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Mr R Maevsky
Assistant Director
Anti-Dumping Commission
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By email

Dear Assistant Director

Hyundai Steel – HRSS from Japan, Korea, Taiwan and Thailand Response to ADC Addendum to preliminary reinvestigation report

As you know, we represent Hyundai Steel Company (“Hyundai Steel”) in the Anti-Dumping Review Panel’s Reviews No 120 and 121. We refer to the Commission’s Addendum (“the Addendum”) to Preliminary Reinvestigation Report (“PRR”) as part of these ADRP reviews, as published on 19 November 2020.

We welcome this opportunity to provide Hyundai Steel’s comments regarding the Addendum. Consistent with basis and purpose of the Addendum, this letter provides a response to the Addendum and is also not intended to replace Hyundai Steel’s first submission in this reinvestigation process dated 11 September 2020 (“the PRR Submission”), and should be read in conjunction with PRR submission.

Hyundai Steel’s PRR Submission raised critical issues regarding the material injury and causation analysis in Report 505, and the lack of justification to continue the measure as against exports from Hyundai Steel.¹ In particular, the submission referred to the significant impact of Taiwanese exports, and the PRR’s new analysis of the Australian industry’s import price parity pricing (“IPP”) which highlighted lack of causal link and competition between imports and a significant part of Australian industry. The submission concluded that:

Therefore, it cannot be correct or reasonable for the Minister to be satisfied that expiry of the measure will lead to continuation or recurrence of dumping and the material injury to the Australian industry. There is no such evidence. Furthermore, [CONFIDENTIAL TEXT DELETED – market analysis] Hyundai Steel’s concern, that the Australian industry’s alleged price suppression and unprofitability are likely to have been exaggerated or artificial. The suppression and unprofitability is due to [CONFIDENTIAL TEXT DELETED – comment about sales in the Australian market], unrelated to imports from TS Steel, Tung Ho, or Hyundai Steel – an unprofitability that the Australian industry [CONFIDENTIAL TEXT DELETED – comment about sales in the Australian market].

¹ See Hyundai Steel’s PRR Submission, at Part B.

In our view, the Commission is obliged to report these cogent new findings to the ADRP in its reinvestigation report, so that the ADRP can see and accept that there is no or insufficient evidence to support the decision to continue the measure as against Hyundai Steel.

We note the Addendum's response to Hyundai's submission at section "2.9 - OneSteel sales to related customers", as follows:

The Commission observes that a reasonably large portion of OneSteel's sales of HRS are to unrelated customers which are in direct competition with HRS exported to Australia from Korea and Thailand. As stated above in chapter 2.8, OneSteel's prices to unrelated customers are set with reference to an IPP model plus a premium. OneSteel provided evidence of pricing mechanisms used for unrelated customers and advised that pricing to related customers follows a similar pricing mechanism, in reference to the IPP model.

The Commission has compared this pricing to unrelated parties with pricing to related parties at an MCC level during the inquiry period. From this analysis, the Commission observes that prices to related and unrelated customers both follow movements in prices of imports. The Commission therefore considers that OneSteel's prices to both related and unrelated customers have, and will likely continue to be, influenced by dumped imports. The Commission also notes that the portion of sales to unrelated customers is large enough that, should measures expire, injury to this portion of sales alone is likely to be material. [underlining supplied]

In our view, this response does not address the reasoned and evidence based concerns put forward in Hyundai's PRR Submission. It is also incompatible with the issues identified in the Commission's own PRR. With respect, we observe that the Addendum's reference to the notion of "a reasonably large portion of OneSteel's sales" or how such portion is "large enough" are undefined and unexplained. Hyundai Steel notes that the only relevant question the Minister is required to consider is the likely impact of expiry of the measure as against exports of the goods under consideration by Hyundai Steel on the *Australian industry*. It is a well-established position that such question can only be answered by examining the Australian industry *as a whole*, not by limiting the examination to a small slice of it, much less so when only an even smaller portion of that small "portion" that might be said to be in competition with imports from Hyundai Steel.

The Addendum's proposition that OneSteel's prices to *both* related and unrelated customers are "influenced" by dumped imports appears unsatisfactorily ambiguous and lacking relevance to the issue at hand. The relevant issue has been clearly exposed in the PRR, ie. there is no competition between imports and OneSteel's sales to related parties, and there has been no adequate analysis of all the relevant economic factors pertaining to the Australian industry as a whole, or the real effect of Hyundai Steel's exports on the Australian industry as a whole:²

The Commission has analysed sales between OneSteel and its related parties and has observed that, despite the arms length nature of these transactions, it would be the downstream sales by the related party which would ultimately be in competition with imports of HRS rather than sales between OneSteel and its related party. The Commission does not have data from the related party concerning its own sales and therefore has been unable to perform any analysis at that level.³

² PRR Submission, at pages 7-9

³ PRR, at page 36

With respect, to the extent that OneSteel's sales were not in competition with exports from Hyundai Steel, any "influence" of Hyundai Steel's price is irrelevant to the injury analysis in the context of anti-dumping.

Lastly, regarding the Addendum's opinion that "*the portion of sales to unrelated customers is large enough that, should measures expire, injury to this portion of sales alone is likely to be material*", we respectfully submit that such view is unsustainable. This is because:

1. This view is not supported by any factual and legal basis. There has been analysis so far conducted on the premises that injurious effect of Hyundai Steel's exports on the Australian industry is to be limited to the portion of the unrelated party sales, but with the full effect of Australian industry's sales via related parties properly taken into account, recognising that such sales are not in competition with imports at all, and with unknown impact to the Australian industry's economic conditions. Instead, as Hyundai Steel repeatedly identified, despite the lack of competition between Hyundai Steel or any imports and the Australian industry's vast majority sales, Report 505 and the Addendum's analysis incorrectly assumed Hyundai Steel's exports were competing with *all* of the Australian industry's sales and have injurious effect on *all* of those sales;
2. This view does not address the issue of potential profit shifting and the critical questions of whether the claimed price based injury is *exaggerated, artificial, and self-imposed*, due to the existence of the much larger portion of the Australian industry's sales via related parties.
3. It unduly assumes that the "*injury to this portion of sales*" can either represent material injury to the Australian industry as a whole, or is solely or materially attributable to the expiry of the measure as against exports from Hyundai Steel, without taking into account other factors, such as undumped exports from and the expiry of the measure as against Taiwanese exporters.

In our view, the Addendum has further highlighted the deficiency in reasoning and the incorrectness of a finding that the Minister should be satisfied that expiry of the measure as against Hyundai Steel will lead to continuation or recurrence of dumping and the material injury to the Australian industry.

Further, for completeness, we would like to offer the following response to the Addendum's other comments insofar as they relate to Hyundai.

In relation to Addendum "2.6 Capacity to supply the Australian market", we note that the Addendum does not dispute Hyundai Steel's advice that its production has been consistently at commercially optimal utilisation level, despite the existence of theoretical spare capacity.⁴ There is no evidence to suggest that Hyundai Steel's theoretical available or "spare" capacity has any direct relationship with the volume it will or is likely to supply to the Australian market. In any case, we note that during the review period, Hyundai's Australian sales of the GUC amounted to less than **[CONFIDENTIAL TEXT DELETED – market statistics and comparison]**. Therefore, any theoretical spare capacity, when proportioned to the Australian market, will be relatively insignificant. Again, there is simply no evidence that Hyundai Steel's total capacity or any spare capacity, could have any bearings on the question of the likelihood of the Australian industry being materially injured as a result of expiry of the measure.

Addendum "2.7 - Value of exported goods" simply suggests that, "*[b]ased on this analysis, the Commission does not consider that the respective prices of the exporters supports the argument that measures against Hyundai should not be continued.*" The Addendum has not offered any reasons or explanations for the basis of such view. Therefore the issues concerning comparison between the

⁴ See Hyundai Steel submission dated 2 September 2019, EPR505-40 at Part D.

prices of goods exported by Hyundai Steel and those undumped imports from Taiwan, as identified by Hyundai Steel's PRR Submission remains unaddressed, and cannot be dismissed.

In relation to Addendum "2.8 - Impact of dumping on prices", specifically "2.8.1 Hyundai", it is unclear to us how observations in this section could support a view that expiry of the measure will or would likely lead to recurrence or continuation of injury caused by dumped prices of Hyundai's exports. Indeed, this additional analysis now clearly demonstrates:

- for majority of the months during the review period, OneSteel successfully charged its customers a premium on top of price level offered by Hyundai for the majority of the review period.
- Hyundai Steel's price did not consistently undercut OneSteel, unlike other imports, particularly those undumped imports from Taiwan;
- In other months, OneSteel's prices, even with the premium, undercut prices of the goods imported from Hyundai Steel.
- OneSteel's pricing were undercutting Hyundai, and, according to its self-claimed pricing policy, more likely to have been influenced by lower price offerings on the market, unrelated to Hyundai. We recall the PRR's finding that the Taiwanese exporters' price advantage significantly exceeds the local price premium demanded by Liberty Steel, for *each quarter* of the POI.⁵

Accordingly, the new analysis confirms Hyundai Steel's submission that OneSteel's pricing for unrelated parties have been and will continue to be affected by undumped exports from Taiwan or other sources, not by Hyundai Steel. It follows that any "price suppression" related injurious effect experienced by OneSteel, if can be established at all noting the lack of analysis and proper treatment of OneSteel's sales to related parties, are more likely to be attributable to those other exports and OneSteel's own sales to via related parties. The outcome of these analysis also support Hyundai Steel's view that there is insufficient evidence that the expiry of the measure will more likely than not lead to the continuation or recurrence of material injury to the Australian industry caused by dumping of the goods from Hyundai Steel.

Separately, the Addendum's price undercutting analysis further highlights the importance of ensuring any non-injurious price determination to have proper regard to the undumped exports – which are evidently the primary source low priced imports in the Australian market. Hyundai Steel refers to Section C of its PRR Submission, for the Commission's further consideration.

Yours sincerely



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⁵ PRR, at page 36.