



29 July 2019

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

BY EMAIL:
investigations2@adcommission.gov.au

Dear Director,

Continuation Inquiry No. 505 and Review No. 499 - Hot Rolled Structural Steel Sections exported from Japan, South Korea, Taiwan and Thailand

AUSTRALIAN INDUSTRY SUBMISSION

OneSteel Manufacturing Pty Limited (**Liberty Steel**) makes the following observations concerning issues pertaining to:

- the preferred form of interim dumping duty calculation; and
- the preferred effective date for any changes to the current dumping duty notice to the extent that the Minister may declare that different variable factors relevant to the determination of duty have been fixed for a particular exporter or to exporters generally.

Form of interim duty calculation

(a) Evidence of ineffectiveness of *ad valorem* measures in the case of the goods

The primary consideration when selecting the form of interim duty calculation is the effectiveness of those measures in terms of remedying the injurious effects of dumping:

These forms of dumping duty calculation all have the purpose of removing the injurious effects of the dumping. However, in achieving this goal certain forms of duty will better suit the particular circumstances of some dumping cases more so than other forms of duty.¹

The interaction between the form of interim duty calculation and their effect in this case on the dumping activity by the exporter from South Korea, Hyundai Steel Company (**Hyundai**), demonstrates the **ineffectiveness** of the *ad valorem* form of duty calculation as it applies to the goods the subject of this review and continuation inquiry (**the goods**). Examining the behaviour of Hyundai as a case study of the ineffectiveness of the *ad valorem* form of duty calculation following the conclusion of the original investigation (INV 223) in 20 November 2014 is

¹ *Australian Government, Anti-dumping Commission, 'Guidelines on the application of forms of dumping duty' (November 2013), p. 2.*

relevant as it has remained the most consistent (in terms of volume and share of dumped imports) exporter of the goods across the lifecycle of the measures. Figure 1 (below) tracks the quarterly share of exports of the goods from sources subject to the measures only.

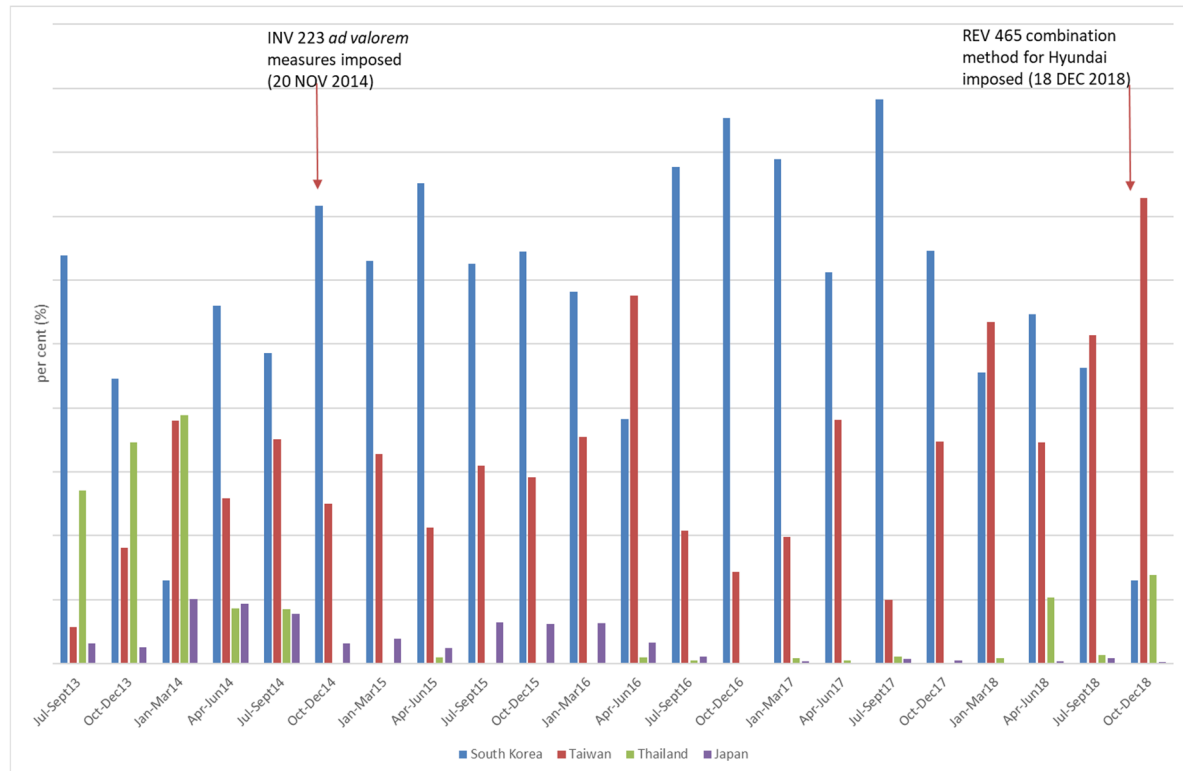


Figure 1: Quarterly share of the goods imported from countries subject to measures since 1 October 2014 (excluding Australian industry own imports) (Source: [appendix A2](#))

As can be observed, exports of the goods from South Korea have consistently dominated the overall share of exports from countries the subject of the measures across the lifecycle of the measures. It is also observed that following the imposition of measures using the *ad valorem* method of duty calculation (at the rate of 2.52 per cent for Hyundai) in November 2014, that exporter's share continued to grow, outperforming competing exporters from other sources for 13 out of the 17 fiscal quarters for which they were subject to *ad valorem* measures. The fact that the *ad valorem* measures were entirely ineffective at restoring balance to the Australian market for the goods in terms of the disproportionate share of exports held by Hyundai over all other sources subject to measures, is largely explained by the growth in the dumping margin for Hyundai - a review of measures in *Review No. 465* (concluded on 18 December 2018) revealed that Hyundai increased its rate of dumping by 293 per cent, from 2.52 per cent during the original investigation period (1 October 2012 to 30 September 2013), to 9.9 per cent for the review period (CY 2017). It is therefore no surprise, that the ineffective *ad valorem* method of interim duty calculation allowed Hyundai to continue to dump by ever increasing margins, while other (historically smaller) exporters from other sources, who were found to have ceased dumping (in subsequent reviews) continued to lose share of total exports (refer for example *Review No. 345*).

In fact, the *ad valorem* measures imposed in November 2014, had the effect of increasing Hyundai's share of exports at the expense of other sources subject to measures, when compared to the respective shares of export sources preceding the imposition of measures.

(b) **Other considerations in deciding whether an *ad valorem* or combination method is most appropriate**

When determining the form of measures to be imposed, the Commission since November 2013 has had regard to the *Guidelines on the Application of Forms of Dumping Duty (the Guidelines)*. In considering the issue in *Review No. 465* – where the Commission reversed an early recommendation to impose *ad valorem* measures, in preference for the combination method in *Final Report No. 465* – the following factors were considered relevant to the decision:

- 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 situation, the ascertained export price (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.²

The Commission will no doubt consider each of these factors in the context of each exporter and source the subject of the current review and continuation inquiry. However, on the question of whether the market for the goods is rising or falling, Liberty Steel makes the following additional observations.

Liberty Steel asserts that the combination method for interim duty calculation is simply not punitive to an importer under any circumstance - given that disclosure of the ascertained export price (relevant to setting the variable duty component) is known at the time of order placement (permitting an importer to make a preliminary interim duty calculation well in advance of order placement). However, in the case of the review period relevant to REV 499 and CON 505, Liberty Steel observes that the export prices from all sources subject to measures are currently within a rising market (refer Figures 2 to 5 (below)).

² REP 465 (Hot Rolled Structural Steel — The Republic of Korea), p. 33.

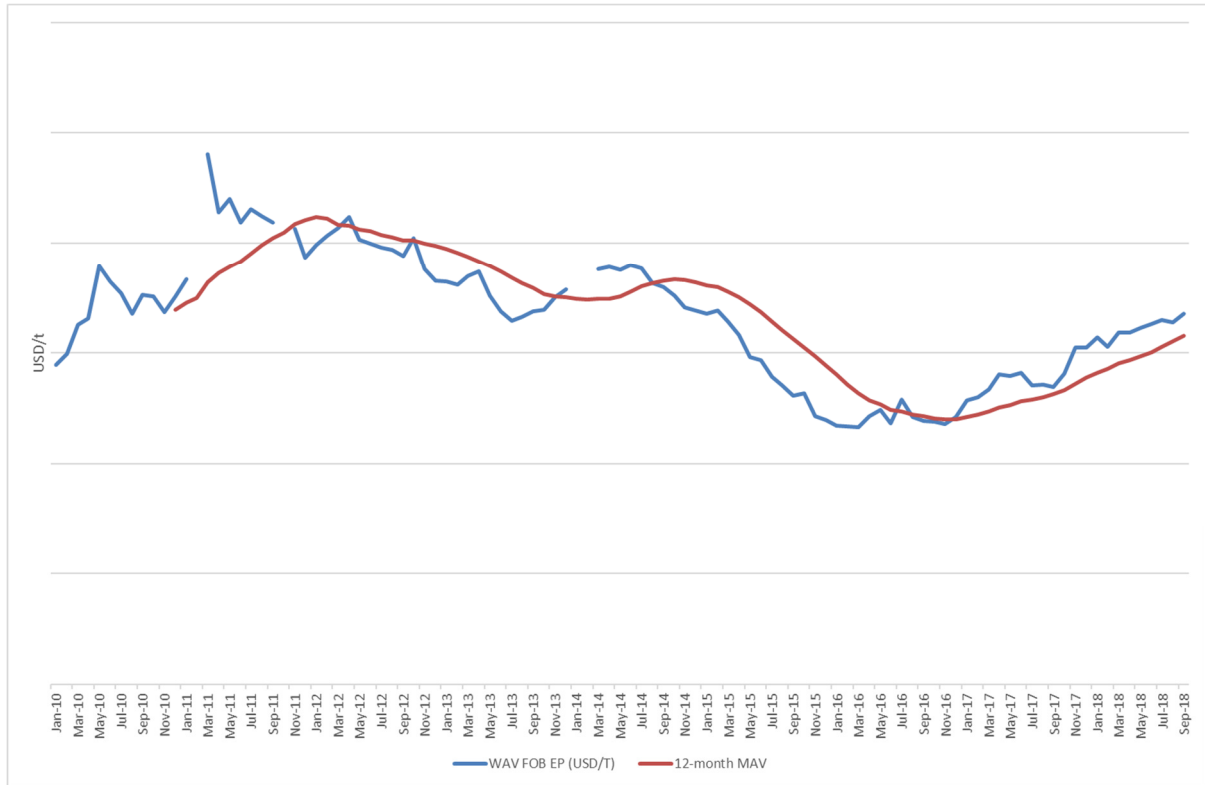


Figure 2: Monthly weighted average (WAV) FOB export prices (USD/t) and 12-month moving average (MAV) FOB export price for the goods exported to Australia from South Korea since January 2010 (Source: [appendix A2](#))

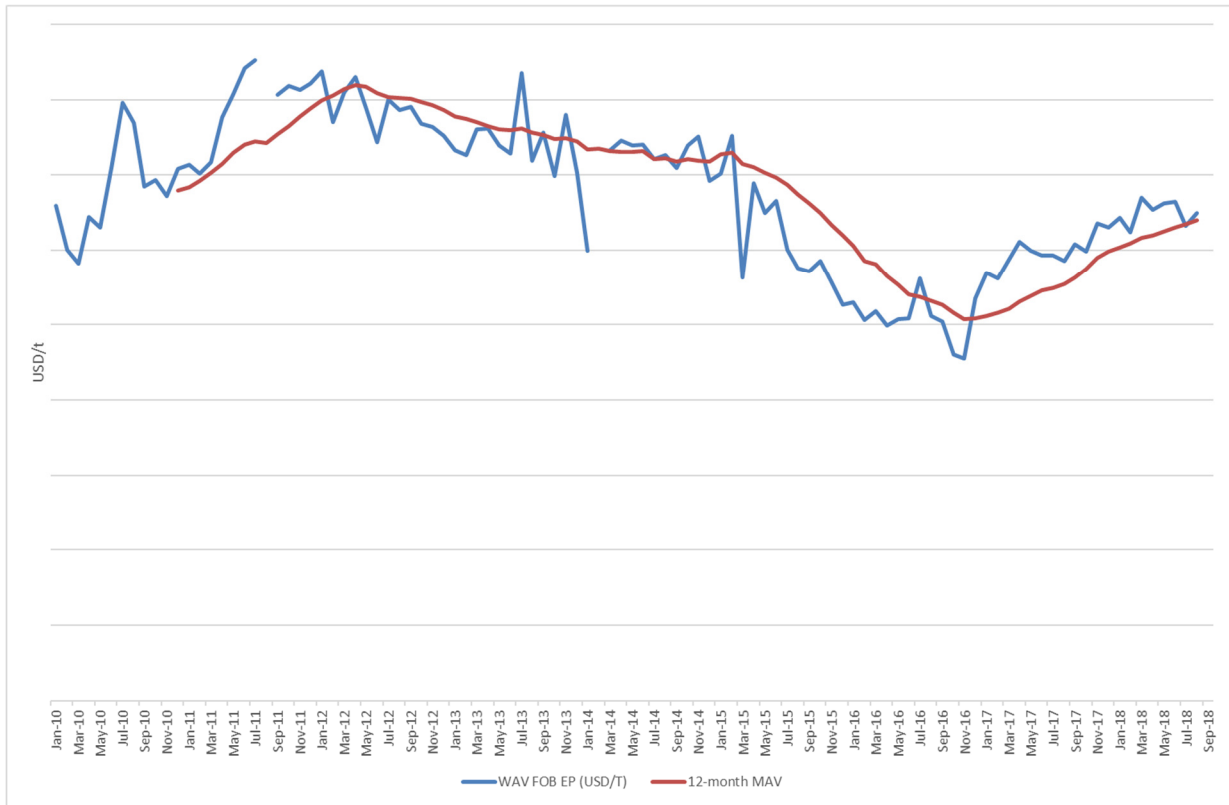


Figure 3: Monthly weighted average (WAV) FOB export prices (USD/t) and 12-month moving average (MAV) FOB export price for the goods exported to Australia from Taiwan since January 2010 (Source: [appendix A2](#))

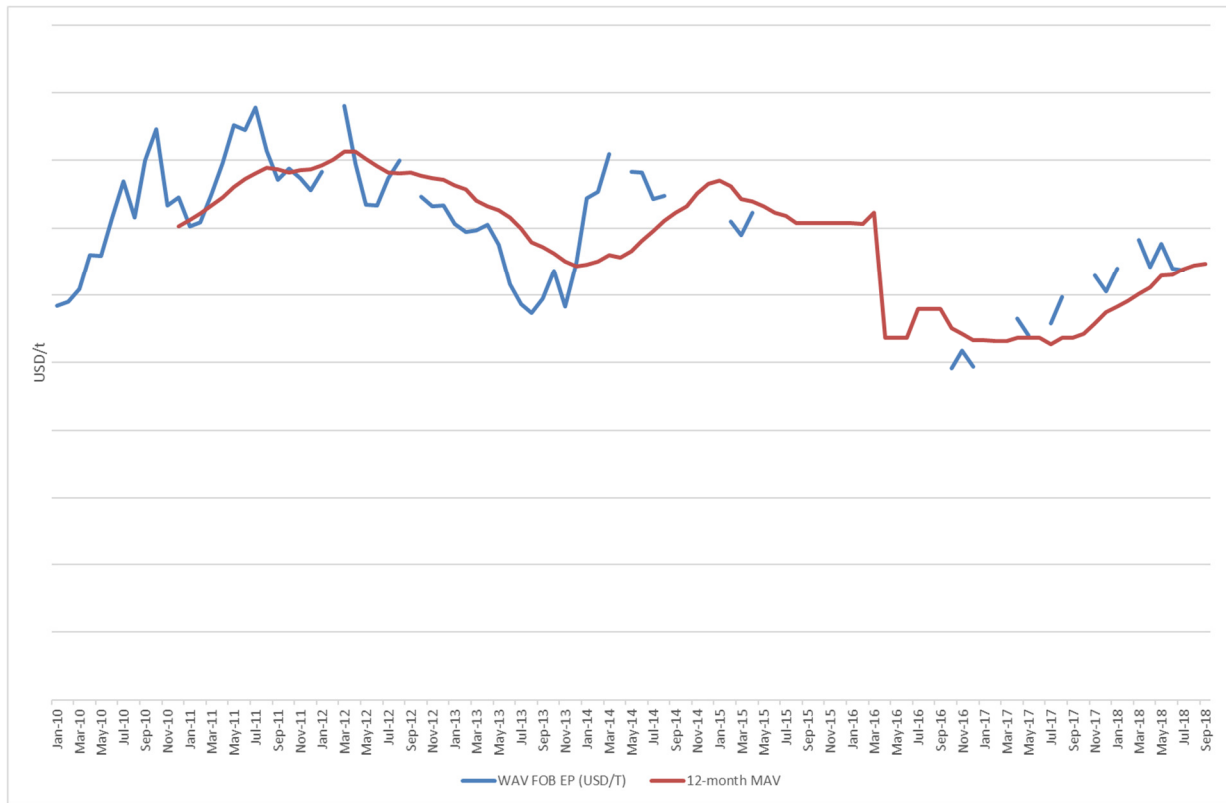


Figure 4: Monthly weighted average (WAV) FOB export prices (USD/t) and 12-month moving average (MAV) FOB export price for the goods exported to Australia from Thailand since January 2010 (Source: [appendix A2](#))

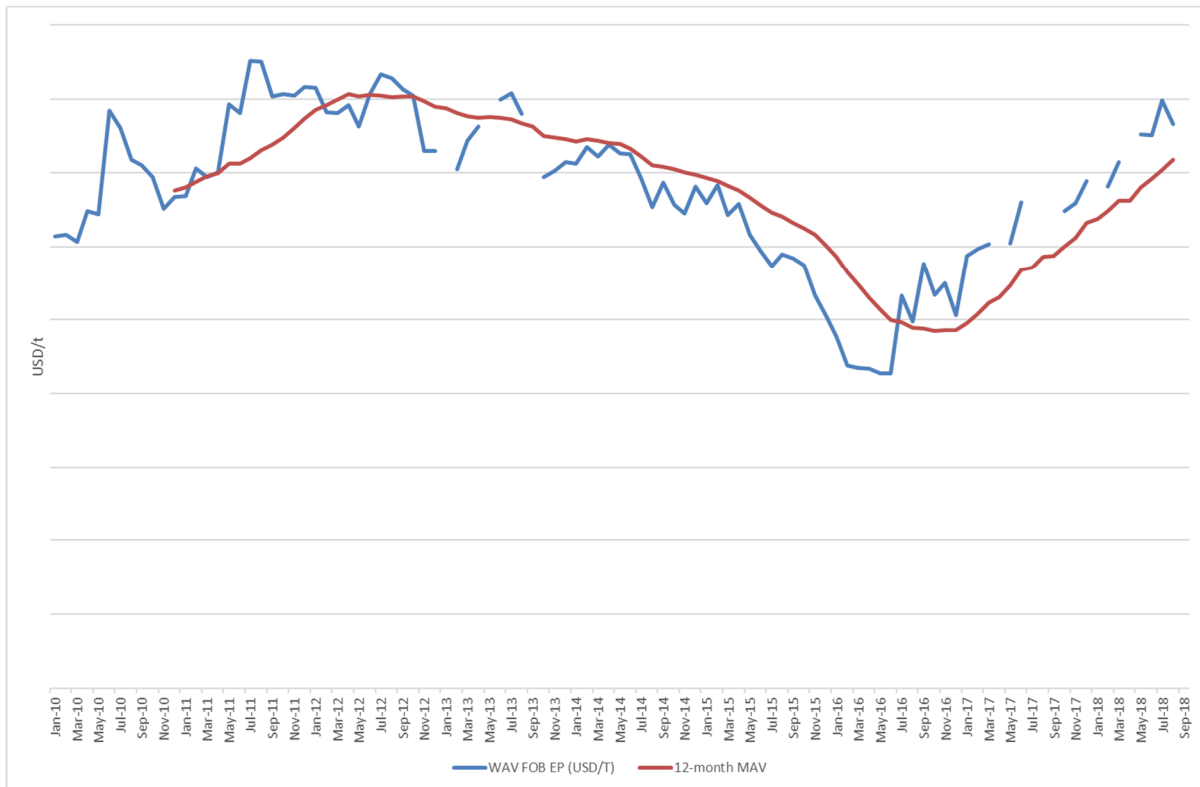


Figure 5: Monthly weighted average (WAV) FOB export prices (USD/t) and 12-month moving average (MAV) FOB export price for the goods exported to Australia from Japan since January 2010 (Source: appendix A2)

Therefore, on any consideration of the factors relevant to the selection of the form of interim duty calculation, the combination method must clearly be preferred in the case of all exporters and sources where a non-negligible dumping margin has been found.

REV 499 - Preferred effective date for any changes to the current dumping duty notice

Table A (below) follows the history of the verified (to date) dumping margin rates across the lifecycle of the measures the subject of this review and continuation inquiry:

Country	Case Ref.: Investigation/Review/Inquiry Period:	INV 223 1-Oct-12 to 30-Sep-13	REV 345 / REV 346 1-Jan-15 to 31-Dec-15	ACC 359 1-Apr-15 to 31-Mar-16	REV 465 1-Jan-17 to 31-Dec-17	REV 499 / CON 505 1-Jan-18 to 31-Dec-18
JPN	JFE Bars and Shapes Corporation	12.15				
JPN	Uncooperative Exporters	12.23				
KOR	Hyundai Steel Company	2.52			9.9	10.3
KOR	Uncooperative Exporters	3.24			13.9	
TWN	TS Steel Co Ltd	4.68				2.1
TWN	Tung Ho Steel Enterprise Corporation	2.20				-3.0
TWN	Dragon Steel				0	9.0
TWN	Uncooperative Exporters	7.89				
THD	Siam Yamato Steel Co Ltd	18.00				5.0
THD	Uncooperative Exporters	19.48				
	Publication date:	20-Nov-14	19-Oct-16	18-Oct-16	18-Dec-18	

TABLE A: Summary of verified dumping margin rates for named/cooperative exporters and uncooperative exporters (Source: adcommission.gov.au, various EPR Folios)

In REV 465, the Minister declared that the different variable factors relevant to the determination of duty had been fixed in respect of the exporters with effect from the date of the notice (14 December 2018). In that review, the Commission concluded, and the Minister accepted that the different

variable factors changed the dumping margin by a factor of 293 per cent for Hyundai when compared to the outcome of the original *Investigation No. 223*.

Although in REV 465, the Minister signed and dated her public notice of the decision on 14 December 2018 (published on 18 December 2018), the information she relied on was already almost 12-months old (the review period on which the variable factors were assessed related to the CY 2017 period). Until the date of the Minister's notice, the exporters from South Korea enjoyed an extended period of 'discounted' dumping margin rates which until the review notice were calculated using an *ad valorem* methodology – Hyundai enjoyed a saving of 7.38 percentage points on its dumping margin calculation, and all other exporters, a 10.66 percentage point saving. On the other hand, the Australian domestic industry, and other exporters, continued to experience unremedied price undercutting at increasingly dumped values. The asymmetrical treatment of interested parties cannot be more pronounced.

There was in REV 465, an opportunity for the Commission to recommend to the Minister that she nominate an effective date for the revised variable factors earlier than the date of her notice. This recommendation would have provided support to the Minister's power under s.269ZDB(1)(a)(iii).³ The Commission failed to do so.

Applied to the current Review No. 499, TABLE A (above) again indicates that in the case of Hyundai Steel, Tung Ho Steel Enterprise Corporation, Dragon Steel and Siam Yamato Steel Co Ltd, different variable factors relevant to the determination of duty have changed such as will increase these exporters' dumping margins since their last review (or accelerated review). In some cases, these exporters have been subject to discounted dumping margins since 19 October 2016⁴. Given that information relevant to the determination of the variable factors for Review No. 499 relate to a CY 2018 period, and that the earliest date for the publication of the Minister's notice under REV 499, will not be before 1 November 2019, then certain exporters have protracted the period of their discounted dumping margin rates even further.

In these circumstances, Liberty Steel submits that the Commission is obliged to advise and recommend to the Minister that she exercise her power under s.269ZDB(1)(a)(iii) to specify a different date (to the date of the notice) from which the revised variable factors be applied – noting that a date up to the date of initiation of *Review No. 499* (3 January 2019) may be specified.

Should the Commission wish to discuss any aspect of this submission, please do not hesitate to contact the representative for the Australian industry applicant on record.

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

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

⁴ In the case of REV 345 and REV 346.