



**Australian Government**  
**Anti-Dumping Review Panel**

# **ADRP REPORT No. 88**

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

March 2019

## Table of Contents

Abbreviations	2
Summary	4
Introduction	5
Conduct of the Review	6
Grounds for Review	10
<b>Dalian Steelforce Hi-Tech Co Ltd</b>	10
<b>Ursine Steel</b>	10
<b>Tianjin Youfa</b>	11
Consideration of Grounds	11
Recommendations	58

## Abbreviations

<b>Term</b>	<b>Meaning</b>
Act	<i>Customs Act 1901</i>
ADA	Anti-Dumping Agreement
ADC	Anti-Dumping Commission
Assistant Minister	Assistant Minister for Science, Jobs and Innovation
Appellate Body	Appellate Body of the World Trade Organization
ATM	Austube Mills Pty Ltd
COGS	Cost of Goods Sold
CTMS	Cost to Make and Sell
Commissioner	The Commissioner of the Anti-Dumping Commission
Dalian Steelforce	Dalian Steelforce Hi-Tech Co Ltd
FTZ	Free Trade Zone
Goods	Certain Hollow Structural Sections
Manual	Dumping and Subsidy Manual
Minister	Assistant Minister for Science, Jobs and Innovation
Review Period	1 July 2016 to 30 June 2017
Parliamentary Secretary	The Parliamentary Secretary to the Minister for Industry, Innovation and Science
Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 419	The report published by the Commission in relation to variable factors review
Reviewable Decision	The decision of the Minister made on 31 May 2018
SEF 419	Statement of Essential Fact published by the Commission 19 March 2018

Tianjin Youfa	Tianjin Youfa International Trade Co Ltd
Ursine	Ursine Steel Co., Ltd
WTO	The World Trade Organization

## Summary

1. Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce) and Tianjin Youfa International Trade Co Ltd (Tianjin Youfa) are Chinese exporters of Certain Hollow Structural Sections (the goods). Ursine Steel Co., Ltd (Ursine) is a Taiwanese exporter of the goods. Dalian Steelforce, Tianjin Youfa and Ursine are collectively hereinafter referred to as the Applicants.
2. Each of the Applicants sought review of the Minister's determination of variable factors impacting upon their individual dumping margins. The Applicants argued as follows:

**Dalian Steelforce** challenged the Minister's decision to accept its sales into the [REDACTED] Free Trade Zone (FTZ) as being sales made in the ordinary course of trade for home consumption in China. The Review Panel affirms the Minister's decision in relation to this claim. Dalian Steelforce also challenged the Minister's failure to make an adjustment to cover the average shipping time from China to Australia. The Commission agreed such an adjustment was appropriate and recalculated the ascertained export price and consequential dumping margin. The Review Panel has recommended that the Minister revoke the reviewable decision and substitute a new decision by re-determining the ascertained export price, resulting in a reduction of the dumping margin.

**Ursine** argued that the Minister had focused upon domestic sales which were not comparable to the goods exported to Australia. The Review Panel affirms the comparison undertaken by the Minister. Ursine also asserted the Minister had inappropriately focused upon the date of the export sales invoice when comparing those export transactions with domestic sales. The Review Panel directed the Commission to reinvestigate this assertion. The Commission's reinvestigation disproved Ursine's claims. Ursine also claimed the Minister ought to have adjusted for the price differential

between the cost of the coil used in the production of a domestic grade and the less expensive coil used to produce the goods exported to Australia. The Commission found no evidence of such a price differential. Accordingly, the Review Panel affirmed the Minister's decisions with respect to Ursine.

**Tianjin Youfa** argued that the Minister failed to give adequate consideration of, and weight, to its use of "narrow strip" in calculating the uplift cost of Hot Rolled Coil (HRC) used in the production of the goods exported to Australia. In the course of the review, the Commission reconsidered its approach to Tianjin Youfa's claims. The Commission concluded there is not a significant difference in the production process of HRC or Hot Rolled (HR) strip such that the additional cutting costs associated with converting HRC into HR strip was minimal. The Commission adopted a new methodology, by which it compared the HRC benchmark against the HRC and HR strip purchases of entities within the Tianjin Youfa group that produce the goods exported to Australia. The Commission also looked at other production costs of those entities and determined a weighted average cost of goods sold used in constructing the normal value, which had the overall effect of increasing the dumping margin by a small amount. Accordingly, the Review Panel recommended the Minister revoke the reviewable decision and substitute a new decision by re-determining the normal value impacting upon the dumping margin for Tianjin Youfa.

## Introduction

3. Austube Mills Pty Ltd (ATM) is the Australian manufacturer of the goods.
4. On 14 July 2017, the Commission initiated a review of the anti-dumping and countervailing measures (REP 419) to which the Applicants are subject. The initiation of the review followed an application by ATM, alleging one or more of

the variable factors relevant to the taking of the anti-dumping measures had changed: namely export price, normal value and the amount of the countervailing subsidy.

5. The review examined the Applicants' exports to Australia in the period 1 July 2016 to 30 June 2017 (the Review Period).
6. Two extensions were approved for completion of the review. On 6 June 2018, the Assistant Minister for Science, Jobs and Innovation (the Minister) published a notice (the Reviewable Decision) accepting the recommendations and reasons for the recommendations, including all the material findings of fact or law set out in the Commission's report of the review, REP 419. The reviewable decision had the effect of varying the fixed rate of combined interim dumping duty and interim countervailing duty (if applicable) to be applied to the Applicants' exports to Australia.
7. On 5 July 2018 and 6 July 2018, the Applicants lodged an application for a review of the decision (Review Application) with the Anti-Dumping Review Panel (Review Panel).
8. The Review Applications were accepted and a notice of the Review Panel's review, as required by section 269ZZI of the *Customs Act 1901*<sup>1</sup> (the Act), was published on 20 July 2018. The Senior Member of the Review Panel has directed in writing that the Review Panel for the purposes of this review be constituted by me.

## Conduct of the Review

9. In accordance with section 269ZZK(1), the Review Panel must recommend that the Minister either affirm the decision under Review, or revoke it and substitute a

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<sup>1</sup> Legislative references are to the *Customs Act 1901*, unless otherwise specified.

new specified decision. The Review Panel may recommend revocation of the Reviewable decision and substitution of a new decision only in circumstances where the new decision is materially different from the Reviewable Decision.

10. In undertaking the Review, section 269ZZ requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it was the Minister, having regard to the considerations to which the Minister would be required to have regard, if the Minister was determining the matter.
11. Subject to the limited exceptions provided for in subsections 269ZZK(4A) and (5), in carrying out its function the Review Panel is not to have regard to any information other than to “*relevant information*” as that expression is defined in section 269ZZK(6)(c), that is, information to which the Commissioner had, or was required to have, regard in reporting to the Minister. In addition to relevant information, the Review Panel is only to have regard to conclusions based on relevant information that is contained in the Review application and any submissions received under section 269ZZJ.
12. If a conference is held under section 269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information.
13. Conferences were held with representatives of the Commission on 1 August 2018, 9 August 2018, 24 August 2018, 15 January 2019 and 1 March 2019, for the purpose of clarifying information contained within the relevant Commission Report (REP 419), and the report entitled “Reinvestigation of Certain Findings in REP 419” (the Reinvestigation Report). A conference was undertaken with Tianjin Youfa’s representatives on 28 November 2018 and 28 February 2019 to clarify the Grounds for Review and for the purpose of clarifying relevant information contained with Tianjin Youfa’s Review Application. Non-confidential summaries of all conferences were placed on the public record.



14. The Commission also provided relevant documents containing confidential information. These documents and the correspondence with the Commission, concerning them, were not made publicly available.
15. Written submissions were received on 17 August 2018, 19 August 2018 and 20 August 2018 from each of the Applicants, the Commission and from ATM. In its submission Tianjin Youfa advised “Ground No.1 is no longer being pursued.”
16. On 22 August 2018, Tianjin Youfa provided an amended submission correcting some errors in the calculations contained within its earlier submission.
17. For the reasons detailed below, in relation to Ground 2 of Ursine’s Review Application, on 4 September 2018, I wrote to the Commissioner, pursuant to section 269ZZL, and required the Commissioner to reinvestigate the decision to fix upon the date of the export invoice, rather than the date of the export sales contract, as the operative dated for the selection of comparable domestic sales prices. This had the effect of suspending my consideration of the Review Application until completion of the Commissioner’s reinvestigation.
18. On 22 October 2018, ATM wrote to the Commission in response to my decision to direct the Commissioner to reinvestigate an aspect of Ursine’s Review Application. On 9 November 2018, Ursine’s representative lodged a written submission with the Commission rebutting ATM’s claims.
19. On 13 December 2018, Tianjin Youfa’s representatives wrote to the Review Panel drawing attention to information which was before the Commission in its development of REP 419. As the letter did not seek to introduce new information but relied upon information submitted to the Commission in the course of the review, I was satisfied its contents were relevant information.
20. On 31 January 2019, the Commission submitted the Reinvestigation Report containing, inter-alia, recalculated spreadsheets. A conference with the

Commission was held on 20 February 2019 to seek clarification on aspects of the Reinvestigation Report and upon Ursine's comments in response.

21. The Review Panel notes that prior to provision of the Reinvestigation Report to the Review Panel, the Commission afforded Ursine the opportunity to comment on a draft of the Reinvestigation Report, attachments and the dumping margin appendices. Ursine did not identify any issues in the draft Reinvestigation Report or the Commission's methodology, but did comment on the approach in the dumping margin appendices. The Commission amended those appendices in response to Ursine's comments.
22. On 31 January 2019, the Commission provided the Review Panel with recalculations in relation to Tianjin Youfa. Those recalculations were foreshadowed in light of the Commission's agreement, in conference on 15 January 2019, to limit its focus, for the purposes of constructing normal value, upon only those entities within the Tianjin Youfa group which had exported goods to Australia. Copies of the recalculations were provided to Tianjin Youfa and a conference convened on 28 February 2019 to afford to Tianjin Youfa an opportunity to comment on the Commission's methodology.
23. Unless otherwise indicated, in conducting these Reviews, I have had regard to:
  - the Review Applications (including documents submitted with the applications), insofar as they contained conclusions based on relevant information;
  - to REP 419 and its attachments;
  - to documentation provided by the Commission;
  - to the written submissions received as detailed in paragraphs 15 to 22 above;

- to the Reinvestigation Report and its attachments; and
- to the matters discussed in conferences.

## Grounds for Review

### Dalian Steelforce Hi-Tech Co Ltd

**Ground 1:** The Minister erred in determining profit by relying on Dalian Steelforce's sales to the FTZ which were not sold for home consumption in China;

**Ground 2:** The Minister erred in determining profit by relying on Dalian Steelforce's sales to the FTZ which were not sales made in the ordinary course of trade; and

**Ground 3:** The Minister erred by not making necessary adjustments to ensure that export prices and normal values were compared at the same time.

### Ursine Steel

**Ground 1:** The Minister erred in determining normal values using domestic sales which were not the most comparable like goods to the exported goods;

**Ground 2:** The Minister erred in determining the incorrect date of sale of the exported goods; and

**Ground 3:** The Minister erred in determining and applying a specification adjustment to the normal values.

## Tianjin Youfa

**Ground 1:** The ADC should have included in its profit calculation, only the profit derived from entities within the Tianjin Youfa group of companies that sold, on their domestic market, like goods to those exported to Australia<sup>2</sup>; and

**Ground 2:** The ADC failed to give adequate consideration of, and weight to, Tianjin Youfa's use of "narrow strip" in calculating the uplift cost of Hot Rolled Coil (HRC) raw material inputs used in the production of the goods exported to Australia.

## Consideration of Grounds

**Dalian Steelforce Ground 1: The Minister erred in determining profit by relying on Dalian Steelforce's sales to the FTZ which were not sold for home consumption in China.**

24. The focus of this Ground is upon the Commission's construction of Dalian Steelforce's normal value. Specifically, the amount of profit the Commission determined for inclusion within the normal value. Dalian Steelforce noted in its Review Application, the Commission recommended the Minister determine that sales by Dalian Steelforce destined for the FTZ, be treated as domestic sales of like goods, which were sold for home consumption in the country of export and in the ordinary course of trade. Accordingly, the Minister relied exclusively on such sales for the purposes of establishing an amount for profit pursuant to section 45(2) of the *Customs (International Obligations) Regulation 2015* (the Regulation).

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<sup>2</sup> As noted in paragraph 16, in its submission to the Review Panel, Tianjin Youfa withdrew Ground No. 1 of its Review Application.

25. The determination of normal value for the purpose of ascertaining whether or not there is a dumping margin is done pursuant to section 269TAC of the Act.

Section 269TAC(1) provides that subject to certain exceptions:

“the normal value of goods exported to Australia is the price paid or payable for goods sold in the ordinary course of trade for home consumption **in the country of export** in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.” [emphasis added]

26. One of the exceptions in section 269TAC(1) to the usual rule for determining normal value is found in subparagraph 269TAC(2)(a)(ii). The Commission gave consideration to the conditions within the Chinese HRC market and noted HRC typically accounts for over 90% of the costs to make HSS.<sup>3</sup> The Commission determined the Government of China materially influenced conditions within the HSS market during the review period and that the domestic price for Chinese HSS was substantially different to what it would have been in the absence of the influence of the Government of China. The Commission therefore determined, that during the review period, the domestic price for HSS was influenced by the Government of China to a degree which makes domestic sales of HSS unsuitable for use in determining normal value under section 269TAC(1).

27. Therefore, the Commission constructed normal value for all co-operative Chinese exporters, including Dalian Steelforce, under section 269TAC(2)(c).

28. Section 269TAC(2)(c) of the Act relevantly provides;

the normal value of the goods for the purposes of this Part is: ... the sum of:

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<sup>3</sup> REP 419 at page 18.

(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the **country of export**; and

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the **country of export**--such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale. [emphasis added]

29. Dalian Steelforce does not challenge the Commission's recourse to section 269TAC(2)(c), nor does it assert that the sales to its customer in the FTZ were not arms length. Dalian Steelforce's challenge under Ground 1 is that in determining an amount of profit, the Commission adopted the profit realized on Dalian Steelforce's sales of like goods to a customer within the FTZ, as if it were a domestic transaction. Dalian Steelforce's challenge was that such sales, objectively, could not be considered to have been sold for home consumption and in the ordinary course of trade in the country of export.<sup>4</sup>

30. Dalian Steelforce argues in its Review Application, that for the Commission to calculate profit in relation to Dalian Steelforce's sales of like goods to the FTZ, the Commission needed to have been satisfied:

- the profit must have related to sales for home consumption in the country of export;
- the profit must relate to sales of like goods; and
- the profit must have related to sales made in the ordinary course of trade.

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<sup>4</sup> The meaning of the phrase "in the ordinary course of trade" forms the basis of Dalian Steelforce's Ground 2 of its Review Application.

31. Dalian Steelforce argues the Commission ought not to have been so satisfied, as the sales to the FTZ were “akin to export sales rather than domestic sales for home consumption.”<sup>5</sup> In support of this argument, Dalian Steelforce noted the relevant Chinese law governing entry of goods in to the FTZ required, inter alia:

- goods entering the FTZ, from other parts of China, were deemed to be exports requiring export declaration formalities be complied with, as if the goods had been exported to another country;
- goods manufactured in the FTZ had to be exported and could only be transported from the zone to another part of China in “exceptional circumstances”; and
- raw material inputs transported from China to the FTZ for use in production within the zone are treated as “bonded goods”.

32. Dalian Steelforce noted the particular circumstances of its sales of like goods into the FTZ support the finding that such sales were not for home consumption.

Dalian Steelforce referred to the following characteristics of its sales into the FTZ:

- its customer within the FTZ is a manufacturer of [REDACTED] for direct export to [REDACTED];
- in addition to the obligation to complete export declarations for the goods sold into the FTZ, Dalian Steelforce incurs a residual “export” VAT of 8% on its sales, like all other Chinese exporters;

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<sup>5</sup> Dalian Steelforce's application to the Review Panel at page 11.

- Dalian Steelforce is required to hold an export license to sell into the zone, whereas other Chinese HSS producers do not hold such a license and are therefore unable to sell and compete for sales to the zone;<sup>6</sup> and
- sales to the FTZ are recorded as third party country exports in Dalian steels accounts.

33. Dalian Steelforce referred to two previous decisions by the Commission and Minister, in which it was accepted that sales to domestic customers were not considered sold for home consumption:

- Review of Measures Case 354 – Prepared or Preserved Tomatoes – Exporters: Calispa SpA and Princes Industrie Alimentary S.r.L.
- Investigation Case 217 – Prepared or Preserved Tomatoes – Exporter: La Doria S.p.A.

34. In Case 354, as noted by Dalian Steelforce, sales of “bright cans”<sup>7</sup> were not sales considered to have been for domestic consumption as the Commission could not be certain the goods were destined for home consumption and not exported.<sup>8</sup> In Case 217, the determining factor was the inability to identify whether the “bright cans” ultimately would be sold to an export market. In those two cases, Dalian Steelforce argued, the determining factor for the Commission and Minister was whether the goods were consumed domestically.

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<sup>6</sup> It is inferred that Dalian Steelforce is not the sole license supplier of HSS into the zone and does not enjoy the status of a monopoly supplier of HSS. Dalian Steelforce’s point appears to be that other Chinese producers of HSS cannot automatically sell into the zone and require a license before doing so.

<sup>7</sup> Unlabeled cans.

<sup>8</sup> Review of Measures (Case 354)-Prepared or Preserved Tomatoes-: Exporters: Calispa SpA and Princess Industrie S.r.L, Investigation (Case 217)-Prepared or Preserved Tomatoes-Exporter: La Doria S.p.A.



35. In support of its argument under Ground 1 of its Review Application, Dalian Steelforce attached a copy of a legal opinion headed “*Memorandum of advice regarding ‘home consumption.’*” The opinion argued the phrase for “home consumption” should have been taken to mean “circulation,” and as Dalian Steelforce’s sales to the FTZ were not for home consumption, they could not have entered circulation within the domestic market of China.
36. In REP 419,<sup>9</sup> the Commission referred to an earlier investigation, Continuation 379, which was initiated on 14 July 2017 and the outcome published on 26 June 2017, a little over a month before initiation of the investigation which culminated in REP 419. The Commission noted its conclusion in REP 419 was “consistent with Continuation 379” where Dalian Steelforce’s sales into the FTZ were treated as being sold for home consumption.
37. The Commission noted in REP 419:
- “the goods sold by Dalian Steelforce to the EPZ are sold to an entity in China who consumes the goods as imports to produce a substantially different product. It is this new product which is then exported out of China. The fact that the sales may be subject to certain administrative arrangements in China does not impact on the fact that they are sold in China to be consumed in a manufacturing process.”<sup>10</sup>
38. The phrase “for consumption in the country of export” is not defined in the Act nor in the Anti-Dumping Agreement. The phrase has received little attention from WTO Panels or the Appellate Body. However, in *US - Oil Country Tubular Goods Sunset Reviews (Article 21.5-Argentina)* the Panel said,

“the starting point for normal value is the comparable price in the ordinary course of trade for the like product when destined for consumption **in the exporting**

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<sup>9</sup> REP 419 at page 25.

<sup>10</sup> At page 26.

**country.** Thus, the concept of dumping is, in the first instance, a comparison of home market [i.e. in the country of export] and export prices.”<sup>11</sup> [emphasis added]

39. The legal opinion in support of Dalian Steelforce’s Review Application sought to rely upon the phrase “entry for home consumption.” Another phrase not defined by the Act, but generally accepted as being the point in time at which imported goods pass from being under the control of Customs authorities and enter the commerce of the country. I do not place any significance upon the similarity of the phrases “for consumption in the country of export” and “entry for home consumption.” Simply put, as the legislature has embraced “for consumption in the country of export,” as it appears in Article 2 of the Anti-Dumping Agreement, the legislature must be taken for it to mean something different to “entry for home consumption.”
40. As a starting point, the ordinary meaning is to be ascribed to the language of the legislation having regard to its context. The ordinary meaning of consumption is “the using up of goods and services having an exchangeable value.”<sup>12</sup> The context in which it is used, in both the Act and the Anti-Dumping Agreement, refers to the observable difference between two prices, and exporter or producer’s domestic price in the country of export and the relevant export price to the Australian market. In the case of Dalian Steelforce, the focus is upon prices within the country of export and their comparison with export sales to Australia.
41. In a geographical sense, the FTZ is within the country of export and as acknowledged by the Commission, the like goods sold into the FTZ are consumed, or used up, in the production of another product. I am therefore satisfied that the like goods sold into the FTZ were consumed in the country of export.

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<sup>11</sup> Panel Report, US – *Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina)*, para. 7.76.

<sup>12</sup> Macquarie Concise Dictionary, Fifth Edition.

42. Accordingly, I reject Ground 1 of Dalian Steelforce's Review Application.

**Dalian Steelforce, Ground 2: The Minister erred in determining profit by relying on Dalian Steelforce's sales to the FTZ which were not sales made in the ordinary course of trade.**

43. In REP 419, the Commission concluded that it could not determine normal values based upon Dalian Steelforce's domestic sales to its customer in the FTZ due to "a particular market situation" impacting upon the Chinese steel sector. Accordingly, normal values were determined under section 269TAC(2)(c), having adopted a HRC benchmark cost, and on the basis of a profit determined under section 45(2) of the Regulations, such profit being based upon the level of profit Dalian Steelforce had achieved upon its sales to its customer in the FTZ.
44. The focus of Dalian Steelforce's challenge under Ground 2 is the Commission's reliance exclusively on the sales of the goods to its customer in the FTZ for the purposes of establishing an amount of profit pursuant to section 45(2) of the Regulations.
45. In support of Dalian Steelforce's Ground 2 in its Review Application, it makes two arguments.
46. The first is that given the Commission's numerous investigations into steel products emanating from China, and elsewhere, the Commission ought to have recognised that the profit Dalian Steelforce realised on its sales to its customer in the FTZ were higher than the profits realised by other sellers of the goods in China, such that the sales into the FTZ could not be said to have been "normal".
47. The second argument claims the Commission's approach to Dalian Steelforce's sales into the FTZ were inconsistent with its past practice and with the practice of other investigating authorities.

48. In addressing the level of profit argument, I will outline the legislative framework and the provisions of the Anti-Dumping Agreement upon which that framework is based.

49. Section 45 of the Regulation relevantly provides:

(1) For subsection 269TAC(5B) of the Act, this section sets out:

(a) the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) of the Act, work out an amount to be the profit on the sale of goods; and

(b) factors that the Minister must take account of for that purpose.

(2) The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods **in the ordinary course of trade** [emphasis added]

50. The Full Court of the Federal Court in *Steelforce Trading Pty Ltd v the Parliamentary Secretary to the Minister of Industry, Innovation And Science*<sup>13</sup>, “the general rule, set out in reg 45(2), is that the Minister in calculating the amount of [profit] ... should ‘work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.’”<sup>14</sup>

51. The Full Court also went on to state,

“what reg 45 sets out is a range of real world proxies which can be determined and which are to stand in the place of, and to provide the answer to, the hypothetical question posed by section 269TAC(2)(c)(ii). The primary rule (or proxy) is set out in regular 45(2). It is that the amount of profit is to be determined

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<sup>13</sup> [2018] FCAFC 47.

<sup>14</sup> At para 84.

using data from the sale of like goods by the exporter. ... There is nothing hypothetical about the assessment called for by regular 45(2). **If like goods are sold in the domestic market and the data is available then reg 45(2) requires the profit to be determined on those actual sales of like goods.**<sup>15</sup> [emphasis added]

52. Section 269TAAD provides as follows:

(1) “If the Minister is satisfied, in relation to goods exported to Australia:

(a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:

(i) for home consumption in the country of export; or

(ii) for exportation to a third country; at a price that is less than the cost of such goods; and

(b) that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period;

the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.”

53. In its Review Application, Dalian Steelforce notes, section 269TAAD is,

“posed as a negative- it explains circumstances in which sales will not be considered as in the ordinary course of trade.”<sup>16</sup>

Although section 269TAAD prescribes two circumstances in which sales will not be regarded as having been made in the ordinary course of trade, it “does not

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<sup>15</sup> at para 93.

<sup>16</sup> Dalian Steelforce Review Application at page 14.

provide an exhaustive list of factors as to when sales will not be considered to be in the ordinary course of trade.”<sup>17</sup>

54. Dalian Steelforce refers to the Dumping and Subsidy Manual (the Manual), which acknowledges that there may be factors other than sales at a loss which render transactions not in the ordinary course of trade.<sup>18</sup>

55. The legal opinion, lodged in support of Dalian Steelforce’s Review Application, argues that the ultimate goal of constructing normal value under section 269TAC(2)(c) is to calculate a proxy price that is representative of the sales of like goods for home consumption. I share this view.

56. The phrase “ordinary course of trade” is not defined in the Act, nor in the Anti-Dumping Agreement.<sup>19</sup> However, section 269TAAD prescribes the circumstances in which sales are not to be treated in the ordinary course of trade; namely when sales of substantial quantities of like goods are below cost. Section 269TAAD purports to give effect to Australia’s obligations under the Anti-Dumping Agreement, specifically under Article 2.1.

57. Article 2.1 of the Anti-Dumping Agreement relevantly provides:

“sales of the like product in the domestic market of the exporting country ... At prices below per unit (fixed and variable) cost of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of

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<sup>17</sup> Ibid. at page 14.

<sup>18</sup> “The Commission accepts there can be a number of factors which can be taken into account when deciding whether sales are in the ordinary course of trade – not only sales at a loss, which is the subject of section 269TAAD.” Dumping and Subsidy Manual-April 2017, page 32-33.

<sup>19</sup> “*The Anti-Dumping Agreement does not define the term ‘in the ordinary course of trade’*” Appellate Body Report, *US-Hot Rolled Steel*, para 139.

time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time.”

58. The Appellate Body in *US - Hot Rolled Steel*<sup>20</sup> agreed with the proposition that,

“generally sales are in the ordinary course of trade if made under conditions and practices that, **for a reasonable period of time prior to the date of sale of the subject merchandise, have been normal for sales of the foreign like product.**” [emphasis added]

The Appellate Body noted when looking into the meaning of sales in the ordinary course of trade under Article 2.1 of the Anti-Dumping Agreement, that the Article does provide for a method to determine whether sales below cost are in the ordinary course of trade. However, the Appellate Body considered that the said provision does not purport to exhaust the range of methods for determining whether sales are in the ordinary course of trade. The Appellate Body noted,

“Article 2.1 of the *Anti-Dumping Agreement* provides that normal value – the price of the like product in the home market of the exporter or producer – must be established on the basis of sales made ‘in the ordinary course of trade’. Thus, sales which are *not* made ‘in the ordinary course of trade’ must be excluded, by the investigating authorities, from the calculation of normal value. ... Article 2.1 requires investigating authorities to exclude sales not made ‘in the ordinary course of trade’, from the calculation of normal value, precisely to ensure that normal value is, indeed, the ‘normal’ price of the like product, in the home market of the exporter. Where a sales transaction is concluded on terms and conditions that are incompatible with ‘normal’ commercial practice for sales of the like product, in the market in question, at the relevant time, the transaction is not an appropriate basis for calculating ‘normal’ value.”<sup>21</sup>

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<sup>20</sup> Appellate Body Report, *US - Hot Rolled Steel*, para 139.

<sup>21</sup> *Ibid.* at paras 139 and 140.

59. The Appellate Body went on to consider circumstances in which a sales price is higher or lower than the “ordinary course of trade” price. The Appellate Body held such consideration is not limited to a question of comparing prices, and that the other terms and conditions of the transaction must be taken into account:

“We note that determining whether a sales price is higher or lower than the ordinary course price is not simply a question of comparing prices. Price is merely one of the terms and conditions of the transaction. To determine whether the price is high or low, **the price must be assessed in light of the other terms and conditions of the transaction**. Thus, the volume of sales transaction will affect whether a price is high or low. Or, the seller may undertake additional liability or responsibility in some transactions, for instance for transport or insurance. These, and a number of other factors, may be expected to affect an assessment of the price.”<sup>22</sup> [emphasis added]

60. Thus, for the Appellate Body, the determining factor was if the terms and conditions were incompatible with “normal” commercial practices for the sales of the like product, in the market in question at the relevant time, the transaction is not an appropriate basis for calculating normal value.

61. I note Dalian Steelforce was established to be an export focused producer, predominately to supply the Australian and New Zealand markets with a range of steel products. Consignments to these markets are made to distributors and are in reasonable or substantial quantities.<sup>23</sup>

62. The legal opinion argued it was necessary to consider the particular circumstances of the sales to Dalian Steelforce’s customer within the FTZ. I agree with this approach. It is said such sales are not representative of sales of HSS within the Chinese market generally. The opinion noted, the sales to the FTZ were typified by small quantities, when compared to consignments to

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<sup>22</sup> Ibid. at para 142.

<sup>23</sup> Dalian Steelforce’s Review Application at page 14.



Australia and therefore attracted high prices. In its Review Application, Dalian Steelforce stated its pricing to its customer in the FTZ reflected that those sales were irregular “and for a very small parcel which are below Dalian Steelforce’s nominal minimum order quantities.”<sup>24</sup> This is in contrast to its exports to Australia which typically are regular and large orders.

63. The legal opinion noted, the profit on the FTZ sales (██████%) was high and disproportionate to profits achieved by other manufacturers and exporters of HSS that sell the goods for home consumption in the Chinese market.<sup>25</sup> The opinion concluded noting there is ample information before the Commission, obtained in the course of review, and in other reviews and investigations into steel products exported from China, that would allow for the determination of profit normally realised by domestic exporters, on sales of the same general category of goods, in the domestic market of China.
64. I agree that a profit of ██████% realised on the sale of a product which is generally regarded as a commodity appears, at first sight, to be unexpectedly healthy, but as the Appellate Body has noted, a price comparison is not determinative, regard must be had to the other terms and conditions of the transaction.
65. The Review Panel has addressed what was said to be the Commission’s “unreasonableness” in the adoption of a high profit ██████% generated from an exporter’s single sale of the goods under consideration in its domestic market in

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<sup>24</sup> Dalian Steelforce Review Application at page 16.

<sup>25</sup> Although Dalian Steelforce did not outline the method used to calculate the profit margin, the Commission did not take issue with the stated amount in its submission to the Review Panel. I therefore assume that the stated profit is accurate and will treat it as such.

Anti-Dumping Review Panel Report 79<sup>26</sup> (REP 79). The pertinent facts in that case can be stated as follows:

- the exporter's business model was that of an export orientated and export dominated company;
- the exporter's policy was not to engage in domestic sales;
- the sale was the only transaction which occurred in the inquiry period;
- the profit margin on the sale was high compared to the profit realised by the exporter on its export sales;
- the profit margin on the single sale was high when compared to other sellers within the country of export, of goods of the same general category; and
- the single domestic transaction accounted for only ██████% of the exporter's total company turnover.

66. In REP 79, the Review Panel noted,

“60. The fact that the domestic sales used for the normal value have ██████ profit than other sales does not of itself mean that the profit from those sales cannot be used to work out the profit on a constructed normal value under s.45(2) of the Regulation. A significant difference could of course indicate that the sales producing such a profit were not made in the ordinary course of trade. If so, then s.45(2) cannot be used.

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<sup>26</sup> ADRP REPORT No. 79 Dichlorophenoxy-acetic Acid (2, 4-D) exported from the People's Republic of China.

61. It is important to note that the domestic sales relied upon by the ADC for the purpose of working out the profit under s.45(2) were the result of an arms-length transaction. The submission by [the exporter] does not establish why there was such a [REDACTED] profit. While various factors are mentioned which, it is contended, make the sale not in the ordinary course of trade, these factors do not explain the [REDACTED] profit. ...

62. Whatever the reason for the difference in the profit made by [the exporter] on its export and domestic sales, it has not been established that it is as a result of a factor which would take the sales outside the terms of s.45(2) and does not mean that the domestic sales cannot be used for the working out of the profit under s.45(2). I do not consider that [the exporter] has established that the use of those sales was not permitted under s.45(2) or that the use has meant that the reviewable decision is not the correct or preferable decision.”<sup>27</sup>

67. REP 79 concluded by accepting the [REDACTED] level of profit as being in the ordinary course of trade.

68. As was the case in REP 79, in the present case (REP 419), the Commission took the view that Dalian Steelforce’s “export orientation” does not, of itself, render sales as not in the ordinary course of trade. The Commission went on to note, that “sales to the FTZ are arm’s-length transactions to an unrelated entity which have occurred over several years”. In its Review Application, Dalian Steelforce confirmed “the circumstances, nature and facts surrounding Dalian steel forces [FTZ] sales remained unchanged since the original investigation. (1 July 2010).” This trading relationship contrasts with that considered by the Review Panel in REP 79, where it was accepted that only one domestic transaction had occurred within the investigation period, a transaction described as being “one-off”. In the

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<sup>27</sup> Ibid at paras 60 to 62.

present case, the Commission observed, “Dalian Steelforce has continued to make ... sales [to the FTZ], establishing a pattern of trade.”<sup>28</sup>

69. The Commission then expressed the view that,

“domestic sales with a different level of trade to export sales does not render those sales not in the ordinary course of trade. Where differences in level of trade are shown to affect price, adjustments are made, if warranted, to ensure fair comparison with export price.”

70. In REP 79, the Review Panel agreed that the comparison of export price and normal value,

“has to be fair in the sense that the export price and the normal value have to be properly comparable. This is the basis for adjustments to be made under section 269TAC(8) and (9).”<sup>29</sup>

71. I note although the Commission made reference to the possibility of a level of trade adjustment, such an adjustment was not pressed by Dalian Steelforce either with the Commission nor with the Review Panel. Accordingly, it is not an issue on which the parties are in dispute, and I do not propose to further address the matter.

72. In REP 419 the Commission went on to conclude,

“the categories of sales to the EPZ have been made by Dalian Steelforce for several years and that the sales were prime grade product made to a standard similar to HSS exported to Australia. The Commission is of the view that this sustained sale of prime product to a customer located in China demonstrates that the sales are “normal” both in the context of Dalian Steelforce’s own selling

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<sup>28</sup> REP 419 at page 26.

<sup>29</sup> REP 79 at page 19, para 59.

behaviour and for sales of HSS in general-being arm's-length, profitable sales over a reasonable period.”<sup>30</sup>

73. Given the circumstances noted above, I agree with the Commission's assessment that Dalian Steelforce has established a pattern of trade over a significant period of time, those sales are at arms length and they are profitable. The transactions have the characteristics of being ordinary, in the sense that they reflect the operation of normal market forces, over a significant period, and as such, they appear to be ordinary or not unusual. Therefore, it cannot be said that those sales were not in the ordinary course of trade and I reject Dalian Steelforce's argument to the contrary.
74. I shall now address the second argument advanced in support of Ground 2 of Dalian Steelforce's Review Application: namely, the Commission's approach to Dalian Steelforce's sales into the FTZ were inconsistent with past practice and with the practices of other investigating authorities.
75. Dalian Steelforce's Review Application references eight previous investigations, assessments and reviews in which the Commission has accepted that Dalian Steelforce's sales into the FTZ should not be treated as sales made in the ordinary course of trade.<sup>31</sup> Of particular significance is the Commission's comments in Duty Assessments 59 and 71 which, in relation to Dalian Steelforce's sales into the FTZ, noted,

“the level of trade differs from Dalian Steelforce's normal operations and export sales which are generally sales to traders ... the main focus of Dalian Steelforce's operations is to manufacture products for export to Australia and New Zealand”<sup>32</sup>

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<sup>30</sup> REP 419 at page 27.

<sup>31</sup> Dalian Steelforce Review Application at pages 15 and 16.

<sup>32</sup> Ibid. at pages 15 and 16.

and therefore, concluded that the sales into the FTZ should not be considered to be in the ordinary course of trade.

76. In Review 379, Dalian Steelforce notes the Commission's conclusion that sales in to the FTZ,

“were not sales in the ordinary course of trade due to the nature of the sales, been at different levels of trade to the corresponding export sales and Dalian Steelforce as normal operations.”<sup>33</sup>

77. In its Review Application, Dalian Steelforce noted, in the course of the current review, the Commission's verification team concluded in their Exporter Visit Report that it was “satisfied that Dalian Steelforce's domestic sales are not in the ordinary course of trade.” The Commission is not bound by the preliminary views of the verification team. Accepting the desirability for certainty, nevertheless the Commission is not bound by its earlier conclusions regarding Dalian Steelforce's sales into the FTZ. In the current review, the Commission was required to perform its statutory functions and powers to determine Dalian Steelforce's normal value according to law. The question therefore before the Review Panel is whether, in departing from its previous practice, the Commission undertook an objective assessment and provided a reasoned explanation such that its new approach was the correct or preferable decision in the particular circumstances of this case.

78. In its Review Application to the Review Panel, Dalian Steelforce referred to three investigations undertaken by the European Union in which it was concluded, due to the particular circumstances of the relevant markets, domestic transactions were not regarded as having been made in the ordinary course of trade.<sup>34</sup> One such case concluded, “those sales were not, by reason of those unusual

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<sup>33</sup> Ibid. at pages 15 and 16.

<sup>34</sup> Ibid. at pages 18 and 19.

circumstances, in the ordinary course of trade.”<sup>35</sup> Another concerned “a ‘local export’ sale in a domestic transaction of the product from the producer to a domestic buyer, who uses the product as an intermediary element in the final product destined for export.”<sup>36</sup>

79. In the latter case the European Union found:

“these sales were made through a specific export oriented sales channel with a particular market situation. The exporting producers concerned specifically identified these sales in their accounting records as being destined for incorporation in products for export. Given their particular market situation, it was concluded that such ‘local export’ sales were not made in the ordinary course of trade and therefore, that their inclusion in the normal value calculations would not permit a proper and fair comparison with the export price.”<sup>37</sup>

80. As stated above, the Commission’s task was to perform its statutory functions and powers to determine Dalian Steelforce’s normal value according to law. The practices of other investigating authorities cannot prevail over an objective and reasoned analysis of the particular factual circumstances within the context of the statutory provisions. Accordingly, I give little weight to the practices of other investigating authorities.

81. In REP 419, the Commission expressly stated:

“in Continuation 379, the Commission took into account the finding that sales to the EPZ were a different level of trade to Dalian Steelforce’s export sales and that the main focus of its operations is to manufacture products for export to Australia”.

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<sup>35</sup> Investigation (Case 145) into Geosynthetic clay liners.

<sup>36</sup> EU investigation into Polyester Staple Fibers exported from Korea.

<sup>37</sup> Ibid.

The Commission went on to state, following reconsideration of the issue:

“the factors upon which it concluded that the EPZ sales were not in the ordinary course of trade were not strong. A review of the factors combined with the fact that Dalian Steelforce had continued to make these sales, establishing a pattern of trade, has caused the Commission to reconsider the status of these sales.”

82. As noted above, the Commission was not precluded from departing from its past treatment of Dalian Steelforce’s sales into the FTZ, provided such a departure was consistent with its statutory duties and functions, and provided any such departure flowed from an objective examination and was accompanied by a reasonable explanation. I am satisfied that the Commission has met these obligations.

83. Accordingly, I reject Ground 2 of Dalian Steelforce’s Review Application.

**Dalian Steelforce, Ground 3: The Minister erred by not making necessary adjustments to ensure that export prices and normal values were compared at the same time.**

84. REP 419 noted HSS exported to Australia by Dalian Steelforce in the review period was sold to Dalian Steelforce Trading Pty Ltd (Steel Force Trading), which sold the goods to Steel Force Australia Pty Ltd (Steel Force Australia). The Commission found that the Steel Force’s group prices were influenced by the commercial, management and ownership relationships within the group. Accordingly, the Commission treated such sales as not arm’s-length, as the majority of the imported selected shipments were unprofitable, such sales were not arm’s-length. Therefore, the Commission determined Dalian Steelforce’s export price in accordance with section 269TAB(1)(c), having regard to all the circumstances of the exportation.

85. In doing so the Commission adopted what is referred to as the deductive method, taking into account all of the costs of importation incurred by both Steel Force



Trading (the intermediary) and Steel Force Australia (the importer), and an amount for profit.

86. Dalian Steelforce, in its Review Application, noted that Steelforce Australia's sales to domestic customers were made from stock held in various distribution centres throughout Australia. As Dalian Steelforce's normal value reflected constructed prices at the FOB level at the date of invoice, the Commission adopted a timing adjustment to Steel Force Australia's selling prices, to ensure a fair comparison. As inventory was typically carried by Steel Force Australia for three months, this period was adopted by the Commission as generating the timing adjustment.
87. Whilst Dalian Steelforce agrees with the Commission's approach to the timing adjustment, it argues that to accurately calculate the date of sale corresponding to the date of shipment, a further adjustment is required to cover the average shipping period between the date of exportation and the date of the arrival of the goods in Australia (i.e. the duration of the sea voyage). Dalian Steelforce suggests this period requires an additional adjustment of, on average, 30 days.
88. In the original calculations, in calculating deductive export prices, the Commission agreed with Dalian that the dates of arms length sales to customers in Australia should be adjusted by the importer's average inventory holding period to determine a date of importation for export sales. As part of Reinvestigation 379, the Commission discovered that the timing adjustment should include a period approximating the duration of the sea voyage, to arrive at an exportation date. REP 379 does reflect an additional adjustment for the average length of the sea voyage. However, REP 419 does not reflect such an adjustment.
89. The Commission has advised the Review Panel that an additional adjustment for the length of the sea voyage ought now be included and form part of Dalian's deductive export prices.

90. This change involved deducting the average inventory holding period and 30 days from the Steelforce Australia sales month to arrive at an estimate of the exportation month. The adjustment was carried into the Dumping Margin worksheet to recalculate the dumping margin. As using the additional 30 day adjustment meant that export prices are not available for the month of June 2017, May 2017 prices have been used for this month. As a result of this change, the dumping margin falls from 11.0% to 10.5%. These changes were reflected in amended spreadsheets provided to the Review Panel on 22 August 2018.<sup>38</sup>
91. I endorse those changes and the consequential changes to the relevant variable factor (ascertained export price) and to the dumping margin.
92. For the purpose of section 269ZZK(1A), I advise that the new ascertained export price and dumping margin are materially different from those under the reviewable decision and I hereby endorse such recalculations.
93. I recommend the Minister affirm the Reviewable Decision, in so far as it relates to Dalian Steelforce, but for the ascertained export price (a variable factor) and dumping margin. I recommend the Minister revoke the ascertained export price and substitute a new ascertained export price and dumping margin consistent with those outlined in the spread sheets provided to the Review Panel, and detailed in paragraph 90.

**Ursine Steel, Ground 1: The Minister erred in determining normal values using domestic sales which were not the most comparable like goods to the exported goods**

94. Ursine is a Taiwanese manufacturer of HSS. Ursine procures HRC which it then further processes to the required specifications and dimensions requested by the

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<sup>38</sup> Spread Sheets Headed "419-Dalian-Appendix 5-DM (updated for ADRP).xlsx" and "419-Dalian-Appendix 1- Ded EXP (updated for ADRP).xlsx".

customer. During the review period, Ursine exported to Australia [REDACTED]. On the domestic market, Ursine sold various grades of [REDACTED], along with other grades and types of HSS.

95. In its Review Application, Ursine claimed the coil used to manufacture the [REDACTED] Grade exported to Australia was also used to manufacture a domestic model known as [REDACTED]. During the review which culminated in REP 419, Ursine submitted to the Commission that [REDACTED] was the most comparable like model (to Grade [REDACTED]) sold domestically, as it was manufactured from the identical coil to that used in the production of the goods exported to Australia. Ursine went so far as to state “that domestic products specified to [REDACTED] are the most comparable domestic like models as they possess characteristics that are identical to the exported goods.”<sup>39</sup>
96. Although acknowledging the commonality of the raw material inputs, the Commission took the view that the most comparable domestic like model was [REDACTED].
97. Ursine claimed, the Commission’s finding that [REDACTED] was the most comparable domestic model to the exports of [REDACTED] is incorrect and inconsistent with the evidence before the Commission.
98. In its Review Application, Ursine included an extract of a table which it said was included in its Exporter’s Questionnaire Response to the Commission, which demonstrates the exported model [REDACTED], and the domestic model [REDACTED] have no differences between them in terms of grade, size, wall thickness, shape or finish.

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<sup>39</sup> Ursine’s Review Application at page 11.

99. Ursine also referred the Review Panel to evidence which showed the export model [REDACTED] and the domestic model [REDACTED] share common galvanised coil specifications [REDACTED]. Ursine asserted the exported goods, and the goods sold domestically, have the same **minimum yield strength** as required by [REDACTED], even though the yield strength stipulated for the [REDACTED] standard is lower. In other words, products specified to grades [REDACTED] and [REDACTED] have identical **actual yield strength**, which in the case of [REDACTED], would be above the minimum yield strength specified in the relevant Taiwanese and Australian standards [emphasis added].

100. Ursine argues such characteristics confirm that the closest structural grade of like goods sold on the domestic market during the review period is [REDACTED]. Ursine further argues that the common characteristics enable both models to be used in the same structural applications (i.e. for general building materials).

101. Ursine also made reference to what is described as an exporter briefing submission, given by the Australian manufacturer of the goods ATM, in the course of which ATM proposed that the model matching principle be conducted by determining the grade of the product. Ursine agreed with this approach and suggested the Commission rely upon the **actual yield strength** of the finished products, and not the **minimum yield strength** specified in the relevant standards as both [REDACTED] and [REDACTED] are produced from the same coil feedstock, they would have identical **actual yield strengths** [emphasis added].

102. Ursine argues that in selecting a domestic model or grade for comparison to the exported goods, the Commission ought to have focused upon the actual yield strength of the domestic products rather than on the minimum yield strength for each grade or model and the minimum yield strength specified by the relevant Taiwanese and Australian standards. The rationale for this method of selection is that if a domestic model or grade shares a common coil specification with an export grade or model, the domestic and exported products' actual yield strength

will be the same and that yield strength may exceed the minimum yield strength required by both the relevant domestic and export standards.

103. In the conferences held with Commission representatives on 1 August and 24 August 2018, it was acknowledged that actual yield strength may exceed the minimum yield strength specified by a particular standard. In the conference held on 1 August 2018, Commission representatives described Ursine's attempts to differentiate between minimum yield strength and actual or average yield strength as "a red herring". The Commission representatives noted that the actual yield strength

"is something which is not typically known to, or of interest to the customer ... All the customer is interested in, and prepared to pay for, is that the product meets the minimum [yield strength] standard."<sup>40</sup>

104. In the conference held on 24 August 2018, Commission representatives confirmed that the minimum yield strength to comply with [REDACTED] was [REDACTED].

105. In that conference, the Commission Representatives were referred to page 11 of Ursine's Review Application. It was noted that the Table at page 11 specifies the minimum yield strength of [REDACTED] and [REDACTED] as being [REDACTED] and [REDACTED] respectively. The Representatives were asked whether they would agree with the following statement at page 11 of the Review Application,

"the export model [REDACTED] and domestic model [REDACTED] share common galvanised coil specifications ... As such, they **possess the same minimum yield strength** as required by [REDACTED], despite the lower yield strength requirements stipulated in the [REDACTED] standard" [emphasis added].

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<sup>40</sup> Conference Summary 24 August 2018 at page 5.

The Commission Representatives stated that statement was “inaccurate” and referred to Ursine’s response to the Exporter Questionnaire (C 4.2) where it is stated that the “Standard Yield Strength” for [REDACTED], [REDACTED]-Export and [REDACTED] are [REDACTED], [REDACTED] and [REDACTED] respectively.

106. The Commission Representatives were asked to comment on the following statement at page 17 of Ursine’s Review Application,

“[REDACTED] has a greater actual yield strength value ([REDACTED]) than that of the exported [REDACTED], which results in a higher unit price.”

The Representatives responded to the effect that the minimum yield strength is the most determinative feature in terms of appropriate comparisons, as the minimum yield strength is what drives the market value of the product. Buyers set the price having regard to the certainty derived from meeting the minimum requirements of the standard.

107. Commission Representatives acknowledged that the physical properties of HRC vary from coil to coil and that although a particular product is sold as meeting a particular standard, for example [REDACTED], its actual yield strength may be greater. The Commission Representatives stated, the buyer will not know the actual yield strength until the mill certificate is delivered with the goods. The actual yield strength is therefore not a relevant consideration when agreeing on price. The Commission Representatives therefore agreed with Ursine’s comment in its application to the effect that [REDACTED] has a greater actual yield strength of value ([REDACTED]) than that of the exported [REDACTED].

108. The Commission Representatives noted that if the mill certificates for the exported [REDACTED] were examined their actual yield strength may well be above [REDACTED]. Nevertheless, the Commission Representatives reiterated that it is compliance with the minimum yield strength of a particular standard which drives the price.

109. Accordingly, I endorse the Commission’s analysis and reasoning and reject Ground 1 of Ursine’s Review Application and affirm the Reviewable Decision relating to Ground 1.

**Ursine Steel, Ground 2: The Minister erred in determining the incorrect date of sale of the exported goods**

110. The Manual<sup>41</sup> outlines Commission policy and practice with regard to establishing the date of sale:

“In establishing the date of sale, the Commission will normally use the date of invoice as it best reflects the material terms of sale. For the goods exported, the date of invoice also usually approximates the shipment date.

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.

For such a claim to succeed it would first be necessary to demonstrate that the material terms of sale were, in fact, established by this other date. In doing so, the evidence would have to address whether price and quantity were subject to any continuing negotiation between the buyer and the seller after the claimed contract date. ...

Any claim for an adjustment would need to substantively address:

- whether, why, and to what degree, the considerations in determining price differed between export and domestic sales;
- whether the materials cost differs at the time of subsequent invoicing of that export sale (compared to domestic sale invoices in the same invoice month of that export sale) having regard to factors such as the production

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<sup>41</sup> Dumping & Subsidy Manual, as at April 2017, page 62.

schedules for domestic and export; and lead times for purchasing main input materials;

- whether contracts were entered into for the materials purchases, and materials inventory valuation.”

111. In its Review Application, Ursine went on to address each of the relevant factors referred to in the Manual.

112. Ursine provided details of its export sales process. Upon execution of an export sale contract with its Australian customer, Ursine regards price and other material terms of trade as having been fixed and binding upon both parties such that no changes to the terms of the sale can occur thereafter. Ursine explained that as it does not [REDACTED], immediately upon entering into the export sales contract, [REDACTED] to enable it to fulfil the export sales contract. At that point both the export price and the purchase price of the coil are fixed and not subject to variation.

113. Ursine argued that it is not the correct or preferable decision to fix upon the date of the **export invoice**, as the export price reflected in the invoice in turn reflects the price of HRC which prevailed several months earlier i.e. at the time of the execution of the export **sales contract**.

114. Ursine went on to provide an example of a particular sales invoice dated [REDACTED] but whose export sales contract date was not agreed some months earlier, in [REDACTED].

115. In relation to this example, Ursine noted, in establishing a normal value for this export sale, the Commission identifies that the invoice fell within the [REDACTED] [REDACTED] and compared the export price to the weighted average normal value for the same quarter ([REDACTED]).



116. Ursine pointed to the difference in lead times for domestic sales and those for export. That is, the length of time between when the contract price was agreed with its Australian customer and when the goods were produced and dispatched. For domestic contracts, the lead time was generally within a month. That is, for domestic sales, the date of contract for sale and the delivery occurred within the same month.
117. Therefore, by adopting the invoice date as being determinative, the Commission was in effect comparing an export price, agreed in [REDACTED] with a domestic price, agreed in [REDACTED].
118. Ursine argues if the Minister had determined the contract date for the export transaction as the operative date and then compared the contract price with the domestic sale occurring at the same time, all within the same month as the contract date, the dumping margin would have been reduced. The difference being due to variations (i.e. price increases) of the cost of HRC, the main raw material input to the goods, over the review period.
119. Section 269TAB(1) prescribes how export price is to be determined, it relevantly provides that the export price for any goods exported to Australia is the price paid or payable for the goods by the importer. As will be seen below the price paid by the importer to Ursine for the exported goods equated with that stipulated in the sales contract and invoice.
120. Section 269TAC(1) prescribes how normal value is to be ascertained. It relevantly provides, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter. Importantly, section 269TAC(1) does not constrain or limit the Minister's focus to any particular domestic transaction. Put another way, it was open to the Minister to look to domestic sales which occurred at or about the same time as the exportation of the goods to determine normal value. Equally the

Minister could have looked to sales which occurred contemporaneously with the date of the sales contract.

121. In REP 419 the Commission confirmed that in Ursine’s response to the Exporter Questionnaire;

“Ursine listed the Australian Sales, Section B, in a spreadsheet. The invoice date and the date of sale were shown to be different. The date of sale was earlier than the invoice date. In its written response to Section B-Australian Sales, Ursine and stated that upon ‘...the execution of sale contract the price and other material terms of sale become fixed and binding, which may not change, and indeed have not changed in the actual course of business’. Ursine submitted that the date of sale for the purposes of comparison with normal value should be the date of the Sales Contract.”<sup>42</sup>

122. In answer to Section B-2(e) of the Exporter Questionnaire, Ursine stated:

[REDACTED]

123. In answer to Section G-6 of the Exporter Questionnaire Ursine stated:

“Ursine’s export price to Australia were fixed upon the sales contract dates, which did not undergo nor entertain any subsequent request for change by customers. Given the substantial lead time from the contract dates to the shipment dates, i.e., an average [REDACTED] days in the period of review, while the same lead time and

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<sup>42</sup> REP 419 at page 46.

domestic sales is fairly short (both order and delivery take place in [REDACTED]), on the one hand, and the substantial fluctuation in cost and price in the review period as documented in Table 1, Ursine submits that the quarterly comparison between Australian price domestic price shall be carried out on a basis of contract dates, as opposed to invoice dates.

In sum, in view of the substantial fluctuations in costs and prices, Ursine submits that ADC uses the date of contract of the Australian sales as their “date of sale” for the purposes of quarterly comparison. As for the date of sale of domestic sales, because order and delivery both take place [REDACTED], as a matter of expediency, ADC may use the invoice date as the date of sale.”

124. Table 1 was reproduced and forms part of Ursine’s Application for Review and details the cost of [REDACTED] coil (i.e. HRC) for each month of the review period. The Table shows Ursine’s [REDACTED] HRC costs varied by [REDACTED]% between the lowest and the highest month over the review period.

125. Ursine, in its response to the Exporter Questionnaire, specifically drew the Commission’s attention to the significance of the “lag affect” upon the production and export of the goods to Australia and the absence of such an affect upon its domestic sales of the goods. In its response, Ursine provided a spreadsheet of its Australian sales which highlighted the different dates of the invoices and the contracts for sale.

126. HRC is the main raw material input to the goods and it is accepted that the cost of HRC constitutes over 80% of the cost to make the goods. Ursine’s response to the Exporter Questionnaire highlighted the significant movement in the cost of HRC over the review period (refer Table 1). In the Conference held on 1 August 2018, “Commission representatives agreed that as HRC is a commodity its prices are varied over the review period.”<sup>43</sup> Accordingly, variations in the cost of

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<sup>43</sup> Conference Summary at page 4.

HRC over the review period can reasonably be expected to have affected selling prices of the goods.

127. As part of its response to the Exporter Questionnaire, Ursine provided supporting documentation which tracked two export sales to Australia from receipt of a Purchase Order to payment of the Invoice price. Documentation tracking a further five consignments to Australia was examined as part of Ursine's desk top verification. These further five consignments were selected by the Commission and not nominated by Ursine. In all cases, the total price paid by the Australian importers was consistent with the prices specified in both the Sales Contracts and the Export Invoices, a fact acknowledged by Commission representatives in the Conference held on 9 August 2018. Nevertheless, the Commission considered such an alignment was not sufficient to move from reliance upon the invoice date.

128. Although the Commission's accepted Ursine's description of its business practices and processes, [REDACTED], the Commission did not accept that Ursine had produced evidence to exclude the possibility of a variation or cancellation of a single contract during the Review Period.

129. Ursine's claims regarding when it agreed to purchase the HRC for use in the production of the exported goods was not questioned by the Commission.

130. I was satisfied there was persuasive material made available by Ursine that a difference existed in the circumstances pertaining to the export and to the relevant domestic sales and that such a difference impacted upon price. Accordingly, on 4 September 2018, I wrote to the Commission, pursuant to section 269ZZL, and required the Commission to further investigate the decision to fix upon the date of the export invoice, rather than the date of the export sales contract, as the operative date for the selection of comparable domestic sales prices.

131. The Commission was to complete the reinvestigation by 8 November 2018 but that date was extended, at the request of the Commission, until 31 January 2019 at which time the Commission submitted its Reinvestigation Report to the Review Panel.

132. Although the focus of the reinvestigation request was upon the lag effect and its impact upon the export price, my letter to the Commission went on to state:

“with regard to domestic sales, the Commission will need to determine whether the HRC used in the production of the like goods, so sold, was sourced from inventory or purchased from Ursine’s supplier and the material terms of such purchases.”

133. For the purposes of the reinvestigation, the Commission sought the following additional information from Ursine:

- a copy of the terms and conditions applying to sales contracts for sales to Australian customers, highlighting the terms that state that the terms of the sales contract cannot be amended and the sale cannot be cancelled – as well as evidence of these terms and conditions being communicated to the Australian customers;
- an explanation of the factors that cause or contribute to the delay between Ursine issuing the sales contract and the goods being shipped to Australia;
- for each of the sample export sales to Australia provided in Ursine’s exporter questionnaire response and sales selected for verification:
  - the signed sales contracts;

- evidence to establish the particular coil or coils of HRC used in the production of the goods;
  - details of whether this HRC was purchased under a contract with the supplier and, if so, the terms of that contract;
  - evidence to show when the HRC was ordered;
  - evidence to show when the HRC was received by Ursine;
  - evidence to show the price of the HRC used in the production; and
  - evidence to show the date of production of the HSS.
- For all domestic sales, the date that the order was received from the customer and the date the order was confirmed (providing documentary evidence of these dates for the sample domestic sales provided in Ursine’s exporter questionnaire response and those sales selected for verification).
  - For each of the sample domestic sales provided in Ursine’s exporter questionnaire response and selected for verification:
    - evidence to establish the particular coil or coils of HRC used in the production of the goods;
    - details of whether this HRC was purchased under a contract with the supplier and, if so, the terms of that contract;
    - evidence to show when the HRC was ordered;
    - evidence to show when the HRC was received by Ursine;
    - evidence to show the price of the HRC used in the production;

- evidence to show the date of production of the HSS.

134. Ursine provided a response to the Commission's request on 3 October 2018.

135. The Reinvestigation Report acknowledged,

“One situation where it may be appropriate to take the contract of sale date to be the date of sale for an exporter is in situations where, *inter alia*:

- an exporter enters into a raw material purchase contract *following* an order for a finished product in order to satisfy that order, as opposed to drawing on existing raw material in inventory to satisfy that order;
- and that this arrangement differs between export and domestic sales.”

136. To establish whether, at the date of the export sales contract, all the material terms had been settled and were not subject to verification, the Commission compared the products supplied, their unit prices and packing arrangements and was satisfied there were no differences, with regard to these items, between the export sales contract and the invoice.

137. However, the Commission also found that for some of the transactions examined (representing ■■■% of the total contract quantity of transactions examined), the actual shipment date for the goods exported to Australia, which reflects the date the invoice is raised, was inconsistent with the shipment date:

- required by the customer in the purchase order; and
- stipulated in the sales contract to reflect the customer's purchase order.

138. Next, the Commission examined with respect to the HRC used to produce domestic and export HSS:

- whether contracts were entered into for HRC purchases in response to HSS orders; and
- the timing of HRC purchases relative to the production and sale of the HSS, i.e. the lead times for how long stock was held in inventory before production and shipment.

139. Contrary to Ursine’s claims contained within its Review Application, the Commission found,

“in the review period, the HSS exported to Australia was normally produced from HRC [REDACTED] at the time the sales contract was signed by the parties. Based upon Ursine’s data and advice, HRC cost in producing HSS was tied to the unit purchase price of the coil consumed in production. In a minority of cases, additional HRC necessary to complete the order was ordered at the time of the sales contract was made.”<sup>44</sup>

140. Based upon data supplied by Ursine, the Commission analysed the average number of days between:

- a) when HRC was delivered to Ursine’s a factory; and
- b) when the export sales contract and the domestic invoices were made.

Contrary to Ursine’s claim in its Review Application, the Commission found export and domestic goods were both produced from HRC [REDACTED] [REDACTED] as at the dates of the export sales contract and domestic sales. The number of days, for both export and domestic goods, in which the HRC reasonably [REDACTED] was, in the words of the Commission, “significant”. In light of these findings, the Commission does not consider, in the ordinary course

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<sup>44</sup> Reinvestigation Report at page 13.



of business, that the [REDACTED] triggered Ursine to [REDACTED]  
[REDACTED] I agree with the Commission's reasoning.

141. Accordingly, I consider it logical for Ursine to have had regard to its raw material costs (i.e. the price paid for the HRC then in inventory) when setting both domestic and export prices, especially in the context of fluctuating HRC costs and the significant period over which the HRC was carried in inventory.

142. The Commission concluded,

“in setting prices for domestic sales, Ursine would have regard to HRC inventory costs that reflect prices of HRC purchased on average [REDACTED] prior to the invoice being raised ... This is inconsistent with Ursine's claim that, from the perspective of HRC purchases to production to delivery, the lead time for domestic sales is fairly short. In this sense, prices for both export and domestic sales are based on HRC with significant lead times between purchase, production and sale.

... The Commission considers that Ursine's price considerations for domestic and export sales on the date of invoice are substantively the same because:

- it is reasonable for Ursine to have regard to its raw material expenses in setting prices for domestic and export sales of HSS; and
- the raw material expenses used to produce domestic and export HSS derive from purchases from a very similar time period (with a discrepancy of [REDACTED])

Further, based on the finding that HSS produced during the review period was made from HRC [REDACTED] for both domestic (in all cases) and export sales (in the majority of cases), and that the purchases of this HRC occurred over similar periods, the Commission is of the view that an adjustment for due allowance is not required.

Consequently, the Commission considers that comparing the invoice dates for domestic and export sales is reasonable in these circumstances.”

143. In light of the Commission’s analysis and reasoning set out in the Reinvestigation Report, I reject Ursine’s claim that the Commission ought to have adopted the date of the export sales contract as the operative date and therefore reject Ground 2 of Ursine’s Review Application.

**Ursine Steel, Ground 3: The Minister erred in determining and applying a specification adjustment to the normal values and should have made an upward adjustment to normal values.**

144. In its Review Application, Ursine argues that domestic sales of [REDACTED] are identical to the export sales of [REDACTED] and therefore if [REDACTED] had been used to establish a normal value on domestic sales sold in the ordinary course of trade, no adjustment would have been necessary.

145. Instead the Commission analysed domestic sales of circular pipe sections and calculated a price variance between corresponding [REDACTED] and [REDACTED] circular pipe products. The price differential was then applied to rectangular tube domestic prices. Ursine challenges the Commission’s approach, asserting that circular and rectangular products are used in different applications. For example, [REDACTED] circular pipes are used for building supports whilst rectangular tubes are used in large mechanical base applications and as high strength pillars. Ursine asserts that these differing applications give rise to differing markets and prices for the products, in particular as [REDACTED] has a greater structural yield strength ([REDACTED]) than that of exported [REDACTED], which results in a higher unit price.

146. In REP 419, in response to these claims regarding differences in applications to which RHS and CHS products are applied, the Commission’s stated;

“Ursine has not demonstrated that the markets and applications for CHS and RHS structural HSS are so different that the price difference between grades of CHS is not a reasonable basis for a specification adjustment for RHS. Ursine has also not suggested any alternative basis for adjustment.”<sup>45</sup>

147. Ursine’s Review Application did not reference any evidence which was before the Commission establishing differences regarding the applications for CHS and RHS structural HSS. In the absence of such evidence and given the Commission’s statement that Ursine had not put forward a methodology to account for any such differences the Commission’s rejection of Ursine’s argument on this point is correct and preferable.

148. In support of its argument, Ursine referred to ATM’s exporter briefing submission which stated, higher strength grade material will have a higher sell price in the market. This is because the cost of HRC feed material increases due to the higher strength coil required to produce higher strength HSS. The strength increase in the coil is achieved through the addition of expensive alloying elements which increases the manufacturing costs of HRC.

149. In Ursine’s Review Application, it argues that if normal values are to be based upon domestic sales of [REDACTED], instead of an upward adjustment as applied by the Commission, a downward adjustment is required to domestic prices for [REDACTED] to ensure a proper comparison with the exported goods [REDACTED] which were produced from less expensive coil. I note Ursine’s Review Application contained no reference to evidence before the Commission as to the price differential between the coil used to produce [REDACTED] and the “less expensive” coil used to manufacture the [REDACTED] exported to Australia.

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<sup>45</sup> REP 419 at page 46.

150. In its submission dated 19 August 2018, Ursine did not further address Ground 3 of its application to the Review Panel.

151. In response to Ursine's reliance on the comments within the exporter briefing submission, to the effect that the "higher strength grade material will have a higher sell price in the market", the Commission in REP 419 did not engage on this point and simply stated,

"the Commission considers that the models compared have a similar minimum yield strength (specification which the Commission considers would most influence price) and therefore that a claim for a specification adjustment is not required to allow a fair comparison between the models."

152. In the absence of reference to relevant information substantiating the price differential between the coil used to produce [REDACTED] and the "less expensive" coil used to manufacture the [REDACTED] exported to Australia, Ursine has not made out Ground 3 of its Review Application. Accordingly, I reject Ground 3 of Ursine's Review Application and affirm the Minister's Reviewable Decision, in so far as it relates to Ursine.

**Tianjin Youfa, Ground 1: The Commission should have included in its profit calculation, only the profit derived from entities within the Tianjin Youfa group of companies that sold, on their domestic market, like goods to those exported to Australia.**

153. In its August submission to the Review Panel, Tianjin Youfa withdrew Ground 1 of its Review Application. Accordingly, I make no finding in relation to that ground.

**Tianjin Youfa, Ground 2: The Commission failed to give adequate consideration of, and weight to, Tianjin Youfa's use of "narrow strip" in calculating the uplift cost of Hot Rolled Coil raw material inputs used in the production of the goods exported to Australia.**

154. Similar to Ground 1, Tianjin Youfa pressed Ground 2 before the Commission in the course of its deliberations in formulating REP 419.
155. The goods can be produced from raw materials, either referred to as HRC or from Hot Rolled Steel (HRS), also referred to as “narrow strip”. HRC can be either of a structural grade or nonstructural grade. HRS or narrow strip is only of a nonstructural grade.
156. HRC or HRS represents the majority of the cost to make the goods but because of the significant government of China influence and the Chinese domestic steel market, the Commission concluded Tianjin Youfa’s recorded costs of HRC and HRS did not reasonably reflect competitive market costs. The Commission therefore determined to substitute Tianjin Youfa’s cost of HRC and HRS with a benchmark cost based upon the verified HRC purchase costs for the review period available for a Korean exporter and two Taiwanese exporters.
157. In a conference convened on 1 March 2019, Commission representatives confirmed that the Korean and Taiwanese benchmark was derived exclusively from those manufacturers’ purchasers of structural grade HRC.
158. Cognisant of the physical differences between structural grade HRC on the one hand, nonstructural grade HRC and narrow strip on the other, and the fact that the majority of Tianjin Youfa’s exports to Australia were of circular nonstructural grade product, the Commission recognized, where justified, the need to derive adjustments to the (structural grade) benchmark to accommodate these differences.
159. Accordingly, the Commission then calculated a quarterly weighted average HRC purchase cost in RMB as a suitable benchmark. In doing so, separate benchmarks were calculated for both black and pre-galvanised finishes. As

Tianjin Youfa only sourced black finish<sup>46</sup>, that benchmark was substituted for Tianjin Youfa's raw material input cost.

160. The Commission noted Tianjin Youfa predominantly sourced a variation of HRC known as “narrow strip” for use in the production of the goods. Some entities within the Tianjin Youfa group did source some small quantities of the more common structural grade HRC for use in the production of the goods. In conference on 1 August 2018, Commission representatives acknowledged that narrow strip is a product unique to China which is typically a marginally lower cost raw material than HRC.<sup>47</sup>
161. Throughout the review, Tianjin Youfa argued that the Commission ought to have derived a separate benchmark for its purchases of structural grade HRC and a separate adjustment for the far greater volume of non-structural HRC and narrow strip consumed in the production of the majority of the goods exported to Australia. Tianjin Youfa's position was, throughout the Review Period, it had submitted ample data to the Commission justifying the need for such adjustments to reflect clear differences in the prices of the different grades (i.e. structural versus non-structural). As will be seen, the Commission's analysis, in the course of this Review, has not substantiated the claimed differences in purchase prices.
162. Tianjin Youfa, in its Review Application, argued it was comprised of a number of distinct legal entities but only some of which produced the goods exported to Australia. It argued only those production facilities that produced the exported goods should be taken into account in determining the foreign benchmark steel material input costs adjustment. In the conference held on 1 August 2018, the Commission representatives noted that rather than focusing on a narrow range of production entities, all production entities producing like goods were considered

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<sup>46</sup> Commonly referred to as “uncoated” or “bare”.

<sup>47</sup> Narrow strip is only produced in a limited widths and thicknesses and cannot be used to produce goods of a structural grade.

as it was less likely to be contaminated by one entity buying grades of HRC that were more expensive.

163. However, in a Conference convened on 15 January 2019, the Commission, on reflection, agreed it would be appropriate to limit consideration to those entities that purchased raw materials that were consumed to make the goods exported to Australia. The Commission considered the new approach appropriate in determining a constructed normal value, especially when undertaking a benchmark comparison with a view to making adjustments for competitive market costs. The Commission therefore focused upon [REDACTED] production entities within the Tianjin Youfa that produced the goods exported to Australia.<sup>48</sup>

164. Consistent with the above revision to the raw material costs of HRC and narrow strip, the Commission considered it would be appropriate to also have regard to the cost of production (being raw material, direct labour, manufacturing overheads and other costs) relating to the entities that produced the goods exported to Australia.<sup>49</sup> It would seem incongruent if the raw material input costs of HRC and narrow strip were derived from the costs incurred only by those entities within the Tianjin Youfa which had produced the goods exported to Australia and yet other production costs were determined by reference to other production costs of the group as a whole. Tianjin Youfa agreed with the Commission's approach.<sup>50</sup>

165. The predominant issue in dispute between the parties resolves around the relative costs to be attributed three of Tianjin Youfa's raw material inputs of:

- structural grade HRC;
- nonstructural grade HRC; and

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<sup>48</sup> [REDACTED]

<sup>49</sup> The Commission removed [REDACTED] from the CTMS calculation as that entity was found not to have produced goods exported to Australia.

<sup>50</sup> Written communication dated 28 February 2019 from TY's representative to the Commission.

- narrow strip, which can only produce nonstructural grade goods.

Tianjin Youfa in effect argues that the above three main raw material inputs reflects a hierarchy of decreasing costs, with structural grade the most expensive and narrow strip the least expensive of the three. It is the Commission's position, based upon its analysis of Tianjin Youfa's own production data, that evidence does not support the existence of such a hierarchy and that there is little, or immaterial difference in the costs of nonstructural grade and narrow strip.

166. It is common ground that some form of an adjustment to the benchmark is required. Tianjin Youfa challenges the Commission's methodology by which adjustments were made to the benchmark reflecting Tianjin Youfa's purchase costs of nonstructural grade HRC and narrow strip.

167. In a letter to the Review Panel dated 13 December 2018, Tianjin Youfa claimed [REDACTED] was the only producer within its group to produce like goods from structural grade HRC and that the Commission merely needed to compare that entity's purchase cost of structural grade HRC with the benchmark and that any "differences in prices ... can only be explained by reason of 'a particular market situation' and which cannot be explained by fundamental differences in the product."<sup>51</sup> Accordingly, any such difference ought to have given rise to an adjustment to the benchmark. The Commission examined this claim by analyzing [REDACTED] raw material prices.

168. The Commission's analysis of [REDACTED] purchases over the review period does not support Tianjin Youfa's claim.<sup>52</sup> The Commission found that the majority (i.e. more than [REDACTED]%) of its purchases of HRC were nonstructural grade and that

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<sup>51</sup> Tianjin Youfa letter to Review Panel dated 13 December 2018 at para 28.

<sup>52</sup> The Commission's analysis is outlined in an attachment to the Reinvestigation Report, 419 – ADRP – Confidential Attachment 4 – [REDACTED] raw material purchases.41.



██████████ purchasing pattern was similar to that of another entity within the group which also purchased significant quantities of nonstructural grade HRC.<sup>53</sup>

169. Further, the Commission mapped ██████████ purchases of structural and nonstructural grade product by quarter and found, in two of the four quarters for the Review Period, the purchase prices of the nonstructural grade had higher unit prices than structural grade. Based upon this analysis, the Commission considers that the purchase prices of structural and nonstructural grade by ██████████ do not support a finding that there is a consistent or material price difference between structural and nonstructural HRC such as to warrant separate adjustments being made for each. I agree with the Commission's analysis and conclusion. In doing so I acknowledge the majority of Tianjin Youfa's purchases of nonstructural grade was in the form of narrow strip.

170. In deriving a benchmark adjustment for narrow strip, as that product was unique to China, there was no external benchmark which could have been used as a comparator. Accordingly, the Commission was limited in its analysis to the data it had gathered from Tianjin Youfa in the course of the Review Period. As the majority of Tianjin Youfa's purchases of nonstructural grade product was in the form of narrow strip and as it had not established that a premium for structural grade over nonstructural HRC was demonstrated, the Commission considered it reasonable to aggregate the large volume of non-structural purchases with all HRC purchases and to compare that aggregate against the HRC benchmark.

171. In producing the goods exported to Australia, Tianjin Youfa's production of rectangular hollow sections (RHS) consumed only HRC, while circular hollow sections (CHS) consumed both HRC and HR strip. By volume, CHS represents the largest proportion of the goods exported. In producing the goods exported to Australia, all ██████████ of the abovementioned production entities purchased narrow

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<sup>53</sup> ██████████.

strip, and █████ of these entities purchased both HRC and narrow strip.<sup>54</sup> Accordingly, the Commission considers it appropriate to compare the HRC benchmark against the aggregated HRC and narrow strip purchases of these █████ production entities when establishing ‘uplift factors’.

172. To calculate ‘uplift factors’ that are most appropriate for Tianjin Youfa’s production of finished goods, the Commission applied the following methodology:

- for RHS exported to Australia, compare the quarterly HRC benchmark against all the corresponding quarterly purchase prices of HRC by the production entities that produced RHS exported to Australia; and
- for CHS exported to Australia, compare the quarterly HRC benchmark against the corresponding quarterly weighted average purchase prices of all HRC and narrow strip by the production entities that produced CHS exported to Australia.

173. The Commission then applied the revised ‘uplift factors’ to the raw material costs for the relevant RHS and CHS finished products that were exported to Australia.

The revisions made to the ‘uplift factors’, normal value and dumping margin are as follows:

- The revision to the ‘uplift factor’ is included in **419 - ADRP - Confidential Attachment 1 - Revised uplift;**
- The revised ‘uplift factor’ is used to adjust raw material costs (HRC and narrow strip) and to construct normal value in **419 - ADRP - Confidential Attachment 2 - Revised normal value;** and

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<sup>54</sup> █████

- The revised normal value are used to determine the dumping margin in **419 - ADRP - Confidential Attachment 3 - Revised dumping margin.**

The Commission notes that this revision reduces the weighted average cost of goods sold (COGS) used in constructing the normal value by [REDACTED] per cent. The revision is undertaken in **419 - Confidential Attachment 2 - Revised normal value**, with normal values being constructed based on the COGS in worksheet 'CTMS - Aust suppliers'. The revisions outlined above (inclusive of the revision to scrap adjustment, referred to below) results in a dumping margin of **10.7 per cent.**

174. In its application to the Review Panel, and in support of Ground 2, Tianjin Youfa argued that a small adjustment to the constructed cost to make and sell, due to the scrap values for each production entity had not been uplifted in accordance with the uplifted steel material input costs. In the conference convened on 1 August 2018, the Commission representatives agreed that such an adjustment was warranted. This revision had the effect of increasing the scrap revenue deduction, which in turn decreased Tianjin Youfa's cost of production in the constructed normal value. The revision has been reflected in **419 – ADRP – Confidential Attachment 3 – Revised dumping margin** referred to in paragraph 173 above.

175. For the purpose of section 269ZZK(1A), I advise that the new normal value is materially different from those under the reviewable decision and I hereby endorse such recalculations. The remainder of Ground 2 of Tianjin Youfa's Review Application is rejected.

## Recommendations

176. Pursuant to s 269ZZK(1) of the Act and for the reasons given above, I recommend the following in relation to each of the Applicants:

- **Dalian Steelforce:** I recommend the Minister affirm the Reviewable Decision, but for the ascertained export price and consequential dumping margin. I recommend the Minister revoke the ascertained export price and dumping margin and that the Minister substitute new ascertained export price and dumping margin, consistent with those outlined in the spread sheets provided to the Review Panel, and detailed in paragraph 90. As a result, Dalian Steelforce's dumping margin will reduce from 11% to 10.5%.
- **Ursine:** I recommend the Minister affirm the Reviewable Decision.
- **Tianjin Youfa:** I recommend the Minister affirm the Reviewable Decision, but for the ascertained normal value. I recommend the Minister revoke the ascertained normal value and that the Minister substitute with a new ascertained normal value, consistent with those outlined in the spread sheets provided to the Review Panel, and detailed in paragraph 173. As a result, Tianjin Youfa's new dumping margin will increase to 10.9 per cent.



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Paul O'Connor  
Panel Member  
Anti-Dumping Review Panel  
4 March 2019