercial invoice date is the date of sale. The Commission has found that Hyundai's domestic sales are generally to established customers that purchase HRS from Hyundai's existing inventory and that are invoiced on a monthly basis. In Hyundai's case, the Commission considers that Hyundai's approach to the date of sale for Australian exporters (sales order date) and domestic sales (commercial invoice) date represents a misalignment that does not allow for a fair comparison of export price and normal value to be made in respect of sales made at a comparable point in time.

The Commission considers that:

- the possibility that customers can cancel orders if certain conditions are not met;
- the time delays between the receipt of an order and the invoicing and export of the goods;
- the differences in volumes and time frames between orders and exports; and
- the fulfilment of a sales order by multiple shipments;

collectively indicate that the details of orders can change between receipt of the order and invoicing and delivery of the goods.

In this review, the Commission considers that the above findings, together with the inconsistent treatment of the date of sale by Hyundai for its Australian export and domestic sales, indicate that the sales order date does not best reflect the material terms of Australian export sales.

The Commission's approach in Review 465 was to use the commercial invoice date as the date of sale for Hyundai's Australian exports because it reflected the evidence that was available and was considered to have best established the material terms of sale. In the Commission's exporter visit report for Review 465, the Commission stated that Hyundai Steel did not provide shipment dates in its export sales listing and that upon

## PUBLIC RECORD

further analysis it found that a not insignificant percentage of the goods were exported after the date requested by the customer on the purchase order.

In the Commission's exporter visit report for this review, the Commission stated that the bill of lading date best reflects the material terms of the sale and, as such, was determined as the date of sale. This was because the Commission had found many instances of time lags from the invoice date to the date of exportation for Hyundai's Australian export sales.

The Commission has reviewed the evidence before it and considers that it is appropriate to use the invoice date as the date of sale for Hyundai's exports to Australia. It has done so because it considers that the time lags between the order date and the invoice date are not as significant as the time lags between the order date and the bill of lading date. Further, the Commission considers that the material terms of the sale have been established by the invoice.

The Commission notes references made by Hyundai to footnote 8 of the World Trade Organization *Anti-Dumping Agreement* (the Anti-Dumping Agreement) and its reflection in section 269TAF(1). Hyundai submits that in so far as the determination of the exchange rate is concerned under section 269TAF, the bill of lading date can have no bearing on pricing behaviour and consideration, nor on the actual financial impact of currency conversion.

Footnote 8 of the Anti-Dumping Agreement and section 269TAF(1) pertain to the comparison of the export prices of the goods exported to Australia with corresponding normal values of like goods if that comparison requires a conversion of currencies. If that is required, section 269TAF(1) states that the conversion is to be made using the rate of exchange on the date of the transaction or agreement that best establishes the material terms of the sale. The Commission considers that section 269TAF(1) describes how the date for a currency conversion should be determined, if that is required. The Commission does not consider that this provision assists in determining the date at which export price should be determined under section 269TAB. There is no reference to section 269TAB in section 269TAF. In any event, section 269TAF(1) does not specify a particular date for a currency conversion, but states that the conversion is to be made using the rate of exchange on the date that *best establishes the material terms of the sale of the exported goods*. It does not define what the material terms of sale are in every case, as suggested by Hyundai.

For the reasons explained above, the Commission considers that the material terms of sale have been established on the invoice date for Australian export sales. The Commission has revised the calculation of the dumping margin as indicated in its exporter visit report.

### ***Adjustments to normal value for physical differences and model matching***

In respect of the adjustment to normal value to account for the physical and grade differences between models exported to Australia and models sold domestically, the Manual discusses adjustments for physical characteristics and quality as follows:

*Adjustment is allowed for differences in physical characteristics where the differences can be quantified to ensure fair comparison. Relevant differences include quality, chemical composition, structure, or design.*

## PUBLIC RECORD

*Evidence should be provided of different selling prices for products with different physical characteristics or quality. In such cases, the size of the price difference may be used as the basis for any adjustment.*

The submission makes reference to differences in costs incurred by Hyundai to produce the various grades of HRS. However, the MCC structure has been applied in order to identify and address difference in selling *prices* of HRS. Despite the presence of physical differences between various models of HRS, the Commission did not find in Hyundai's verified sales data, or in other evidence, that physical differences of models within respective MCC groups influenced *prices*.

The Commission also notes that the respective standard in Korea has recently been altered. In previous investigations and reviews pertaining to Hyundai, the models of Korean HRS were differentiated on the basis of ultimate tensile strength. The renaming of the Korean standard based on yield strength is more closely aligned to the Australian standard which emphasises yield strength and which Australian end users refer to and require to be met. The MCC structure in this review includes categories based on yield strength and also accommodates categories for tensile strength. The MCC structure was not available to be applied in Investigation 223 or in Review 465. The Commission considers that the MCC structure applied in this review is appropriate, facilitates close matching of Australian export models with domestic models and ensures that adjustments to normal value are only required when a physical difference is shown to influence price.

In respect of Hyundai's request that the Commission ensure the same requirements of transparency related to the MCC apply to the applicant, the Commission notes that it does not discriminate between interested parties and maintains a balance between transparency and its responsibility in respect of confidentiality requirements.

In respect of Hyundai's statements that Review 499 is being conducted on the premise that the variable factors have changed, and that attempts to challenge and substantially revise the model matching applied in the original decision to impose anti-dumping measures should not be considered, the Commission notes that it is required to consider the evidence before it in this review, including whether that indicates that a different approach to model matching is required.

### **OCOT testing**

In respect of the concerns raised by Hyundai and comments made by Liberty Steel on the Commission's methodology for the OCOT test, the Commission considers that SG&A expenses are of a general nature and include some expenses that may only be incurred annually (for example, staff bonuses). As such, the Commission considers that SG&A expenses should be calculated on an annual basis, rather than the manner proposed by Hyundai, being the application of an annual SG&A average ratio to the relevant quarterly sales revenue.

The Commission considers that conducting the OCOT test at an ex-works level produces an accurate result because delivery expenses are based on actual expenses on a line by line (transactional) basis. Hyundai has stated that sales are made and invoiced on a delivered basis and the actual invoice charges (which are inclusive of transportation) should be used and compared to a CTMS inclusive of transportation costs. As such, they would be treated in a manner consistent with other elements of the CTMS, being the weighted average full cost for the review period as mandated by 269TAAD(3). The Commission does not consider this appropriate.

***Exclusion of the amount of interim dumping duties (IDD)***

Hyundai's claim, made in its submission of 27 June 2019, presumes a finding that in the case of the sales it made to an Australian customer on duty paid terms, Hyundai is both the exporter and the importer of the goods, requiring determination of export price under section 269TAB(1)(c) in respect of these sales.

In section 5.5.1.1 of this report, it is explained that for the sales by Hyundai on duty paid terms, the export price has been ascertained under section 269TAB(1)(a). For these duty paid sales, the delivery term is of a kind that the risk and beneficial ownership of the goods is transferred to the buyer upon loading on the ship. The Commission considers that the payment of IDD does not change the point at which risk and beneficial ownership passes to the buyer and therefore considers the Australian customer to be the importer of the goods for Hyundai's duty paid sales.

In accordance with 269TAB(1)(a), the Commission has deducted all the post-exportation costs from the import price of the goods in order to determine the export price for the goods at the FOB level. This includes the IDD, which is a charge arising after exportation.

**5.5.2 Uncooperative and all other exporters**

**5.5.2.1 Export price**

Export prices for uncooperative and all other exporters from Korea were determined having regard to all relevant information under section 269TAB(3) as prescribed in section 269TACAB(1). Specifically, the Commission had regard to Hyundai's export price, being the price paid by the importer to the exporter less transport and other costs arising after exportation.

**5.5.2.2 Normal value**

Normal values for uncooperative and all other exporters from Korea were determined having regard to all relevant information under section 269TAC(6), as prescribed in section 269TACAB(1). Specifically, the Commission had regard to Hyundai's normal value with all favourable adjustments under section 269TAC(8) removed.

**5.5.2.3 Preliminary dumping margin**

The preliminary dumping margin for uncooperative and all other exporters from Korea was established in accordance with section 269TACB(2)(a), by comparing the weighted average export price established under section 269TAB(3) with the weighted average normal value established under section 269TAC(6).

The preliminary dumping margin for uncooperative and all other exporters from Korea is **12.3 per cent**.

The calculations of the variable factors for 'uncooperative and all other exporters' from Korea are at **Confidential Appendix 3**.

## 5.6 Taiwan

### 5.6.1 Tung Ho Steel<sup>48</sup>

The Commission stated in its exporter verification report that the verification team reviewed mill test certificates and concluded that it was correct that all models sold by Tung Ho had a minimum yield strength of greater than 265 MPa and categorised all models accordingly in the MCC structure. The Commission has subsequently reviewed its analysis and has found that in respect of both its domestic and Australian sales, Tung Ho's customers purchased HRS primarily on the basis of the minimum standard required, and not on the basis of the results of mill test certificates. As such, the Commission has reclassified MCC subcategories for Tung Ho's domestic sales applying the minimum standard requirements to which the goods are sold.

The Commission has also amended the MCC structure that applied to Tung Ho at the time of verification to exclude the optional subcategory of thickness as it could not find that thickness affected price.

The factors described above have resulted in an amendment to the preliminary dumping margin that was indicated in Tung Ho's exporter verification report.

#### 5.6.1.1 Export price

##### *Consideration of section 269TAB(2B)*

The Commission determined that it is not appropriate to determine Tung Ho's export price under section 269TAB(2B) after considering the factors in section 269TAB(2A)(b).

The Commission compared previous volumes of goods exported to Australia by Tung Ho preceding the original investigation period with exports preceding the review period, and found that export volumes have increased.

The Commission considered patterns of trade of like goods exported by other exporters and found that the volume of Tung Ho's exports were much larger than most other exporters.

The Commission is not aware of any factors affecting patterns of trade for like goods that were not within the control of the exporter.

##### *The exporter*

For all Australian export sales during the period, the Commission is satisfied that Tung Ho was the exporter of the goods.

##### *The importer*

The Commission considers that for all Australian exports by Tung Ho during the review period, its Australian customers were the beneficial owners of the goods at the time of importation and therefore the importers of the goods.

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<sup>48</sup> Item 19 on the public record refers.

**PUBLIC RECORD**

**Export price – assessment**

In respect of the Australian sales of the goods by Tung Ho, the export price has been determined under section 269TAB(1)(a) as the price paid by the importer to the exporter less transport and other costs arising after exportation.

**5.6.1.2 Normal value**

For one Australian export model, normal value was established in accordance with section 269TAC(1) using Tung Ho’s domestic sales for like goods sold in the OCOT in arm’s length transactions.

With regard to four Australian export models, there were insufficient volumes of domestic sales made in the OCOT. The normal value for these four models was established under section 269TAC(2)(c) based on:

- the cost to make the exported model based on the company’s records in accordance with section 43(2) of the *Customs (International Obligations) Regulation 2015* (the Regulation);
- domestic SG&A expenses that would be incurred on the assumption that the exported goods are sold on the domestic market based on the company’s records in accordance with section 44(2) of the Regulation; and
- an amount for profit based on the production and sale of like goods by Tung Ho on the domestic market in the OCOT in accordance with section 45(2) of the Regulation.

Table 4 provides a summary of the adjustments that, where:

- normal value was ascertained in accordance with section 269TAC(1), were made pursuant to section 269TAC(8); and
- normal value was ascertained in accordance with section 269TAC(2)(c), were made pursuant to section 269TAC(9).

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic packaging	Deduction
Domestic inland transport	Deduction
Export packing	Addition
Export inland transport	Addition
Export customs brokers fees	Addition
Export bank charges and letter of credit fees	Addition
Export inspection	Addition
Export trade promotion service fees	Addition
Export pier through fees	Addition
Export port service charges	Addition
Export bill of lading fee	Addition
Export handling fee	Addition

*Table 4 – Tung Ho adjustments to normal value*

### **5.6.1.3 Preliminary dumping margin**

The preliminary dumping margin has been assessed by comparing quarterly weighted average Australian export prices to the corresponding quarterly weighted average normal values for the review period, in accordance with paragraph 269TACB(2)(a).

The revised preliminary dumping margin for Tung Ho is **negative 1.6 per cent**.

Details of the variable factors calculation are at **Confidential Appendix 4**.

### **5.6.2 TS Steel**

Subsequent to the publication of the verification report, the Commission obtained further information from TS Steel. The Commission found that amendments were required in respect of the designation of steel grades and MCC subcategories for a number of domestic sales. The Commission has revised its calculation of the preliminary dumping margin accordingly.

#### **5.6.2.1 Export price**

##### ***Consideration of section 269TAB(2B)***

The Commission determined that it is not appropriate to determine TS Steel's export price under section 269TAB(2B) after considering the factors in section 269TAB(2A)(b).

The Commission has found a pattern of trade in which TS Steel's exports of HRS remained consistent for a period since the original investigation and increased substantially during the review period (to volumes greater than those in the original investigation period). The Commission considers that in these circumstances, section 269TAB(2B) does not apply.

The Commission is not aware of any factors affecting patterns of trade for like goods that were not within the control of the exporter.

##### ***The exporter***

For all Australian export sales during the review period, the Commission is satisfied that TS Steel was the exporter of the goods.

##### ***The importer***

The Commission considers that:

- for sales made direct to Australian customers, the Australian customers were the beneficial owners of the goods at the time of importation and therefore the importers of the goods; and
- in respect of a sales made during the review period to Australian customers through intermediaries, that the Australian customers were the beneficial owner of the goods at the time of importation, and were therefore the importers of the goods.

##### ***Export price – assessment***

In respect of sales made direct to the Australian customer, the export price has been determined under 269TAB(1)(a) as the price paid by the importer to the exporter less transport and other costs arising after exportation.

## PUBLIC RECORD

In respect of Australian sales made through intermediaries, the goods have not been purchased by the importer from the exporter and therefore sections 269TAB(1)(a) and 269TAB(1)(b) do not apply. The export price for these sales was determined under section 269TAB(1)(c) having regard to all the circumstances of the exportation, being the price paid or payable for the goods by the intermediaries less (as appropriate) transport and other post exportation costs.

### 5.6.2.2 Normal value

As described in TS Steel's verification report, normal values were initially established in accordance with section 269TAC(1) using TS Steel's domestic invoice prices for like goods sold in the OCOT in arms length transactions.

Following the receipt of revised data and a review of the preliminary normal value calculation, the Commission found that for the Australian export model there were insufficient volumes of sales made in the OCOT of an equivalent domestic model.

The normal value was established under section 269TAC(2)(c) based on:

- the cost to make the exported model based on the company's records in accordance with section 43(2) of the Regulation;
- domestic SG&A expenses that would be incurred on the assumption that the exported goods are sold on the domestic market based on the company's records in accordance with section 44(2) of the Regulation; and
- an amount for profit based on the production and sale of like goods by Tung Ho on the domestic market in the OCOT in accordance with section 45(2) of the Regulation.

Table 5 provides a summary of the adjustments that, in accordance with section 269TAC(9), are necessary to ensure fair comparison of normal values with export prices:

Adjustment Type	Deduction/addition
Domestic credit expenses	Deduction
Export packaging	Addition
Export inland transport	Addition
Export handling & other costs	Addition

*Table 5 – TS Steel adjustments to normal value*

### 5.6.2.3 Preliminary dumping margin

The preliminary dumping margin has been assessed by comparing the weighted average Australian export prices to the corresponding quarterly weighted average normal values for the review period in accordance with paragraph 269TACB(2)(a).

The revised preliminary dumping margin is **negative 1.6 per cent**.

Details of the variable factors calculation for TS Steel are at **Confidential Appendix 5**.



**5.6.3 Dragon Steel**

**5.6.3.1 Export price**

***Consideration of section 269TAB(2B)***

The Commission determined that it is not appropriate to determine Dragon Steel’s export price under section 269TAB(2B) after considering the factors in section 269TAB(2A)(b).

An export price for HRS exported to Australia by Dragon Steel was ascertained in Accelerated Review 359 in 2016. The Commission found in this review that it commenced HRS exports to Australia during the review period consistent with a significant increase in overall imports from Taiwan in 2018. The Commission considers that section 269TAB(2B) does not apply.

***The exporter***

For all Australian export sales during the period, the Commission is satisfied that Dragon Steel was the exporter of the goods.

***The importer***

The Commission considers that for all Australian exports by Dragon Steel during the review period, its Australian customers were the beneficial owners of the goods at the time of importation and therefore the importers of the goods.

***Export price – assessment***

In respect of the Australian sales of the goods by Dragon Steel, the export price has been determined under section 269TAB(1)(a) as the price paid by the importer to the exporter less transport and other costs arising after exportation.

**5.6.3.2 Normal value**

Normal values were established in accordance with section 269TAC(1) using Dragon Steel’s domestic invoice prices for like goods sold in the OCOT in arms length transactions.

Table 6 provides a summary of the adjustments that, in accordance with section 269TAC(8), are necessary to ensure fair comparison of normal values with export prices.

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic rebates	Deduction
Domestic packaging	Deduction
Domestic inland transport	Deduction
Export packaging	Addition
Export inland transport	Addition
Export handling and other	Addition
Export commission	Addition
Export bank charges	Addition

*Table 6 – Dragon Steel adjustments to normal value*

### **5.6.3.3 Preliminary dumping margin**

The preliminary dumping margin has been assessed by comparing the weighted average Australian export prices to the corresponding quarterly weighted average normal values for the review period, in accordance with section 269TACB(2)(a).

The preliminary dumping margin for Dragon Steel is **9.0 per cent**.

Details of the variable factors calculation for Dragon Steel are at **Confidential Appendix 6**.

### **5.6.4 Uncooperative and all other exporters**

#### **5.6.4.1 Export price**

Export prices for uncooperative and all other exporters from Taiwan were determined having regard to all relevant information under section 269TAB(3) as prescribed in section 269TACAB(1). The Commission used the lowest export price from the cooperative exporters.

#### **5.6.4.2 Normal value**

Normal values for uncooperative and all other exporters from Taiwan were determined having regard to all relevant information under section 269TAC(6) as prescribed in section 269TACAB(1). The Commission used the highest normal value from the cooperative exporter.

#### **5.6.4.3 Preliminary dumping margin**

The preliminary dumping margin for uncooperative and all other exporters from Taiwan was established in accordance with section 269TACB(2)(a) by comparing the weighted average export price established under section 269TAB(3) with the weighted average normal value established under section 269TAC(6).

The preliminary dumping margin for uncooperative and all other exporters from Taiwan is **12.3 per cent**.

The calculations of the variable factors for 'uncooperative and all other exporters' from Taiwan are at **Confidential Attachment 7**.

## **5.7 Thailand**

### **5.7.1 Siam Yamato Steel** <sup>49</sup>

#### **5.7.1.1 Export price**

##### ***Consideration of section 269TAB(2B)***

The Commission determined that it is not appropriate to determine SYS's export price under section 269TAB(2B) after considering the factors in section 269TAB(2A)(b).

The Commission has found a pattern of trade in which SYS's exports of HRS have increased substantially during the review period. In the review period, SYS was one of the

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<sup>49</sup> Item 26 on the public record refers

## PUBLIC RECORD

largest exporters of HRS to Australia. The Commission considers that in these circumstances, section 269TAB(2B) does not apply.

The Commission is not aware of any factors affecting patterns of trade for like goods that were not within the control of the exporter.

### ***The exporter***

For all Australian export sales during the period, the Commission is satisfied that SYS was the exporter of the goods.

### ***The importer***

The Commission considers that for all Australian exports by SYS during the review period, its Australian customers were the beneficial owners of the goods at the time of importation and therefore the importers of the goods.

### ***Export price – assessment***

In respect of the Australian sales of the goods by SYS, the export price has been determined under section 269TAB(1)(a) as the price paid by the importer to the exporter less transport and other costs arising after exportation.

#### **5.7.1.2 Normal value**

Normal values were established in accordance with section 269TAC(1) using SYS's domestic sales for like goods sold in the OCOT in arms length transactions.

Table 7 provides a summary of the adjustments that, in accordance with section 269TAC(8), are necessary to ensure fair comparison of normal values with export prices.

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic credit terms	Deduction
Domestic inland transport	Deduction
Domestic handling	Deduction
Domestic commission	Deduction
Domestic bank charges	Deduction
Export inland transport	Addition
Export handling charges	Addition
Export bank charges	Addition
Export credit terms	Addition

*Table 7 – SYS adjustments to normal value*

#### **5.7.1.3 Preliminary dumping margin**

The preliminary dumping margin has been assessed by comparing the weighted average Australian export prices to the corresponding quarterly weighted average normal values for the review period in accordance with section 269TACB(2)(a).

The preliminary dumping margin for SYS is **5.0 per cent**.

Details of the variable factors calculation for SYS are at **Confidential Appendix 8**.

### **5.7.2 SYS submissions on variable factors**

In its submission of 8 July 2019,<sup>50</sup> SYS reiterated that it does not accept the Commission's determination of a preliminary dumping margin of 5.0 per cent for reasons including:

- the methodology employed by the Commission is considered to be a departure from the provisions of section 269TACB(2) in that SYS submits any determination should be based on the weighted average of all relevant transactions;
- section 269TAC provides for the domestic sales values to be determined on the price paid or payable; and
- the Commission has not accepted the *actual* domestic credit costs and a proportion of the marketing expenses incurred and relevant to domestic sales of the goods as claimed by SYS as legitimate due allowances under section 269TAC(8).

SYS further submitted that it is opposed to the MCC mechanism being applied by the Commission because it results in a determination of *what is factually only technical dumping* by including steel grades in the manner proposed by Liberty Steel and that are not truly comparable. SYS stated that it had matched identical sales to Australian export sales which satisfied the OCOT and sufficiency tests during the review period and that there is no reason for the MCC mechanism to be applied.

In its submission of 5 August 2019,<sup>51</sup> SYS:

- reiterated that mill test certificates were relevant in model matching;
- stated that it had sufficient sales of identical models of the goods exported to Australia (AS300) that were sold in the OCOT in the domestic market and that the Commission has no requirement to select any surrogate grades of GUC in its calculation of normal value;
- stated that in determining models that should be treated as a surrogate, price and actual minimum yield strength should be primary considerations; and
- provided the Commission with its revised dumping margin calculations on the basis that there were sufficient sales on the domestic market in the OCOT of grade AS300 HRS.

#### **5.7.2.1 The Commission's assessment**

The Commission's approach to model matching and the reasons it does not consider the application of mill test certificates suitable is described in section 5.2.3 of this report.

The Commission does not accept the domestic credit costs sought by SYS as a due allowance under 269TAC(8) because this relied on an interest rate set by an internal company notice. Rather, in making an adjustment to normal value, the Commission calculated the average minimum lending rate for commercial banks in Thailand during the review period. This approach is consistent with the Commission's practice as described in the Manual, which provides an order of preference for the interest rate that is generally applied in making a credit adjustment.

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<sup>50</sup> Item 32 on the public record refers.

<sup>51</sup> Item 39 on the public record refers

## PUBLIC RECORD

The Commission does not accept the proportion of marketing expenses claimed as a due allowance under 269TAC(8) by SYS because:

- certain costs were considered to be general advertising expenses; and
- for other marketing costs, SYS was unable to reliably demonstrate which costs were specific to the domestic like goods.

The Commission's treatment is consistent with the Commission's practice as stated in the Manual:

*.....where the connection to the sale is established and evidence is suitable an adjustment may be allowed in certain circumstances where.....advertising and sales promotion expenses are exclusive to the goods in question.*

In its determination of the sufficiency of the sales volume of Australian export models sold on SYS's domestic market in the OCOT under 269TAC(14), the Commission notes that it has assessed the total quantity sold to the domestic and export market over the review period as described in the Manual and not on a quarterly basis, the grounds on which SYS submits there are sufficient sales of AS300 in the OCOT.

The Commission would be unable to establish normal values solely on the AS300 grade sold in SYS's domestic market as there would have been insufficient sales of AS300 in the OCOT over the review period. The Commission has found through price analysis that for other steel grades sold on the domestic market, SS(SM400), the differences in physical characteristics to AS300 did not give rise to a distinguishable and material difference in price in the domestic market.

### **5.7.3 Uncooperative and all other exporters**

#### **5.7.3.1 Export Price**

Export prices for uncooperative and all other exporters from Thailand were determined having regard to all relevant information under section 269TAB(3), as prescribed in section 269TACAB(1). Specifically, the Commission had regard to SYS's export price, being the price paid by the importer to the exporter less transport and other costs arising after exportation.

#### **5.7.3.2 Normal Value**

Normal values for uncooperative and all other exporters from Thailand were determined having regard to all relevant information under section 269TAC(6) as prescribed in section 269TACAB(1). Specifically, the Commission had regard to SYS's normal value with all favourable adjustments under section 269TAC(8) removed.

#### **5.7.3.3 Preliminary dumping margin**

The preliminary dumping margin for uncooperative and all other exporters from Thailand was established in accordance with section 269TACB(2)(a) by comparing the weighted average export price established under section 269TAB(3) with the weighted average normal value established under section 269TAC(6).

The preliminary dumping margin for uncooperative and all other exporters from Thailand is **7.7 per cent**.

The calculations of variable factors for 'uncooperative and all other exporters' from Thailand are at **Confidential Appendix 9**.

## 6 NON-INJURIOUS PRICE AND LESSER DUTY RULE

### 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.

### 6.2 Legislative framework

Under section 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975*, 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 interim dumping duty payable and the AEP is not greater than the NIP (lesser duty rule).

The NIP is defined in section 269TACA(a) as the minimum price necessary to prevent the injury or a recurrence of the injury caused by the dumping.

Under section 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty where the Minister is satisfied that one or more of the following circumstances exist:

- a) the normal value of the goods was not ascertained under section 269TAC(1) because of the operation of section 269TAC(2)(a)(ii); or
- b) there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises.

Neither of these circumstances are present in this review.

### 6.3 Calculation of the NIP

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 the export price and the normal value (e.g. FOB).

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

#### 6.3.1 Original investigation

In Investigation 223, the Commission considered that there was no suitable method of determining the USP and so considered an alternative approach to establishing the NIP. As such, the Commission considered that the NIP for exporters would be a price equal to the respective normal value and that the lesser duty rule did not come into effect.<sup>52</sup>

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<sup>52</sup> REP 223 is available on the Commission's website.

### **6.3.2 Review 465**

In Review 465, the Commissioner found 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):

- the ascertained normal value had changed; and
- the NIP should be set equal to the ascertained normal value, meaning that the ascertained NIP had changed.<sup>53</sup>

### **6.3.3 Hyundai submission of 27 June 2019**

In its submission of 27 June 2019,<sup>54</sup> Hyundai stated that the Australian industry's economic conditions are affected by factors unrelated to dumping and that anti-dumping duty must not be excessive and unnecessary. As such, the lesser duty rule should apply.

## **6.4 Assessment of the NIP**

The Commission has found in this review that the Australian HRS market is affected by dumping and considers that historical sales data is not a suitable method for calculating the USP.

In the original investigation, it was determined that the cost plus profit approach was not suitable for the determination of the USP because a correlation between the profit rate proposed by the applicant and HRS sales could not be established. The Commission considers this to be the case for this review as well.

The Commission has not found there to be a suitable method of determining the USP and considers that the approach to determining the NIP in REP 223 and in Review 465 remains valid for the purpose of this review.

The Commission considers that the NIP for all exporters should be a price equal to the respective normal value. As such, the NIP for each exporter has changed but is not operative and therefore does not affect the effective rates of duty set out in Table 8 of this report.

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<sup>53</sup> Rep 465 is available on the Commission's website.

<sup>54</sup> Item 34 on the public record refers.

## 7 EFFECT OF THE REVIEW

### 7.1 Summary of findings

The Commission has made preliminary findings in relation to HRS exported to Australia from Japan, Korea, Taiwan (except for Feng Hsin) and Thailand for all exporters during the review period that the respective:

- AEP has changed;
- ascertained normal value has changed; and
- NIP has changed.

### 7.2 Effect of the review

#### 7.2.1 Forms of measures

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>55</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 on the form of duties to be imposed.

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 circumstance, the AEP (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.

The form of measures that was imposed in the original investigation was *ad valorem*. Exports made by Tung Ho, SYS and Dragon Steel Corporation are subject to a floor price as a result of Review 345, Review 346 and Accelerated Review 359 respectively.

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<sup>55</sup> The Guidelines can be found at [https://www.industry.gov.au/sites/default/files/2019-05/adc\\_guideline\\_forms\\_of\\_dumping\\_duty-november2013.pdf](https://www.industry.gov.au/sites/default/files/2019-05/adc_guideline_forms_of_dumping_duty-november2013.pdf).



## PUBLIC RECORD

In Review 465, the Commissioner considered that, in respect of exporters of HRS from Korea, the combination of fixed and variable duty<sup>56</sup> pursuant to section 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013* was appropriate on account of the following factors:

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

### 7.2.2 Number of export models and significance of price differences

The Commission has analysed verified industry and exporter data and has found that despite there being a large quantity and number of sales made by exporters during the review period, these were not for a significant number of models and only small variations in price were observed between models.

### 7.2.3 Existence of complex company structures and risk of price manipulation or circumvention

The Commission has found that exporters of HRS to Australia are companies that exist within complex business structures.

### 7.2.4 The state of the Australian HRS market

Figure 1 indicates that the size of the entire Australian HRS market has fluctuated since 2010, but has grown since 2015.

**Australian HRS Market (tonnes)**

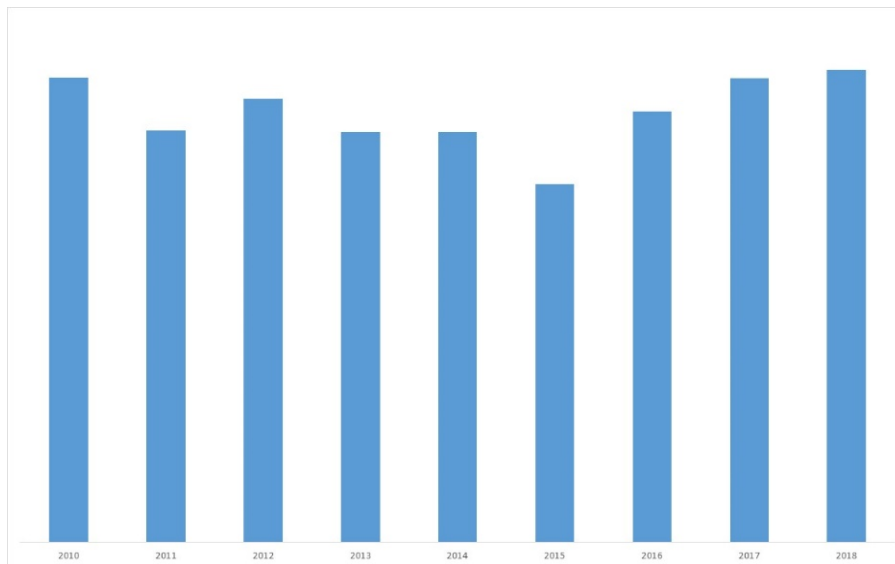


Figure 1 – Australian HRS Market Size

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<sup>56</sup> The fixed element can be a percentage amount which applies to the higher of the ascertained export price or the actual export price or it can be applied per unit of the goods (e.g. the weight of the goods - \$100/tonne) or it can be a combination of the two. The variable element is the difference between the ascertained export price and the actual export price

Figure 2 indicates that since 2016 Liberty Steel has achieved higher prices for HRS in recent years.

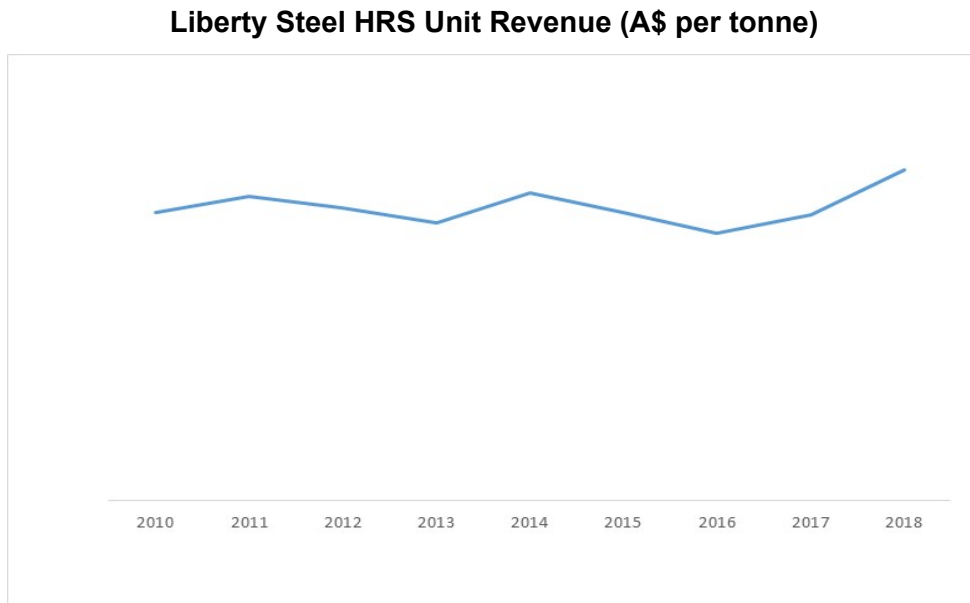


Figure 2 – Liberty Steel HRS Prices

The Commission found from its examination of ABF data, a trend of increasing HRS export prices. This finding supports the Commission’s view that the HRS market is at present a rising market.

The level of activity in the market segments in which end users operate drives demand in the Australian HRS market. The end users of HRS are producers that transform finished steel into fabricated products for a variety of end-uses. In the *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission*<sup>57</sup> and in the report, *Analysis of Australia’s Steel Manufacturing and Fabricating Markets Report to the Commissioner of the Anti-Dumping Commission November 2017*,<sup>58</sup> the Commission reported that most steel products are purchased by the construction, manufacturing and mining industries.

The Commission notes that the Australian Industry Group (Ai Group) in its November 2018 *Construction Outlook*<sup>59</sup> states that in 2019-20:

- major construction activity will moderate;
- engineering construction will grow;
- non-mining infrastructure growth will ease; and
- commercial, residential public sector construction will grow.

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<sup>57</sup> *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission*, page 1. This report is available on the Commission’s web site.

<sup>58</sup> *Analysis of Australia’s Steel Manufacturing and Fabricating Markets Report to the Commissioner of the Anti-Dumping Commission November 2017*, page 13. This report is available on the Commission’s web site.

<sup>59</sup> This report is available at <https://aib.org.au/wp-content/uploads/2018/12/Construction-Outlook-ACA.pdf>.

The Commission considers that this indicates that high levels of demand in the Australian HRS market will continue to be present from 2019 to 2020.

The Commission considers that the growth in the size of the Australia HRS market in recent years, the increase in HRS prices achieved by Liberty Steel and the prospect of high levels of demand for steel in 2019 to 2020 indicate that the Australian HRS market can, at present, be considered to be a rising market.

### **7.3 Basis for recommendation on the forms of measures**

The Commission notes that under the combination method, where the fixed component has been imposed as a fixed amount per unit, the effective rate of duty diminishes in a rising market rendering it ineffective. Conversely, the 'effective' rate increases in a declining market making it punitive.

The Commission notes that applying a percentage of the higher of the AEP or the actual export price to the fixed component, rather than a set amount per unit, under the combination duty method will not result in an erosion of the effective rate of duty in the event of a rising market.<sup>60</sup>

In this review, the Commission has found that the market is rising. The Commission notes that in such a circumstance there is a reduced risk that the combination duty will be unreasonably punitive. As noted in the Guidelines, all forms of anti-dumping duty calculation have the purpose of removing the injurious effects of dumping. In this review, the Commission's analysis and findings have been based on positive evidence.

In this review, the Commission has found:

- there are not significant differences in prices between models;
- exporters of HRS to Australia are companies that exist within complex business structures; and
- the Australian HRS market can, at present, be considered to be a rising market.

Based on the Commission's findings and the Guidelines, the Commission considers that the combination form of anti-dumping duty applying a percentage of the higher of the AEP or the actual export price to the fixed component is suitable to be applied to:

- all exporters of HRS from Japan;
- all exporters of HRS from Korea;
- Dragon Steel and uncooperative exporters of HRS from Taiwan; and
- all exporters of HRS from Thailand.

In respect of Tung Ho and TS Steel, the Commission determined negative dumping margins. Fixed, *ad valorem* and combination duty methods are operative where a positive dumping margin has been found. The implementation of either of these methods where a negative dumping margin has been found would result in circumstances where duties are collected on exports that are not dumped. The Commission considers that it is

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<sup>60</sup> Where the fixed duty element is applied as a set amount per unit of the goods in a rising market, over time, the total duty amount that is collected is maintained and, as such, the effective rate (the *ad valorem* equivalent), erodes over time.

appropriate to recommend that the Minister impose anti-dumping measures in the form of a floor price that is equivalent to the exporter's respective ascertained normal value.

## **7.4 Submission on the forms of measures**

In its submission of 29 July 2019,<sup>61</sup> Liberty Steel stated:

- the form of duty has an effect on the dumping activity by an exporter;
- when determining the form of measures to be imposed, the Commission should have regard to the Guidelines;
- the combination method for interim duty calculation is not punitive to an importer under any circumstance;
- the export prices for all countries subject to measures are currently rising. Therefore, the combination duty method must be preferred in the case of all exporters and countries where a non-negligible dumping margin was found; and
- the Commission is obliged to advise and recommend to the Minister that the power under section 269ZDB(1)(a)(iii) be exercised to specify a different date that the notice have effect.

### **7.4.1 The Commission's assessment**

As explained in section 7.3 of this report, the Commission has referred to the Guidelines in its consideration of the forms of measures the Commissioner may recommend to the Minister in respect of HRS exported to Australia from Japan, Korea, Taiwan (except for Feng Hsin) and Thailand.

The Commission considers that it is appropriate to apply the combination fixed and variable duty method to exporters and countries where the preliminary dumping margin was found to be positive for various reasons, including the conditions in the HRS market. Where negative dumping margins were determined, the Commission considers it appropriate to apply the floor price duty method.

In respect of the Minister's power to specify an effective date for changes to variable factors, the Commission considers section 269ZDB(1)(a)(iii) does not impose on the Commissioner an obligation to advise and recommend to the Minister that she exercise her power to specify a different date (to the date of the notice) from which the revised variable factors be applied. The Commissioner intends, subject to the consideration of any submissions made in response to this SEF, to recommend that the notice have effect as if different variable factors had been fixed from the date of publication of the Minister's declaration.

## **7.5 Summary of proposed recommendations**

The Commissioner proposes, subject to the consideration of any submissions, to recommend to the Minister that the dumping duty notice be altered in respect of HRS exported to Australia from Japan, Korea, Taiwan (except for Feng Hsin) and Thailand as follows:

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<sup>61</sup> Item 37 on the public record refers.

**PUBLIC RECORD**

Country	Manufacturer/ exporter	Preliminary dumping margin and effective rate of duty	Duty Method	Method to establish dumping margin
Japan	All Exporters	12.2%	Combination fixed and variable duty method	Weighted average export prices were compared with corresponding normal values over the investigation period in terms of s. 269TACB(2)(a) of the <i>Customs Act 1901</i> .
Korea	Hyundai Steel Company	9.5%	Combination fixed and variable duty method	
	Uncooperative Exporters	12.3%	Combination fixed and variable duty method	
Taiwan	Dragon Steel Corporation	9.0%	Combination fixed and variable duty method	
	TS Steel Co Ltd	-1.6%	Floor price	
	Tung Ho Steel Enterprise Corporation	-1.6%	Floor price	
	Uncooperative Exporters	12.3%	Combination fixed and variable duty method	
Thailand	Siam Yamato Steel Co Ltd	5.0%	Combination fixed and variable duty method	
	Uncooperative Exporters	7.7%	Combination fixed and variable duty method	

*Table 8 — HRS – Proposed Interim Dumping Duty*

**8 LIST OF APPENDICES AND ATTACHMENTS**

Non-Confidential Appendix 1	MCC - summary of grades and standards
Confidential Appendix 1	Japanese uncooperative and all other exporters - variable factors calculation
Confidential Appendix 2	Hyundai – variable factors calculation
Confidential Appendix 3	Korea uncooperative and all other exporters – variable factors calculation
Confidential Appendix 4	Tung Ho – variable factors calculation
Confidential Appendix 5	TS Steel – variable factors calculation
Confidential Appendix 6	Dragon Steel – variable factors calculation
Confidential Appendix 7	Taiwan uncooperative and all other exporters – variable factors calculation
Confidential Appendix 8	SYS – variable factors calculation
Confidential Appendix 9	Thailand uncooperative and all other exporters – variable factors calculation

**Steel grades and standards for  
Model Control Code subcategory of minimum yield strength**

**Background**

As described at section 5.2.2 of SEF 499, the Commission has adopted the Model Control Code (MCC) structure to match models exported to Australia to like goods sold domestically in the country of export.

The MCC structure at the initiation of this review is set out in AND No. 2019/002. A mandatory subcategory under the MCC structure for HRS is minimum yield strength.

Liberty Steel’s standard HRS range is manufactured to a yield strength of 300 MPa as required by the Australian Standard AS/NZA369.1. Imported HRS generally meets the requirements of Australian Standard AS/NZA369.1.

In this review, the Commission has obtained information in respect of the steel grades and standards to which HRS is produced and sold by cooperative exporters in their domestic markets.

The Commission has summarised the grades and standards assigned to the MCC subcategory of minimum yield strength for domestic sales used in its normal value calculations.

The parameters which define each subcategory are as follows:

MCC Subcategory (Minimum yield strength)	Parameters	Notes
A	Less than 265 MPa	
	Less than 245 MPa	These parameters apply to the exporter Siam Yamato Steel Co Ltd of Thailand. Refer to the exporter verification report on the public record.
B	Greater than or equal to 265 MPa	
	Equal to or greater than 245 MPa, and less than 325 MPa	These parameters apply to the exporter Siam Yamato Steel Co Ltd of Thailand. Refer to the exporter verification report on the public record.
C	Equal to or greater than 325 MPa	These parameters apply to the exporter Siam Yamato Steel Co Ltd of Thailand. Refer to the exporter verification report on the public record.

*Table 1- MCC minimum yield strength subcategory parameters*

The summary at Table 2 aggregates information for all cooperative exporters and countries subject to this review.

**PUBLIC RECORD**

	Grade	Standard
<b>Minimum Yield Strength Subcategory A</b>	A36	ASTM A36
	S235JR	BS EN 10025
	S235JR04	EN10025-2:2004
	S235JR-SI	EN10025-2:2004
	SM400A	CNS 2947
	SM400B	CNS 2947
	SN400A	CNS 13812
	SN400B	CNS 13812 JIS G3136
	SN400C	CNS 13812
	SN400YB	CNS 13812
	SS275	KS D 3503
	SS275-DUAL	KS D 3503
	SS400	CNS 2473 JIS G3101 KS D 3503
	GRADE-A	Ship building
	GRADE-B	Ship building
	GRADE-D	Ship building
<b>Minimum Yield Strength Subcategory B</b>	AH32	Ship building
	AH36	Ship building
	EH32	Ship building
	EH36	Ship building
	SD295	Ship building
	A36	ASTM A36
	A992	ASTM A992
	Grade 300	AS/NZS 3679.1
	Grade 300S0	AS/NZS 3679.1
	Grade 50	ASTM A572
	Grade 50	ASTM A709
	Grade 50B	ASTM A572
	S275J0	EN10025-2:2004
	S275J004	EN10025-2:2004
	S275JR	BS EN 10025-2:2004
	S275JR04	EN10025-2:2004
	S355G11+M	EN10225
	S355J004	EN 10025
	S355J2	EN10025-2:2004
	S355J204	EN10225
	S355JR	BS EN 10025
	S355JR04	EN10225
	SHN275	KS D 3866
	SHN275-TRI	KS D 3866 SHN275



**PUBLIC RECORD**

Grade	Standard
SHN355	KS D 3866
SHN355-DUAL	KS D 3866
SHN460	KS D 3866
SHN490	KS D 3866
SHN-TRIPLE	KS D 3866 SHN275
SHP275	KS F 4603 SHP275
SHP355W	SHP355W
SM275A	KS D 3515
SM278B	KS D 3515
SM355A	KS D 3515
SM355B	KS D 3515
SM400	TIS 1227:1996
SM420B	KS D 3515
SM490A	CNS 2947 JIS G3106 KS D 3515
SM490B	CNS 2947 KS D 3515
SM490YA	JIS G3106 KS D 3515 CNS 2947
SM520B	KS D 3515
SM570	CNS 2947
	JIS G3106
SN490B	CNS 13812
	JIS G3136
SN490BD	CNS 13812
SN490BM	CNS 13812
SN490C	CNS 13812
SN490YB	CNS 13812
SS275	KS D 3503
SS275-DUAL	KS D 3503
SS315	KS D 3503
SS400	TIS 1227:1996
	KS D 3503
SS400/SM400	JIS g 3101:2004 or JIS3106:2004
SS410	KS D 3503
SS490	KS D 3503
SS540	KS D 3503
TRIPLE	ASTM A572 G50, ASTM A992, CSA G40.21-13 50WM (345WM)
TRIPLE-1	ASTM A572 G50, ASTM A992, CSA G40.21-13 50WM(345WM)

**PUBLIC RECORD**

	<b>Grade</b>	<b>Standard</b>
<b>Minimum Yield Strength Subcategory C</b>	A992	ASTM A992/A992M:2004a
	S355J0	BS EN 10025-2:2004
	S355JR	BS EN 10025-2:2004
	SM490	TIS 1227:1996
	SM490A	JIS G 3106:2004
	SM520	TIS 1227:1996
	SM520B	JIS G 3106:2004
	SS540	TIS 1227:1996

*Table 2 - MCC subcategory minimum yield strength, steel grades and standards*

Refer to section 5.2.8 of SEF 499 for further details.