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**The Director
Investigations 2
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria 3000**

By email

Dear Director

Hyundai Steel Company Review 499/Continuation 505 - response to Liberty Steel comments

As you know we act for Hyundai Steel Company (“Hyundai Steel”) in the abovementioned procedures.

We note the recent submissions by “*OneSteel Manufacturing Pty Limited, trading as ‘Liberty Primary Steel’*”¹ (“the Applicant” or “Liberty Steel”) uploaded to the public record of Review 499 and Continuation Inquiry 505 on 3 July and 8 July 2019 respectively. We also note that the due date for the Statement of Essential Facts in these procedures has since then been extended again, from 16 July 2019 to 12 August 2019.

Hyundai Steel has instructed us to provide further comments in response to Liberty Steel’s submissions.

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A Identifying the Australian industry

At the outset, we would like to remind the Commission of a fundamental issue in these matters – the identity of the Australian industry. We respectfully refer the Commission to Hyundai Steel’s submission dated 21 May 2019 (“Submission 505-011”) in this regard. We have yet to see any response to that submission from either the Applicant or the Commission. In particular, we refer to Parts A, C, and D of that submission, which raise serious questions about the identity of the “Australian industry”, which has

¹ EPR505-021, at page 1.

changed both structurally and substantively since the imposition of the original measure. We continue to urge closer examination of this matter by the Commission.

The Applicant now claims to trade as “*Liberty Primary Steel*”. In its application for the Continuation Inquiry it claimed to be “*Liberty Steel*”. This creates even more confusion.

However what remains unchanged and unchallenged is the fact that the “Australian industry” demanding continuation of the anti-dumping measure is not the same Australian industry that the anti-dumping measure was intended to protect. We have demonstrated that the *new* Australian industry, in comparison to the old and former Australian industry that the anti-dumping measure was intended to protect:

- is in a much stronger economic position - see Parts E and F of Submission 505-011;
- has further consolidated its market power - see Part B of our submission dated 27 June 2019 (“Submission 505-018”); and
- has put in place significantly different commercial arrangements in relation to the goods under consideration (“the GUC”) – see Part B of Submission 505-011 and Part B of Submission 505-018.

B Model control codes

We take note of the Applicant’s persistent disagreement with the Commission’s approach towards model matching. In this regard, Hyundai Steel makes the following comments for the Commission’s consideration:

- (a) Hyundai Steel understands that the MCC adopted by the Commission for the Reviews represents the Commission’s view as to how model matching for the GUC should best be conducted, taking into account the particular countries of export concerned. This view has been formed through extensive investigations and consideration of the relevant technical, production and sales information presented by interested parties in numerous procedures, from as far back as Investigation 223. The MCC as established by the Commission in the current Reviews is a well-informed approach.
- (b) Hyundai Steel is determined to comply with the Commission’s MCC requirements in the current Reviews, and has faithfully complied therewith.
- (c) Hyundai Steel supports the Commission’s efforts to administer the MCC requirements according to the prescribed method, as notified to all interested parties at the commencement of these procedures. Hyundai Steel also supports the Commission’s efforts to carefully and thoroughly examine any legitimate model matching claims that were made in compliance with Commission’s notice.
- (d) Hyundai Steel notes the following comments by the Commission in response to the Liberty Steel’s MCC complaints:

The Commission noted these concerns and stated that it developed the MCC structure after consultation with Liberty Steel and with regard to what information was available on matters that affect price. The Commission also indicated that the Commissioner, in his notice announcing the initiation of Review 499, encouraged interested parties to

make submissions on the MCC by the date exporter questionnaires were due, but that no party provided such a submission.²

Hyundai Steel welcomes the Commission's comments, and the Commission's intention to apply the same procedural rules to the Applicant as apply to other interested parties.

- (e) Hyundai Steel notes that it did make submission on the MCC in its response to the exporter questionnaire, as follows:

The classification is consistent with method adopted by the Commission in previous review and investigations for the same product, which determined model matching based on shape, tensile strength and dimension. For Hyundai Steel, the tensile strength is the most relevant characteristic for the GUC and is capable to achieve and better suited for model matching purpose. For instance, a model matching based on only the three "key" subcategories would result in a too broad classification, that groups Australian grades such as Grade 300 and Grade 350 in the same category. On the other hand, the model matching outcome utilising both yield strength and the tensile strength provide a model matching outcome consistent with the Commission's previous findings.

Accordingly, Hyundai Steel considers that tensile strength should also be considered a "key" and subcategory for MCC purpose.

Hyundai Steel encourages the Commission to consider this submission and to apply the suggested MCC revision to the Applicant. The Applicant should be urged to comply with the Commission's current MCC procedure, which we expect was established in consultation with the Applicant in the first place, rather than attempting to further erode other interested parties' procedural rights, and to dictate the conduct of the investigation.³

- (e) Insofar as the "variable factors" aspect of these procedures is concerned, the Review 499 is being conducted on the premise that the Applicant established – which is that there appear to be reasonable grounds for the view that the variable factors have changed. Unless justified by an actual change of the models concerned, any attempts to challenge and substantially revise the model matching methodology as applied in the Minister's original decision to impose the dumping duties should not be entertained. Otherwise the legitimacy of the original anti-dumping measure and its administration would be undermined.
- (f) Hyundai Steel supports the Applicant's call for transparency relating to model matching, and careful examination of whether the information provided by each interested party complies with the MCC regime. Hyundai Steel has made its best efforts to comply with the Commission's MCC rules. It has given full and proper disclosure of the goods it exported to Australia and sold in the domestic market, according to the MCC classification. Hyundai Steel respectfully urges the Commission to ensure the same requirement is complied with by the Applicant. Hyundai Steel expects the relevant MCC-based information to be properly disclosed in both the Application for the continuation inquiry and in the Commission's reports concerning the Australian industry. The MCC should also be properly applied in the Commission's injury and causation analysis. Indeed, Hyundai Steel submits it is critical that the MCC adopted for dumping margin calculation is applied consistently with the MCC adopted for the injury and

² See, EPR505-019, File note – Commission's meeting with Liberty Steel

³ We refer to the Applicant's so called "options for improvement" at EPR 505-020, at page 27.

causation analysis, in order for the Commission to form a correct view about the competition between imported goods and the goods produced by the Australian industry, and about the Australian industry's economic condition. The bottom-line is that the Commission's MCC requirements must be complied with. If any party, whoever that might be, does not correctly comply with and adopt the MCC, and continues to argue that it wants to do things differently, it is not being cooperative, and the reliability and accuracy of its information must be treated as being suspect, in line with the Commission's treatment of non-cooperation by interested parties in any other circumstance.

C Date of sale

Hyundai Steel rejects Liberty Steel's comment that claims by Hyundai Steel relating to the date of its sales are somehow "inconsistent".

The reason that the date of sale for Hyundai Steel's *Australian* sales is best reflected by the sales order date was already thoroughly addressed by Hyundai Steel in Review 465:

The reason why Hyundai Steel's view regarding the date of sale for its Australian sales has changed since the investigation period of the original investigation, which was over five years ago, was well explained to the Commission during the verification. Particularly, Hyundai Steel pointed out the circumstances pertaining to a certain importer customer it had during the original investigation period, being circumstances that did not exist in the current review period.

The fact that Hyundai Steel approached the date of sale issue in the US investigation differently to the present review in Australia is due to the particular regulatory requirements in the US jurisdiction, and the fact that each market has its own characteristics. The date of sale for each market and each customer can differ because of those characteristics. Indeed, the paragraph that LOS's submission quoted from the US investigation, which it claims somehow "exposes" Hyundai Steel, or its representative, depicts the circumstances of Hyundai Steel's domestic market. The paragraph referred to by LOS is entirely consistent with Hyundai Steel's position in the present review, being that the date of sale for its domestic market is best determined by the invoice date, and is different to the circumstances for Hyundai Steel's Australian sales. LOS's insults betray either a lack of understanding of the facts in the present review in this jurisdiction, or a carelessness with respect to those facts born of its own self-interest.⁴

The Applicant is not qualified to state that "the exporter's sales to both domestic and export customers have been subject to a high degree of changeability up until the point of despatch and delivery – typically aligning with the date of invoice where issued at the point of delivery", and has no basis for that statement. The evidence provided by Hyundai Steel proves that the material terms of the sales concerned were clearly established between itself and its Australian sales customers, without any ambiguity, when the sales orders were entered into Hyundai Steel's integrated sales system. The evidence provided by Hyundai Steel both in Review 465 and in the current procedures indicates that the material terms of its Australian sales, being the specification, quantity, and price of the goods, were all confirmed at the time of the sales order, and were implemented by Hyundai Steel and its customers. These sales terms establish the price and quantity of the goods exported, the domestic currency based price that the exporter is supposed to have in mind, and the point of time that must be referred to for

⁴ See EPR465-020, at page 1.

identifying the *corresponding* normal value of those export sales. Once again, we refer the Commission to our submission on this issue dated 13 June 2019.⁵

In relation to the Applicant's reference to the practice of the US Department of Commerce ("USDOC"), we note that the decision to use the shipment date as the date of sale was based on the specific situation attending Hyundai Steel's sales practices for *hot rolled steel flat products* to the USA. The evidence before USDOC was that "*price and/or quantity remains subject to change up until shipment*". This is categorically different from the evidence before the Commission, which shows that neither prices nor quantities were changed between the sales order date and the date of invoice/shipment. We also note that in the US procedure, the date of sale reported was "*the **earlier** of shipment date or the date of invoice as the appropriate date of sale*", being the earliest time that the material terms of the sale were considered to be clearly settled. This was also based on the specific circumstances of Hyundai Steel's US sales of the hot rolled flat products, for which "*[i]nvoices [were] generally issued after shipment*". This is also very different to the *facts* and *evidence* before the Commission, being that Hyundai Steel consistently issued its invoices and completed the sales transaction in its accounting system *prior* to the Bill of Lading date.

Accordingly, the USDOC practice that the Applicant cites does not support the arbitrary selection of the Bill of Lading date as the date of sale, as has been done in the current review. If anything, the USDOC practice is logically consistent with Hyundai Steel's proposition that the sales order date should be used as the date of sale.

Once again, we respectfully urge the Commission to adopt the correct approach towards the determination of the date on which Hyundai Steel's individual sales occurred. In our view the preliminary determination to use the Bill of Lading date as the date of sales has no factual or legal basis.

D Physical adjustment

Hyundai Steel rejects Liberty Steel's assertion that the cost and profit based adjustment to account for the physical differences adopted by the Commission in Report 223 and Report 465 for the purpose of ensuring fair comparison between the export price and normal value is "*is entirely wrong at law and under WTO jurisprudence*". It is not. There is nothing in the Australian law or the WTO jurisprudence that prohibits the investigating authority from making an adjustment to account for physical differences where that is appropriate. The paragraphs from the Anti-Dumping Review Panel report as cited by the Applicant goes to the question of the probative value of the specific evidence at issue in that case, and not to any jurisprudence on the subject.

As identified in Submission 505-015, the Commission's Report 465 has already addressed the appropriateness and relevance of making an adjustment to account for the non-identity of the exported goods and the domestic sales of like goods under Section 269TAC(8) of the *Customs Act 1901* ("the Act"), relevantly:

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

⁵ See, EPR505-015, at pages 2 to 5.

*goods to ensure that the adjustment to normal value reflected the market value of the cost difference.*⁶

That is, the Commission has already come to the view that the combination of differences in the cost of production and gross margin was appropriate to account for the price impact caused by the differences between different grades.

Further, the Applicant's restless assertion that the Commission's model matching method for Hyundai Steel somehow shows "error" is again misplaced. Hyundai Steel confirms – as verified by the Commission - that its model matching method is entirely consistent with the Commission's MCC, with or without the further demonstration of mill certificates. The Applicant's assertion reflects its out-dated⁷ and misinformed view about the goods produced and sold by Hyundai Steel.

E OCOT test

Regarding the Applicant's complaint regarding the OCOT test, the Applicant's submission is not to the point and not relevant to the situation applicable to Hyundai Steel. The "quarterly S" that Hyundai Steel asks the Commission to adopt, for the sake of consistency and accuracy, is to be derived by applying the annual average ratio of S to the relevant quarterly sales revenue of the relevant models. This would allow for the S to be consistent with the use of quarterly CTM, and most suitable for determining the profitability of domestic sales transactions in the relevant quarters.

Regarding the issue of the treatment of transportation cost, the Applicant's comment misunderstands Hyundai Steel's submission. We repeat our comment that the transportation cost, "*which is Hyundai Steel's cost for selling those goods, should be treated in a manner consistent with the other elements of the quarterly/POR CTMS, on a weighted average basis*".⁸ The use of the full weighted average cost for the whole period of review is also mandated by Section 269TAAD(3). The treatment of transportation cost should be of no exception.

Yours sincerely



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⁶ See, EPR505-015, at pages 5 and 6.

⁷ For instance, the yield strength information cited in the Applicant's submission does not reflect the relevant minimum yield strength for "grade 400" as implemented by Hyundai Steel for its domestic market.

⁸ *Ibid*, at page 7