



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 19 February 2020 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application to the ADRP for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

¹ By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

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Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Orrcon Manufacturing Pty Ltd
Address: 121 Evans Road, Salisbury, Queensland, 4107
Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: [REDACTED]
Position: [REDACTED]
Email address: [REDACTED]
Telephone number: [REDACTED]

3. Set out the basis on which the applicant considers it is an interested party:

Pursuant to Section 269ZZC of the Customs Act 1901 ("the Act")³ a person who is an interested party in relation to a reviewable decision may apply for a review of that decision.

Orrcon Manufacturing Pty Ltd ("Orrcon") is an Australian manufacturer of hollow structural sections ("HSS") and was the applicant company in relation to an application under s.269ZA that led to the making of the reviewable decision.

4. Is the applicant represented?

Yes No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

³ All legislative references in this application are to the Customs Act 1901, unless otherwise stated.

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

- | | |
|--|---|
| <input type="checkbox"/> Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice | <input type="checkbox"/> Subsection 269TL(1) – decision of the Minister not to publish duty notice |
| <input type="checkbox"/> Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice | <input checked="" type="checkbox"/> Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures |
| <input type="checkbox"/> Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice | <input type="checkbox"/> Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry |
| <input type="checkbox"/> Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice | <input type="checkbox"/> Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures |

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed.**

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods which were the subject of the reviewable decision are:

Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.

The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections).

Finish types for the goods include inline galvanised (ILG), pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS.

Sizes of the goods are, for circular products, those exceeding 21 millimetres (“mm”) up to and including 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3 mm.

The following categories of HSS are excluded from the goods:

- conveyor tube made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1 mm on outer surface and 0.25 mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6 mm in order to maintain vibration free rotation and minimum wind noise during operation;*
- precision RHS with a nominal thickness of less than 1.6 mm; and*
- air heater tubes to AS 2556.*

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7. Provide the tariff classifications/statistical codes of the imported goods:

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Act 1995*:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36, and 37), circular hollow sections;
- 7306.50.00 (statistical code 45), other circular cross sections of other alloy steel;
- 7306.61.00 (statistical codes 21, 22, 25 and 90), rectangular or square hollow sections;
- 7306.69.00 (statistical code 10), other non-circular cross-sections; and
- 7306.90.00 (statistical code 12), other.

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number:

2021/011.

Date ADN was published:

9 March 2021. A copy of the notice of the reviewable decision is attached as **Appendix A** to this application.

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission’s website) to the application****

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked ‘**CONFIDENTIAL**’ (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked ‘**NON-CONFIDENTIAL**’ (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant’s representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

Based on a finding by the Commission in Report No. 529 (“Report 529”), the reviewable decision of the Minister set out in ADN 2021/011 is not the correct or preferable decision on the following grounds:

Ground 1:

The decision by the Minister to revoke the anti-dumping measures applying to HSS exported to Australia from South Korea (“Korea”) by Kukje is not the correct or preferable decision as the Commissioner failed to provide the Minister with a sufficient and reasonable explanation why the negative dumping margin found during the inquiry period was likely to continue beyond the revocation of the measures.

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Ground 2:

The decision by the Minister to revoke the anti-dumping measures applying to HSS exported to Australia from Korea by Kukje is not the correct or preferable decision as the Commissioner failed to provide the Minister with a sufficient and reasonable explanation why the revocation of the measures would not lead, or be likely to lead, to a continuation of, or recurrence of, material injury.

Ground 3:

For the purposes of s.269TAC, the normal value of the goods exported to Australia by Chinese exporters could be ascertained by reference, in part, to a Hot Rolled Coil ("HRC") competitive cost adjustment using verified HRC purchases in the review period from cooperating HSS exporters in Korea, Taiwan, and Thailand, and excluding within the cost adjustment benchmark Chinese originating HRC, and HRC from other unknown sources.

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

Grounds 1 & 2:

The correct or preferable decision would be:

- for the Commissioner to recommend, pursuant to s.269ZDA(1A)(b), that he is satisfied, as a result of the review, that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent; and
- for the Minister to extend her declaration to Kukje, pursuant to s.269ZDB(1)(a)(iii), that the dumping duty notice is taken to have effect as if different variable factors had been fixed, relevant to the determination of duty.

Ground 3

The correct or preferable decision would ascertain the normal value of the goods exported to Australia by Chinese exporters by applying a HRC competitive cost adjustment that excludes not only Chinese originating and unknown HRC sources, but also any imported HRC.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Elaboration of the grounds raised in question 9 can be found at **Appendix B**, attached.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

Grounds 1 & 2:

The correct or preferable decision would result in the Minister:

- not publishing a notice, under s.269ZDB(1)(a)(ii), that the dumping duty notice is revoked in relation to Kukje; and
- extending her notice, under s.269ZDB(1)(a)(iii), that the dumping duty notice is taken to have effect as if different variable factors had been fixed, relevant to the determination of duty for Kukje.

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Ground 3:

The correct or preferable decision would increase the ascertained normal value of the goods exported to Australia by Chinese exporters, and increase the level of dumping.

13. Please list all attachments provided in support of this application:

Appendix A: Copy of the notice of the reviewable decision.

Appendix B: Elaboration of the grounds raised in question 9.

Confidential Attachment 1: Appendix A2; HSS Australian market and import volume assessment.

Confidential Attachment 2: Korean Normal Value and Export Price Trends.

Confidential Attachment 3: Orrcon Commercial-in-Confidence Review 529 Statement of Essential Facts response.

PART D: DECLARATION

The applicant declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: [sgd]

Name: [REDACTED]

Position: [REDACTED]

Organisation: [REDACTED]

Date: 8 / 04 / 2021

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative:
Organisation:
Address:
Email address:
Telephone number:

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /

**APPENDIX B
Elaboration of the grounds raised in question 9**

Introduction

On 25 September 2019, Orrcon lodged an application under Section 269ZB seeking a review of the anti-dumping measures in respect of HSS exported to Australia from China, Korea, Malaysia, Taiwan and Thailand (“the subject countries”). Orrcon asserted that one or more of the variable factors had changed since they were last ascertained.

The Commissioner decided not to reject the application, and on 25 October 2019 initiated a review of the anti-dumping measures applying to HSS exported from the subject countries.

On 2 December 2019, Kukje Steel Co., Ltd. (“Kukje”) lodged an application to extend the review of measures to include consideration of whether the measures applying to it should be revoked.

As set out in ADN No. 2019/155, the Commissioner was satisfied that Kukje’s application complied with Section 269ZCB, and in accordance with Section 269ZCC(2) there appeared to be reasonable grounds for asserting that the anti-dumping measures were no longer warranted. The Commissioner therefore decided not to reject the application, and the review was extended to consideration of whether to revoke the measures applying to exports of HSS from Korea by Kukje.

At conclusion of the review inquiry, the Commissioner made the following recommendations to the Minister in Report No. 529 (“Report 529”):¹

“The Commissioner recommends to the Minister that the dumping duty notice have effect as if different variable factors had been ascertained. The Commissioner recommends that the measures applying to Kukje be revoked.

The Commissioner recommends to the Minister that the countervailing duty notice in respect of HSS exported from China have effect as if different variable factors had been ascertained.

The Commissioner recommends to the Minister that the anti-dumping measures applying to Kukje be revoked.”

On 9 March 2021, ADN 2021/011 confirmed the acceptance by the Minister of the Commissioner’s recommendation. The decision of the Minister was made on the 9th March 2021 and published on the Anti-Dumping Commission’s website on the 12th March 2021. Report 529 contains the basis for the Commission’s recommendations.

Orrcon is a manufacturer of HSS at its Salisbury, Queensland production site.

Orrcon is an affected party and member of the Australian industry that will be adversely impacted by the revocation of the anti-dumping measures on HSS exported from South Korea by Kukje.

As outlined in this application, Orrcon requests that the Anti-Dumping Review Panel (“ADRP”) review the Minister’s decision to revoke the measures. Orrcon also requests that the ADRP review the Commissioner’s calculation methodology in ascertaining normal values for Chinese exporters.

Orrcon has detailed its grounds for review of the Minister’s decision below.

¹ Report No. 529 – Review of Anti-Dumping Measures applying to Hollow Structural Sections exported to Australia from the People’s Republic of China, the Republic of Korea, Malaysia, Taiwan, and the Kingdom of Thailand. Page 10.

Ground 1:

The decision by the Minister to revoke the anti-dumping measures applying to HSS exported to Australia from Korea by Kukje is not the correct or preferable decision as the Commissioner failed to provide the Minister with a sufficient and reasonable explanation why the negative dumping margin found during the inquiry period was likely to continue beyond the revocation of the measures.

The Anti-Dumping Commission (“the Commission”) ascertained the variable factors for the investigation period (1 October 2018 to 30 September 2019) for exports of the goods from Korea by Kukje. The Commission concluded that the variable factors had changed since the last review. The Commission established that Kukje was dumping by a margin of negative 5.0 per cent.

Orrcon does not seek to dispute the Commission’s assessment of the dumping margin as detailed in Report 529. The grounds of appeal relied upon by Orrcon extend beyond the mere determination of the variable factors and dumping margins to the assessment and conclusions as to the likelihood of dumping and material injury in the absence of the measures.

In Report 529, the Commissioner upheld his preliminary finding in Statement of Essential Facts 529² (‘SEF 529’) that:

“Having considered the evidence before the Commission, the Commissioner is not satisfied that the revocation of the anti-dumping measure applying to Kukje would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and material injury that the anti-dumping measure is intended to prevent.”³

Specific to the determination of the negative 5.0 per cent dumping margin during the inquiry period, the Commission also reiterated its SEF 529 comments that whilst the presence (or absence) of dumping may be indicative of future behaviour, that this factor alone is not determinative.⁴ In report 529, the Commission provided the following table⁵ trending Kukje’s dumping margin outcomes from earlier inquiries, noting that Kukje’s history of not dumping was only one of the factors that the Commission considered:⁶

Case Number	Period investigated	Type of Verification	Measures effective from	Dumping margin
177 – Original investigation	Jul-2010 to Jun-2011	On-site	June 2012	3.2%
266 – Review of measures	Jul-2013 to Jun-2014	Desktop	May 2015	negative 6.7%
379 – Continuation inquiry	Jul-2015 to Jun-2016	On-site	July 2017	negative 1.9%
419 – Review of measures	Jul-2016 to Jun-2017	On-site	June 2018	negative 3.6%
529 – Review of measures	Oct-2018 to Sep-2019	On-site	NA	negative 5.0%

The Commission then ultimately concluded that it was “...persuaded by Kukje’s history of not exporting HSS at dumped prices to Australia...”⁷ in recommending that the measures be revoked.

² EPR Folio No. 71.

³ Report 529, p. 122.

⁴ Report 529, p. 121.

⁵ Report 529, p. 108.

⁶ Ibid.

⁷ Report 529, p. 121.

In response to SEF 529, Orrcon provided evidence that Kukje's dumping margin trend was on an upward trajectory, and provided a forward-looking view of Korea's (and therefore – Orrcon submitted – Kukje's) likely dumping margin post the Review 529 inquiry period.⁸ Orrcon demonstrated that Kukje was likely dumping HSS on the Australian market, and that it was probable that this trend would continue in the absence of measures.

Orrcon's SEF 529 response detailed the methodology employed and the critical aspects of its analysis in reaching the above-noted conclusions.⁹ In Report 529, the Commission addressed Orrcon's claims and evidence:

"Orrcon performed its own analysis and provided this to the Commission. The analysis performed by Orrcon led it to submit that Kukje was likely to have been dumping after the review period, because the calculated normal values exceeded the export price data it obtained.

Regardless of the reliability of Orrcon's estimates, the Commission has insufficient information to make any finding as to whether dumping has or has not occurred after the review period. However, such information may nevertheless be relevant to inform the Commission's assessment of whether dumping may be likely.

The Commission has reviewed Orrcon's analysis. Acknowledging that Orrcon has utilised the data which is available to it, errors were found by the Commission which caused the analysis and subsequent conclusions to be unreliable. In particular, Orrcon has over- and under-estimated certain elements of its calculations. However, regardless of these errors, the analysis is not specific to Kukje's actual circumstances, and is therefore not informative as to whether Kukje's exports were dumped following the review period."¹⁰ (emphasis added).

This is not the correct or preferable decision, as the Commissioner is capable of accurately approximating the post review period margin applicable to Kukje based on the relevant information, under s269ZZK(6), during the inquiry period. Specifically:

Relevant Information	Correct or Preferable Conclusions
1. Korean exporters during the review period.	<p>The Commission determined the two main Korean exporters of HSS to Australia during the Review 529 inquiry period were Kukje and HiSteel Co., Ltd ("HiSteel").</p> <p>The Commission undertook an in-country visit to verify the information provided by Kukje in its Exporter Questionnaire Response ("EQR"),¹¹ and conducted a desktop verification of HiSteel's EQR.¹²</p> <p>In this first instance, this should have led the Commission to conclude that Orrcon's forward view dumping margin is assignable on a probable and likely basis to either Kukje or HiSteel, and no other exporter.</p>
2. Korean HSS volumes during the review period.	As part of its application for the variable factors review, Orrcon provided the Commission with its estimate of Korean HSS import volumes during the October

⁸ EPR Folio No. 76.

⁹ Ibid.

¹⁰ Report 529, p. 109.

¹¹ Ibid, p. 73.

¹² Ibid, p. 70.

	<p>2018 to September 2019 inquiry period.¹³ In this document, exports of HSS to Australia by Korean producers were quantified at [REDACTED] metric tonnes.¹⁴</p> <p>In Report 529, the Commission determined that HiSteel exported one type of HSS model to Australia during the review period, this being the Model Control Code (“MCC”) of P-N-O-R-350-P.¹⁵ In contrast, Kukje exported 9 separate MCC’s during the review period (Table 28 of Report 529 refers):¹⁶</p> <table border="1" data-bbox="491 510 1374 680"> <thead> <tr> <th colspan="6">MCC</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>P-G-N-C-350-N-P</td> <td>4.</td> <td>P-N-N-C-350-N-P</td> <td>7.</td> <td>P-N-P-C-250-N-T</td> </tr> <tr> <td>2.</td> <td>P-G-N-R-350-N-P</td> <td>5.</td> <td>P-N-N-R-350-N-P</td> <td>8.</td> <td>P-N-P-C-350-N-P</td> </tr> <tr> <td>3.</td> <td>P-N-N-C-250-N-P</td> <td>6.</td> <td>P-N-P-C-250-N-P</td> <td>9.</td> <td>P-N-P-R-350-N-P</td> </tr> </tbody> </table> <p>Report 529 concludes that the share of market held, and the volume of HSS exported, by Kukje has been stable for several years.¹⁷</p> <p>Conversely, HiSteel has not historically exported material volumes of HSS to Australia, as confirmed by its non-participation in earlier anti-dumping inquiries, and via its own admission that it had made only infrequent spot sales of very small quantities of the goods prior to 2017.¹⁸ On this basis, and given the existence of only one HiSteel MCC during the Review 529 inquiry period, and there being no other significant Korean exporter of HSS to Australia, Orrcon contests that Kukje manufactured and exported the majority of the above-noted Australian HSS imports during the investigation period in Review 529.</p> <p>In the second instance, this should have led the Commissioner to conclude that Orrcon’s forward view dumping margin analysis can be attributable to Kukje, on the basis of the high probability that the proportional export volume mix post the Review 529 investigation period (to which Orrcon’s forward AD margin view has been determined) remains heavily and primarily weighted to Kukje.</p>	MCC						1.	P-G-N-C-350-N-P	4.	P-N-N-C-350-N-P	7.	P-N-P-C-250-N-T	2.	P-G-N-R-350-N-P	5.	P-N-N-R-350-N-P	8.	P-N-P-C-350-N-P	3.	P-N-N-C-250-N-P	6.	P-N-P-C-250-N-P	9.	P-N-P-R-350-N-P
MCC																									
1.	P-G-N-C-350-N-P	4.	P-N-N-C-350-N-P	7.	P-N-P-C-250-N-T																				
2.	P-G-N-R-350-N-P	5.	P-N-N-R-350-N-P	8.	P-N-P-C-350-N-P																				
3.	P-N-N-C-250-N-P	6.	P-N-P-C-250-N-P	9.	P-N-P-R-350-N-P																				
<p>3. Dumping margin trend accuracy.</p>	<p>In its SEF 529 response, Orrcon provided the Commission with the above-noted dumping margin forward estimate for Korean, and by extension Kukje, HSS exports to Australia.¹⁹ In its calculations, Orrcon adopted a conservative methodology,²⁰ resulting in a conservative (i.e. low) dumping margin outcome.²¹ As detailed in Orrcon’s SEF 529 response, the relevant data variables were summarised as follows:</p>																								

¹³ Confidential Attachment 1: HSS Australian market and import volume assessment.

¹⁴ Ibid.

¹⁵ Report 529, p. 71.

¹⁶ Ibid, p. 77.

¹⁷ Ibid, p. 10.

¹⁸ Revocation Review No. 567 – Dumping Hollow Structural Sections from Korea. Exported by: HiSteel Co., Ltd. Folio No. 1, p. 7.

¹⁹ Confidential Attachment 2: Korean Normal Value and Export Price Trends.

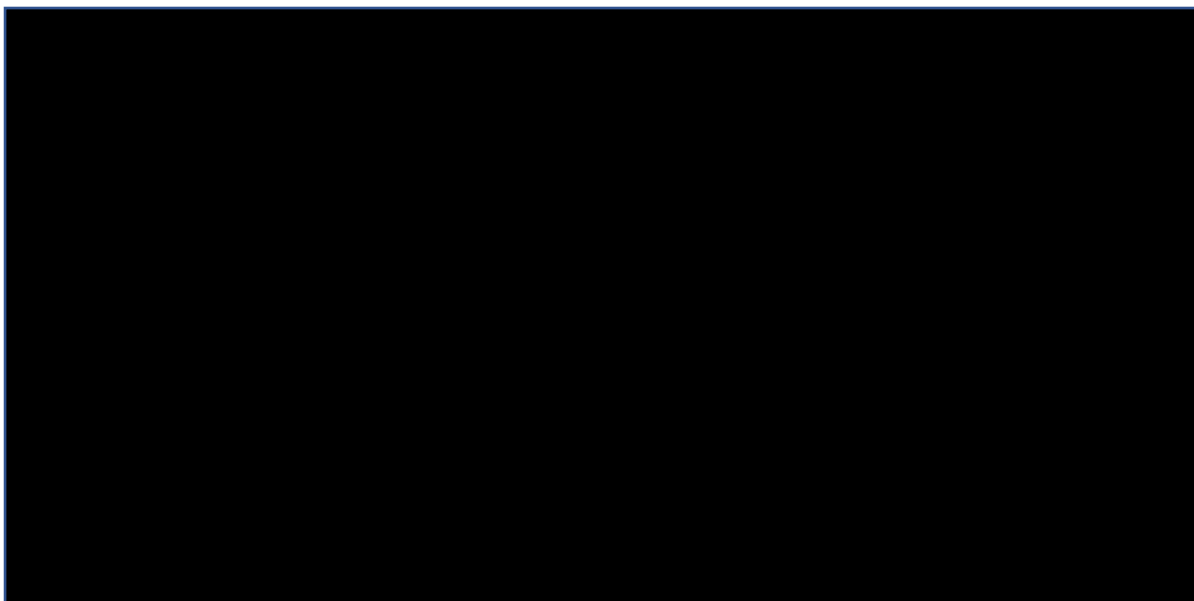
²⁰ Confidential Attachment 3: Orrcon Commercial-in-Confidence SEF response, p. 5. The key data piece in the determination of Korean HSS normal values and export prices, as sourced from [REDACTED], is one that has been accepted by the Commission as valid and reliable in its consideration of numerous steel-related anti-dumping applications. Refer most recently, inter-alia, to the Commission’s Consideration Reports for Aluminium Zinc Coated Steel (of a width equal to or greater than 600 millimeters) from the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam (current investigation No. 558), Aluminium Zinc Coated Steel (of a width less than 600 millimeters) from the Republic of China, and the Socialist Republic of Vietnam (current investigation No. 559), and Precision Pipe and Tube Steel exported from the Republic of China, and the Socialist Republic of Vietnam (current investigation No. 550).

²¹ EPR Folio No. 76, p. 5-6.

Variable	Data Source	Methodology Comments
Assessment Period	Calendar years 2013-2020	Orrcon has assessed the difference between the Korean market HSS normal value, and the Australian export price over a similar period to that represented by the Commission in SEF 529 Table 43.
Prices	█ /	Data sourced █. █ ²² however Orrcon concurs with the Commission that for this purpose it is sufficient for examining trends for the goods under consideration.
HSS Normal Value	█	Determined as the █. █ ²³
Export Price	█	█.
Korean HRC Price	█	█. █ ²⁴

Confidential Table 1: Orrcon’s Kukje Dumping Margin Methodology

The above-noted pricing trends were represented as follows (indicating a positive forward view dumping margin of █ percent):



Confidential Chart 1: Orrcon’s Kukje Dumping Margin Methodology Outcomes

²² █.

²³ In SEF 529, and again in the Final Determination, the Commission noted China as the largest exporter of HSS to Korea over the comparison periods (comprising an average annual share of 83 to 97 per cent of all HSS imports). Kukje would primarily compete at an import parity price (“IPP”) level on the Korean domestic market with these Chinese imports.

²⁴ The inclusion of this analysis aligned with the Commissions conclusions at Appendix A of SEF 529 at A.3.3 (p. 118) that there is a strong correlation between the HRC price and the subsequent price of HSS in the Korean domestic market.

3. Dumping margin trend accuracy (cont.).	<p>Critical also for the Commission's consideration was the historical dumping margin trend articulated by Orrcon, which aligned to the Commission's past negative margin findings for Kukje.²⁵</p> <p>Orrcon's SEF 529 response also provided plausible economic rationale for the trend. Orrcon was able to conclusively demonstrate that a prospective examination of Kukje's Australian export prices and the calculated Korean normal value yielded a positive margin outcome.</p> <p>The Dumping and Subsidy Manual states that while there may be no current dumping or subsidisation, it does not, of itself, mean that the measure must be revoked.²⁶ In this third instance then, Orrcon's prospective margin assessment of Kukje should have been evidence to the Commission of Kukje's probable future behaviour in the absence of measures (i.e. continued positive dumping, and consequent material injury (see Grounds 2 below) to the Australian industry).</p>
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The correct or preferable decision would be for the Commissioner to conclude that Orrcon's post review investigation period dumping margin estimate for Kukje is relevant, and that it is informative of the highly likely and probable recurrence of future dumping by Kukje.

Ground 2:

The decision by the Minister to revoke the anti-dumping measures applying to HSS exported to Australia from Korea by Kukje is not the correct or preferable decision as the Commissioner failed to provide the Minister with a sufficient and reasonable explanation why the revocation of the measures would not lead, or be likely to lead, to a continuation of, or recurrence of, material injury.

The Commission's price undercutting analysis in Report 529 concluded that:

*"The Commission's price analysis at chapter 10.3.8 demonstrates that Kukje's HSS is sold in Australia at prices that undercut the Australian industry. However, these prices in the review period are undumped."*²⁷

Chapter 10.3.8 specifically stated that:

*"The Commission observes that Kukje's HSS was cheaper than prices from Australian industry for black and galvanised HSS in the review period."*²⁸

Further that:

*"...DITH's [the Australian importer of Kukje HSS] sales of Kukje-originating goods undercut the Australian industry prices throughout the review period."*²⁹

²⁵ Refer Table 43 of Report No. 529 (p. 108).

²⁶ Dumping and Subsidy Manual, November 2018, p.167-168.

²⁷ Report 529, p. 115.

²⁸ Ibid, p. 112.

²⁹ Ibid, p. 113.

And finally that:

“The Commission concludes that Kukje’s HSS sold in Australia undercut the Australian industry’s HSS in the review period.”

Orrcon agrees with the Commissions price undercutting determinations – the Australian HSS market continues to be a price-sensitive market. Any degree of price undercutting from imported HSS provides a supplier with a competitive advantage that results in reduced profit and profitability to the Australian industry.

In its assessment of the likelihood of certain events occurring and their anticipated effect (as is required in a revocation review), the Commissioner necessarily considers a hypothetical situation.³⁰ It is hypothetically probable that Kukje’s undercutting of Australian industry prices has continued beyond the review period (where Orrcon has evidenced positive dumping), and by extension would continue once the measures are revoked. This would translate to material injury to Orrcon.

The Commission’s failure to account for a relevant consideration, being Orrcon’s analysis of dumping during the post-investigation period for exports by Kukje (over an almost twelve-month period to the Minister’s revocation decision), has resulted in the omission of that relevant consideration in the findings and recommendations provided to the Minister in Report 529.

Orrcon therefore submits that the correct or preferable decision is that the revocation of Kukje’s anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent.

Ground 3:

The reviewable decision of the Minister set out in ADN 2021/011 is not the correct or preferable decision because it is based on a finding by the Commissioner in Report 529 that, for the purposes of ascertaining normal values for Chinese exporters under s.269TAC, the composition of the HRC competitive cost adjustment excluded only Chinese originating and other unknown HRC sources, and failed to exclude all other HRC import sources.

In ascertaining Chinese exporter normal values, Report 529 stated that:³¹

“The Commission has considered all relevant information, including the HRC purchases of individual Chinese exporters, and considers it appropriate to use the exporters’ records, but only after an adjustment is made to the records relating to the costs of HRC. Such an adjustment ensures that each exporter’s records reflect “competitive market costs”, that is, the cost of production in China absent the market situation.”

Hence, the Commission disregarded HRC input costs for Chinese exporters on the basis that they were not normal competitive market costs,³² and surrogated this for a competitive HRC cost adjustment based on verified HRC purchases during the review period from cooperating HSS exporters in Korea, Taiwan, and Thailand. This, according to the Commission, ensured that the Chinese exporter’s adjusted records reflected the HRC feed cost that would have otherwise been incurred in China absent the distortion resulting from the influence of the Government of China (“GOC”).

³⁰ Report 529, p. 100.

³¹ Ibid, p. 40.

³² Ibid.

The Commission's methodology:³³

"...excluded Chinese originating HRC, and HRC from other unknown sources, from its calculation of competitive HRC costs so as to minimise the risk that these costs have also been impacted by GOC influence."

Orrcon submits that the correct or preferable decision would be to also exclude from the cost benchmark all other imported HRC costs incurred by those verified HSS exporters. It was open for the Commissioner to make this additional exclusion based on the relevant information before it for the inquiry period, and respectfully, would have been logical for it to do so.

The Commission made this further exclusion in the concurrent review inquiries for zinc coated (galvanised) steel and aluminium zinc coated steel ("Review 521/522").^{34 35} Review 521/522 addressed the same Chinese competitive HRC cost issue under a Particular Market Situation. In the Statement of Essential Facts to Review 521/522, the Commission's preliminary benchmark:³⁶

"...excluded Chinese originating HRC, and HRC from other unknown sources, from its calculation of competitive HRC costs, so as to minimise the risk that these costs have also been impacted by GOC influence."

In the Review 521/522 Final Determination, the Commission made the distinct additional exclusion in the benchmark adjustment for all other imported HRC:

"The Commission has excluded Chinese originating HRC, imported HRC and HRC from other unknown sources, from its calculation of competitive HRC costs, so as to minimise the risk that these costs have also been impacted by GOC influence." (emphasis added).

Between the SEF and Final Determination for Review 521/522, the Commission undertook the additional step of fully ensuring that the impact of the GOC's influence was not reflected in the cost adjustment, by excluding all other imported HRC. Applied to Review 529, under almost identical circumstances and over an almost identical period of inquiry, Orrcon asserts that the correct or preferable decision would have been for the Commission to make this additional cost exclusion also.

³³ Ibid, p. 42.

³⁴ Review 521 – *Dumping and Subsidisation of Zinc coated (galvanised) steel from China, India, Korea, Malaysia, Taiwan and Vietnam*, and Review 522 – *Dumping and Subsidisation of Aluminium zinc coated steel from China*.

³⁵ The inquiry period for Review 521/522 was fiscal year 2019, as compared to the Review 529 period being the twelve months ending September 2019.

³⁶ SEF 521/522, p. 37.



ANTI-DUMPING NOTICE NO. 2021/11

Hollow Structural Sections exported from the People's Republic of China, the Republic of Korea, Malaysia, Taiwan and the Kingdom of Thailand

Findings in relation to a Review of anti-dumping measures

Notice under section 269ZDB(1) of the *Customs Act 1901*

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed a review of the anti-dumping measures applying to hollow structural sections exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia, Taiwan and the Kingdom of Thailand (Thailand). The anti-dumping measures are in the form of a dumping duty notice and a countervailing duty notice.

The review commenced on 25 September 2019 and was extended on 19 December 2019 to include a revocation inquiry with respect to Kukje Steel Co., Ltd, an exporter of hollow structural sections from Korea.

On 27 July 2020, the anti-dumping measures with respect to Thailand were discontinued.

Recommendations resulting from the review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in *Anti-Dumping Commission Report No. 529 (REP 529)*.

I, KAREN ANDREWS, the Minister for Industry, Science, and Technology, have considered REP 529 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 529.

Under section 269ZDB(1)(a)(iii) of the *Customs Act 1901* (the Act), I DECLARE that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), with effect from the day after the publication of this notice, the dumping duty and countervailing duty notice is to be taken to have effect in relation to the exporters listed in the below table and exporters generally, as if different variable factors had been fixed in respect of those exporters, relevant to the determination of duty.

For Ta Fong Steel Co., Ltd. (an exporter from Taiwan) and uncooperative and all other exporters from Taiwan, the non-injurious price of goods for the purposes of the dumping duty notice is less than the normal value of goods.

In accordance with section 8(5B) of the Dumping Duty Act, I have had regard to the desirability of specifying a lesser amount of duty and have fixed the interim duty for Ta Fong Steel Co., Ltd. and uncooperative and all other exporters from Taiwan to be such a sum so that:

- the export price of goods; and
- that lesser duty,

does not exceed that non-injurious price of goods of that kind as ascertained.

For the remaining exporters from Korea, Malaysia and Taiwan, the non-injurious price of goods for the purposes of the dumping duty notice is greater than the normal value of the goods. Therefore a lesser amount of duty has not been applied.

For all exporters from China, and in accordance with sections 8(5BAA), 10(3D) and 10(3DA) of the Dumping Duty Act, and section 269TAC(2)(a)(ii) of the Act, I have not had regard to the desirability of specifying a lesser amount of duty, due to the situation in the market in the country of export.

Under section 269ZDB(1)(a)(ii) of the Act, I DECLARE that, for the purposes of the Act and the Dumping Duty Act, with effect from the day after the publication of this notice, the dumping duty notice is to be revoked in relation to the Korean exporter, Kukje Steel Co., Ltd.

To preserve confidentiality, details of the revised variable factors, being the ascertained export price, ascertained normal value and non-injurious price, will not be published. Particulars of the dumping margins established for each of the exporters and the effective rates of duty are also set out in the following table.

Exporter	Form of measures - IDD	Effective rate of IDD	Rate of ICD
China			
Dalian Steelforce Hi-Tech Co., Ltd.	combination	9.1%	Not applicable
Huludao City Steel Pipe Industrial Co., Ltd.	combination	20.7%	Not applicable
Tianjin Ruitong Iron & Steel Co., Ltd.	combination	8.0%	3.6%
Tianjin Youfa Group of companies	combination	15.6%	3.3%
Uncooperative, non-cooperative and all other exporters	combination	21.3%	45.6%
Korea			
HiSteel Co., Ltd.	floor price	0%	Not applicable
Kukje Steel Co., Ltd.	REVOKED	Not applicable	
Uncooperative and all other exporters	combination	2.8%	
Malaysia			
Alpine Pipe Manufacturing SDN BHD Company	combination	26.3%	Not applicable
Uncooperative and all other exporters	combination	27.2%	
Taiwan			
Shin Yang Steel Co., Ltd.	combination	0.5%	Not applicable
Ta Fong Steel Co., Ltd.	combination	4.3%	
Uncooperative and all other exporters	combination	20.9%	

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 529 has been placed on the Anti-Dumping Commission's public record. The public record may be examined at www.adcommission.gov.au. Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2471, or by email to investigations1@adcommission.gov.au.

Dated this *9th* day of *March* 2021

A handwritten signature in black ink, appearing to read "Karen Andrews". The signature is fluid and cursive, with the first name "Karen" and the last name "Andrews" clearly distinguishable.

KAREN ANDREWS
Minister for Industry, Science and Technology