Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 20 May 2019 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application for review to the ADRP of a review of a Ministerial decision.

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

Time

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

Conferences

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

Further application information

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

Withdrawal

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

[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Contact

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

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name:	**Hyundai Steel Co., Ltd ("Hyundai")**
Address:	**231 Yangjae-Dong Seocho-Gu** **Seoul** **Republic of Korea**
Type of entity (trade union, corporation, government etc.):	**Hyundai is a company**

2. Contact person for applicant

Full name:	**Charles Zhan**
Position:	**Senior Associate**
Email address:	**Charles.zhan@moulislegal.com**
Telephone number:	**+61 2 6163 1000**

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

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

The reviewable decision in this case relates to an application made to the Commission under under 269ZDB(1) requesting that the Minister review the anti-dumping measures, that apply to Hyundai's exportation of hot rolled structural steel sections exported from Korea.

Under Section 269T of the Act an "interested party" for the purpose of that kind of a reviewable decision is defined as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia.

Hyundai is a manufacturer of the goods to which the decision relates, namely hot tolled structural steel sections which was exported to Australia from Korea during

the original investigation and in the inquiry period in the continuation inquiry undertaken by the Commission. Hyundai is thus an "interested party" for the purposes fo the Act and this application.

4. **Is the applicant represented?**

Yes ☒ **No** ☐

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

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

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

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

☐Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☒Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

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

The goods subject of the reviewable decision, as described in Final Report 499 are:

Hot rolled structural steel sections in the following shapes and sizes, whether or not containing alloys:

- ***universal beams (I sections), of a height greater than 130 mm and less than 650 mm;***
- ***universal columns and universal bearing piles (H sections), of a height greater than 130 mm and less than 650 mm;***
- ***channels (U sections and C sections) of a height greater than 130 mm and less than 400 mm; and***
- ***equal and unequal angles (L sections), with a combined leg length of greater than 200 mm.***

Sections and/or shapes in the dimensions described above, that have minimal processing, such as cutting, drilling or painting do not exclude the goods from coverage of the investigation.

The measures do not apply to the following goods:

- ***hot rolled 'T' shaped sections, sheet pile sections and hot rolled merchant bar shaped sections, such as rounds, squares, flats, hexagons, sleepers and rails; and***
- ***sections manufactured from welded plate (e.g. welded beams and welded columns).***

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

The goods are classified as follows:

Goods identified as hot rolled non-alloy steel sections (meeting the specified shapes and sizes set out above) are generally classified to the tariff subheading in Schedule 3 of the Customs Tariff Act 1995:

- ***7216.31.00 statistical code 30 (channels — U and C sections);***
- ***7216.32.00 statistical code 31(universal beams — I sections);***
- ***7216.33.00 statistical code 32 (universal column and universal bearing piles — H sections); and***
- ***7216.40.00 statistical code 33 (equal and unequal angles — L sections).***

Goods identified as hot rolled alloy steel sections (meeting the specified shapes and sizes set out above) are generally classified to tariff subheading 7228.70.00 (statistical codes 11 and 12) in schedule 3 of the Customs Tariff Act 1995.

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number:	**Anti-Dumping Notice No 2019/125**
Date ADN was published:	**11 November 2019**

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

Please refer to Attachment 1 – ADN 2019/125

PART C: GROUNDS FOR THE APPLICATION

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

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

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

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

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

See Attachment 2.

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

See Attachment 2.

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

See Attachment 2.

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

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

See Attachment 2.

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

The attachments provided in support of this application are:

- **Attachment 1– ADN 2019/125;**
- **Attachment 2 – Hyundai application re HRSS continuation – grounds – confidential;**
- **Attachment 2 – Hyundai application re HRSS continuation – grounds – non-confidential; and**

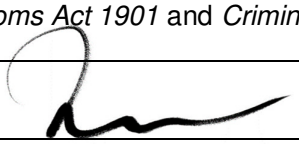
- **Attachment 3 – Letter to ADRP re ML authority – Hyundai continuation inquiry review.**

PART D: DECLARATION

The applicant's authorised representative declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and

- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:	
Name:	**Charles Zhan**
Position:	**Senior Associate**
Organisation:	**Moulis Legal**
Date:	**11 December 2019**

PART E: AUTHORISED REPRESENTATIVE

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

Provide details of the applicant's authorised representative:

Full name of representative:	**Charles Zhan**
Organisation:	**Moulis Legal**
Address:	**6/2 Brindabella Circuit Brindabella Business Park Canberra International Airport, ACT Australia 2609**
Email address:	**Charles.zhan@moulislegal.com**
Telephone number:	**+61 2 6163 1000**

Representative's authority to act

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

Please refer to Attachment 3 – letter of authority

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

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /

Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

ANTI-DUMPING NOTICE No. 2019/125

Customs Act 1901 – Part XVB

Hot rolled structural steel sections

Exported to Australia from Japan, the Republic of Korea, Taiwan (except by Feng Hsin Steel Co Ltd) and the Kingdom of Thailand

Findings in relation to a review of Anti-Dumping Measures (Review 499)

Notice under subsection 269ZDB(1) of the Customs Act 1901 and subsection 8(5) of the Customs Tariff (Anti-Dumping) Act 1975

The Commissioner of the Anti-Dumping Commission has completed a review, which commenced on 3 January 2019, of the anti-dumping measures in the form of a dumping duty notice applying to certain hot rolled structural steel sections (HRS or 'the goods') exported to Australia from Japan, the Republic of Korea (Korea), Taiwan (except for exports by Feng Hsin Steel Co Ltd) and the Kingdom of Thailand (Thailand).

Recommendations resulting from the review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in *Anti-Dumping Commission Report No. 499* (REP 499).

I, KAREN ANDREWS, the Minister for Industry, Science and Technology have considered REP 499 and have decided to accept the recommendations and reasons for the recommendations including all the material findings of facts or law set out in REP 499.

Under subsection 269ZDB(1)(a)(iii) of the *Customs Act 1901* (the Act), I declare that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), with effect from the date of publication of this notice, the dumping duty notice currently applying to the goods exported to Australia from Japan, Korea, Taiwan (except for exports by Feng Hsin Steel Co Ltd) and Thailand is to be taken to have effect as if different variable factors relevant to the determination of duty had been fixed in respect of exporters generally.

I determine, pursuant to subsection 8(5) of the Dumping Duty Act, that:

- the interim dumping duty payable on the goods exported to Australia by TS Steel Co. Ltd from Taiwan be an amount worked out in accordance with the floor price duty method pursuant to subsections 5(4) and 5(5) of the *Customs*

Tariff (Anti-Dumping) Regulation 2013 (the Dumping Duty Regulation) with effect from the date of publication of this notice; and

- the interim dumping duty payable in respect of the goods exported to Australia by:
    - all exporters from Japan;
    - all exporters from Korea, except for Hyundai;
    - Dragon Steel Corporation from Taiwan;
    - uncooperative and all other exporters from Taiwan; and
    - all exporters from Thailand

  is an amount which will be worked out in accordance with the combination fixed and variable duty method pursuant to subsections 5(2) and 5(3)(a) of the Dumping Duty Regulation with effect from the date of the publication of this notice.

Particulars of the dumping margins established for each of the exporters and the fixed rates of duty are set out in the following table.

Country	Manufacturer/ exporter	Dumping margin	Effective fixed rate of interim dumping duty	Duty Method
Japan	All Exporters	12.2%	12.2%	Combination
Korea	Hyundai Steel Company	4.7%	4.7%	Combination
	Uncooperative Exporters	7.9%	7.9%	Combination
Taiwan	Dragon Steel Corporation	9.0%	9.0%	Combination
	TS Steel Co Ltd	-1.6%	0%	Floor price
	Tung Ho Steel Enterprise Corporation	-1.6%	0%	Floor price
	Uncooperative Exporters	12.3%	12.3%	Combination
Thailand	Siam Yamato Steel Co Ltd	5.0%	5.0%	Combination
	Uncooperative Exporters	7.7%	7.7%	Combination

Affected parties should contact the Anti-Dumping Commission (the Commission) on 132846 or +61 2 6213 6000 or clientsupport@adcommission.gov.au for further information regarding the actual duty liability calculation in their particular circumstance.

To preserve confidentiality, details of the revised variable factors being the Ascertained Export Price, Ascertained Normal Value and non-injurious price will not be published.

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

REP 499 has been placed on the Commission's public record. The public record may be examined at www.adcommission.gov.au. Alternatively, the public record may be examined at the Commission's office during business hours by contacting the case manager on the details provided below.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2428 or by email to investigations2@adcommission.gov.au.

Dated this 5 day of November 2019

KAREN ANDREWS
Minister for Industry, Science and Technology

In the Anti-Dumping Review Panel

11 December 2019

Application for review

Hot rolled structural steel sections from Korea

Hyundai Steel Company

A Introduction

Review

By way of notice published 3 January 2019, the Anti-Dumping Commission ("the Commission") initiated a review under Section 269TC(4) of the *Customs Act 1901* ("the Act") of the anti-dumping measures applying to the export of hot rolled structural steel sections ("HRSS" or "the goods") from Japan, Korea, Taiwan and Thailand to Australia (hereafter "Review 499").[1]

The original investigation, applied for by OneSteel Manufacturing, then trading as Liberty Steel, led to the imposition of anti-dumping measures on the goods on 20 November 2014.[2]

Review 499 was initiated in response to an application by OneSteel Manufacturing Pty Ltd (hereafter "OneSteel Manufacturing" or "the domestic industry applicant").

Continuation inquiry

By way of notice published on 23 November 2018, the Commission invited certain persons to apply for the continuation of the subject anti-dumping measures.[3]

On 21 January 2019, in response to the invitation from the Commission, OneSteel Manufacturing applied to the Commission for such a continuation.

On 11 February 2019, and on the basis of the application, the Commission initiated a continuation inquiry (hereafter "Inquiry 505").[4] The subject matter of the continuation inquiry was described by the Commission as follows:

> *…whether the continuation of anti-dumping measures, in the form of a dumping duty notice, that apply to exports of hot rolled structural steel sections (HRS or the 'goods') from Japan, the Republic of Korea (Korea), Taiwan (except for exports by Feng Hsin Steel Co Ltd) and the Kingdom of Thailand (Thailand) to Australia is justified.*[5]

Overlapping effect of Review 499 and Inquiry 505

The overlapping effect of Review 499 and Inquiry 505 was noted by the Commission from the outset, as stated in the initiation notice with respect to Inquiry 505:[6]

> *In Review 499, the applicant, the countries from which the goods are under review, the respective importers and exporters of HRS and the period being examined are identical to those in this continuation inquiry.*

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1 ADN 2019/02.

2 ADN 2014/127.

3 ADN 2018/173.

4 ADN 2019/21.

5 ADN 2019/21 at page 1.

6 ADN 2019/21 at page 6.

> *For the purposes of this continuation inquiry, I intend to have regard to other matters which I consider relevant to the inquiry, including the variable factors established in Review 499, to assess whether dumping has occurred during the inquiry period, and whether dumping is likely to continue or recur if the anti-dumping measures are not continued.*

The Minister's decisions

In a public notice made under Section 269ZHG(1) of the Act, signed on 5 November 2019 and published on 11 November 2019, the Minister declared that she had decided to secure the continuation of the anti-dumping measures applying to HRSS exported to Australia from Japan, Korea, Thailand and Taiwan, with the exception of Tung Ho Steel Enterprise Corporation ("the Continuation Decision").[7]

The Minister confirmed that in making her decision she had:[8]

> *…considered REP 505 and have decided to accept the recommendations and reasons for the recommendations, including all material findings of facts and law therein.*[9]

In a separate notice, also signed on 5 November 2019 and published on 11 November 2019, and based on recommendations and reasons contained in in the Commission's final report for Review 499 ("Report 499"),[10] the Minister decided to vary the variable factors applying to the exporters subject to Review 499 under Section 269ZDB(1)(a)(iii) of the Act, effective from the date of the publication of the notice ("the Review Decision").[11]

Report 505 notes, as part of its recommendations:[12]

> *For the purposes of this continuation inquiry, the Commissioner has had regard to other matters considered relevant to the inquiry, including the variable factors established in Review 499. In respect of Review 499, the Commissioner recommended to the Minister that the dumping duty notice be altered in respect of HRS exported to Australia from Japan, Korea, Taiwan (except for Feng Hsin) and Thailand. Refer to REP 499 which is on the public record.*

Report 499 and its findings and recommendations with respect to variable factors, including export prices, normal values and non-injurious prices, were therefore incorporated as part of the reasons and recommendations in Report 505 and therefore formed part of the basis of the Continuation Decision.

This application relates to the Review Decision and reasons contained in Report 499 only. As indicated in the prescribed form, this application has been prepared to meet the Review Panel's requirements if it chooses to review the Minister's decision in Report 499 and Report 505 separately. Nonetheless, to the

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7 ADN 2019/126.

8 Ibid.

9 "REP 505" is a reference to the Final Report published with respect to Inquiry 505 (hereafter "Report 505").

10 See Review 499, Doc 068 – Final Report.

11 ADN 2019/125.

12 Report 505, footnote 6.

extent that the Continuation Decision and Report 505 effectively incorporated the reasons and findings with respect to the Review Decision references may also be made to Report 505 as relevant.

Hyundai Steel Company ("Hyundai Steel") is a Korean manufacturer and exporter of HRSS. For a short part of the inquiry period of Review 499, Hyundai Steel also carried out the role of the importer of the HRSS it exported to Australia.

The effect of the Continuation Decision was to secure the continuation of the anti-dumping duties on exports from all exporters subject to the notice, except for Tung Ho Steel Enterprise Corporation ("Tung Ho"), based on the same variable factors that had been fixed by the Review Decision, which was made at the same time. With respect to Hyundai Steel, a dumping margin of 4.7% was found in the inquiry period for Report 499.[13]

As outlined in this application, Hyundai Steel seeks review by the Anti-Dumping Review Panel ("the Review Panel") under Sections 269ZZA(1)(c) and 269ZZC of the Act, of the decisions of the Minister following a review of anti-dumping measures against the exportation of the goods by Hyundai Steel from Korea to Australia.

We now address the requirements of both the form of application that has been approved by the Senior Panel Member under Section 269ZY of the Act, and of Section 269ZZE(2) of the Act in relation to our client's grounds of review, being those requirements not already addressed within the text of the approved form itself, which we have also completed and lodged with the Review Panel.

B First ground – errors in the determination of the dumping margin

9 Grounds

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

The dumping margin calculated for Hyundai Steel in the period of inquiry ("POI") was 4.7%.[14]

Hyundai Steel considers that the Minister's decision with respect to the dumping margin applicable to its exports was not the correct or preferable decision, due to the following matters:

- the Minister did not apply physical difference-based (non-identical goods) adjustments in arriving at the normal value under Section 269TAC(8) of the Act in a consistent manner;
- the Minister made errors relating to the determination of the domestic sales of like goods in the ordinary course of trade ("OCOT") under Section 269TAAD(3) of the Act; and
- the Minister incorrectly determined the export price with respect to the goods that were both exported by Hyundai Steel to Australia and imported by Hyundai Steel into Australia.

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13 See, Report 499, at page 26, and ADN2019/125.

14 Ibid.

As noted in Report 499, throughout Review 499 and Inquiry 505 Hyundai Steel made strong and consistent submissions on these issues.[15] Hyundai Steel's final submissions on these issues were then made in its response to Statement of Essential Facts 499 and 505 ("SEF499" and "SEF505" respectively) on 2 September 2019 ("the SEF Margin Submission"),[16] and in further discussion with the Commission during its meeting with Hyundai Steel on 17 September.[17]

Report 505 – relying on the findings in Report 499 - rejected Hyundai Steel's submissions regarding the above issues.

In our view, the Commission's various rejections of Hyundai Steel's submissions in Report 505 and Report 499 were neither correct nor preferable. We will now address each issue in turn.

(a) Consistent non-identical goods based adjustment is required

This issue arises in the context that the Minister has consistently determined, since the original investigation in 2014, that the normal value for the HRSS exported by Hyundai Steel to Australia should be worked out under Section 269TAC(1) of the Act, based on Hyundai Steel's domestic sales of like goods. Further, the Minister has also consistently directed that, an adjustment to the domestic sales of like goods based normal value should be applied under Section 269TAC(8) of the Act, given the physical differences between the goods exported by Hyundai Steel to Australia and the like goods sold in the domestic market. As a summary of the issues, we refer to the following statement from Report 499:

> *In the original investigation and in Review 465, the Commission found the most comparable domestic grade to the Australian export grade AS300 was SS400, both of which were categorised as Grade Code B. However, the Commission considered that the two grades within Grade Code B were not identical in all respects and a physical adjustment was made to normal value for differences observed in the cost of production for the Korean domestic grades within Grade Code B and the AS300.*

Please note that "Review 465" refers to a previous variable factors review concerning exports of HRSS from Korea only. Review 465 related to a review period of 1 January 2017 to 31 December 2017, and was concluded about two weeks prior to the initiation of Review 499. The review period for Review 499 was 1 January 2018 to 31 December 2018.

In light of the close proximity of Review 465 and Review 499 and the comparable factual circumstances between the two review periods, Hyundai Steel expected the Commission to adopt the same calculation treatment of the relevant "physical adjustment" to account for the differences between the HRSS it exported to Australia and its domestic sales of like goods in the Korean market in both Reviews. Hyundai Steel requested the Commission to proceed in such a consistent manner.

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15 See, Report 499, at pages 26 to 29.

16 See, EPR505-37, also identified as EPR499-46. A confidential version of this submission is attached for the Review Panel's reference.

17 See, EPR505-50 (also identified as EPR499-59) for the Commission's file note for the meeting.

Report 499 notes Hyundai Steel's consistent requests for the same adjustment principles to be applied. These requests and the explanation of them are to be found in Hyundai Steel's submissions dated 13 June 2019 and 22 July 2019, and in the SEF Margin Submission.[18]

Hyundai Steel first became aware of the Commission's proposed approach through its viewing of the Commission's exporter verification report. In Hyundai Steel's submission on the issue dated 13 June 2019, we said the following:[19]

> *The history and most recent position on this issue was helpfully summarised in the Commission's Report 465, issued not more than six months ago:*
>
> *…*
>
> *This summary is equally applicable to the current review.*
>
> *The introduction and implementation of the MCC in the current review has not changed the fact that Hyundai Steel exported Grade AS/NZS 300 to the Australian market during the POR, and that largely the same group of goods, mostly SS400, were sold in the domestic market. Indeed, the matching outcome arrived at by using the MCCs is largely consistent with the outcome generated by Hyundai Steel's pre-MCC model matching method, and which was adopted in Report 223 and Report 465.*
>
> *The use of MCCs in this review does not detract from the need for a physical adjustment to be made to reflect the quantifiable cost differences and the associated market value of those differences, as the Commission has done in Report 223 and Report 465. The physical differences between Hyundai Steel's Australian sales and the relevant domestic sales suitable for normal value purposes in the current review do not differ to the situation before the Commission and the Minister in either Review 465 or Investigation 223, either materially or as a matter of principle. The only thing that has changed is that during the POR the domestic goods sold by Hyundai Steel which are in the same MCC as Grade AS/NZS 300 now attract a higher cost of production to the goods exported to Australia. Hyundai Steel has explained the possibly contributing factors for this change – such as the revision of the applicable Korean product standards and associated production arrangements in response to those changes.*
>
> *The fact that this has caused a reversal in the direction of the cost differences does not cast the underpinning rationale for a physical and cost-based adjustment into doubt. The Commission has verified Hyundai Steel's costs and satisfied itself that they are accurate and in accordance with Korean GAAP. Indeed, Hyundai Steel notes that if such an adjustment had not been made in Investigation 223, then Hyundai Steel's dumping margin would have been calculated as de minimis, and no anti-dumping measures would have been imposed.*

Report 499 refused to apply the physical adjustment in a manner that was consistent with the way in which it was applied in the original investigation and in Review 465. The following explanations for this were offered by the Commission:[20]

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18 See, Report 499, at pages 26 to 29.

19 See EPR505-15.

20 Report 499, at pages 33 and 34.

The Commission has found in this review that despite the presence of physical differences between various models of HRS, the Commission did not find in Hyundai's verified sales data, or in other evidence, that physical differences of models within respective MCC groups influenced prices.

Further, the Commission could not identify;

- *a consistent correlation between the cost to make for the models sold domestically and the Australian models and the selling prices; and*
- *a physical characteristic that resulted in the cost differences between the Australian export model and the equivalent domestic model to support Hyundai's submission that changes to the Korean standard may explain these cost differences.*

Hyundai maintains that the adoption of the MCC does not change the requirement for an adjustment to normal value for physical differences as the model matching outcome is comparable to previous investigations and reviews. The Commission notes that the respective standard in Korea has recently been altered. In previous investigations and reviews pertaining to Hyundai, the models of Korean HRS were differentiated on the basis of ultimate tensile strength. The renaming of the Korean standard based on yield strength is more closely aligned to the Australian standard which emphasises yield strength and which Australian end users refer to and require to be met. The MCC structure in this review includes categories based on yield strength and also accommodates categories for tensile strength. The MCC structure was not available to be applied in Investigation 223 or in Review 465. The Commission considers that the MCC structure applied in this review is appropriate and facilitates close matching of Australian export models with domestic models while recognising that adjustments to normal value may be required when a physical difference is shown to influence price. In respect of Hyundai and this review, the Commission has not found this to be the case.

In the context of the findings above and consistent with the Manual, the Commission does not consider that a price adjustment for physical differences is warranted.

…

In respect of Hyundai's statements that Review 499 is being conducted on the premise that the variable factors have changed, and that attempts to challenge and substantially revise the model matching applied in the original decision to impose anti-dumping measures should not be considered, the Commission notes that it is required to consider the evidence before it in this review, including whether that indicates that a different approach to model matching is required. [underlining supplied]

We note that the underlined text in the extracts set out above are a repetition of the statements in SEF 499,[21] which Hyundai Steel had addressed in its SEF Margin Submission as follows:[22]

We refer the Commission to Hyundai Steel's submission dated 13 June 2019:

> *The introduction and implementation of the MCC in the current review has not changed the fact that Hyundai Steel exported Grade AS/NZS 300 to the Australian market during the POR, and that largely the same group of goods, mostly SS400, were sold in the*

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21 SEF499, at page 31.

22 EPR505-37, SEF Margin Submission, at pages 5 and 6.

> *domestic market. Indeed, the matching outcome arrived at by using the MCCs is largely consistent with the outcome generated by Hyundai Steel's pre-MCC model matching method, and which was adopted in Report 223 and Report 465.*
>
> *The use of MCCs in this review does not detract from the need for a physical adjustment to be made to reflect the quantifiable cost differences and the associated market value of those differences, as the Commission has done in Report 223 and Report 465. The physical differences between Hyundai Steel's Australian sales and the relevant domestic sales suitable for normal value purposes in the current review do not differ to the situation before the Commission and the Minister in either Review 465 or Investigation 223, either materially or as a matter of principle. The only thing that has changed is that during the POR the domestic goods sold by Hyundai Steel which are in the same MCC as Grade AS/NZS 300 now attract a higher cost of production to the goods exported to Australia. Hyundai Steel has explained the possibly contributing factors for this change – such as the revision of the applicable Korean product standards and associated production arrangements in response to those changes.*
>
> *As noted in the second paragraph above, the revision of the Korean Standards in fact contributed to the reversal of the direction of the adjustment. However, the fact that an adjustment is favourable or unfavourable to an exporter in the determination of its dumping margin is irrelevant to the obligation to make such an adjustment as requested and as verified. The reasons for an adjustment, as adopted by the Commission in Investigation 223 and Review 465, have not been affected or removed. That is, the normal value and the export price "are not in respect of identical goods", and the physical differences affect their fair comparison, as the Commission has previously and consistently considered to be the case.*
>
> *Accordingly, Hyundai Steel respectfully urges the Commission to adopt the consistent reasoning and methodology as recently confirmed in Review 465, and to apply an adjustment to the normal value on the same basis.*

In our view, Report 499 did not address Hyundai Steel's submissions as set out above. The underlined text simply repeat the Commission's view in SEF 499. Hyundai Steel's comments are not referenced. Regarding the two points which the *"Commission could not identify"*, Hyundai Steel submits that Report 499 does not explain the relevance of these additional observations to the need to make a physical adjustment consistent with the Minister's direction in the original investigation and in Review 465.

In any case, the Commission's comments clearly miss the point. As identified in the summary at the outset, the relevant goods exported to Australia were of a different grade to the grade of "like goods" sold by Hyundai Steel in its domestic market. The Australian export grade was not sold by Hyundai Steel in its domestic market, and *vice versa*:

> *In the original investigation and in Review 465, the Commission found the most comparable domestic grade to the Australian export grade AS300 was SS400, both of which were categorised as Grade Code B. However, the Commission considered that the two grades within Grade Code B were not identical in all respects and a physical adjustment was made to normal value for differences observed in the cost of production for the Korean domestic grades within Grade Code B and the AS300.*

If the anticipated correlation referred to in Report 499 is that a lower-cost grade [CONFIDENTIAL TEXT DELETED – pricing information] then that would have been precisely the basis for the Minister's decision to apply the cost based physical differences adjustment in the original investigation and in Review 465.

Further, Hyundai Steel demonstrated that there were relatively consistent differences in the cost to make pertaining to the different grades. The "physical difference calculation" spreadsheet provided as part of Hyundai Steel's response to the Exporter Questionnaire and presented during the verification visit shows that [CONFIDENTIAL TEXT DELETED – pricing information]:[23]

[CONFIDENTIAL IMAGE DELETED – data showing cost differences]

The calculation method adopted to present the cost differences between the different grades was the same with the cost based physical differences analysis and the physical difference adjustment calculation adopted in Review 465:[24]

[CONFIDENTIAL IMAGE DELETED – data showing cost differences]

As shown above, Review 465's comparison of the different grades within the [CONFIDENTIAL TEXT DELETED – internal product information]. In other words, the use of both tensile strength and yield strength based model identifiers by the MCC did not result in significant changes to the model matching outcome for Hyundai Steel as compared to Review 465. Hyundai Steel submitted as follows:[25]

> *The introduction and implementation of the MCC in [Review 499] has not changed the fact that Hyundai Steel exported Grade AS/NZS 300 to the Australian market during the POR, and that largely the same group of goods, mostly SS400, were sold in the domestic market. Indeed, the matching outcome arrived at by using the MCCs is largely consistent with the outcome generated by Hyundai Steel's pre-MCC model matching method, and which was adopted in Report 223 and Report 465.*
>
> *… The only thing that has changed is that during the POR the domestic goods sold by Hyundai Steel which are in the same MCC as Grade AS/NZS 300 now attract a higher cost of production to the goods exported to Australia. Hyundai Steel has explained the possibly contributing factors for this change – such as the revision of the applicable Korean product standards and associated production arrangements in response to those changes.*

Lastly, we draw the Review Panel's attention to the fact that some of Hyundai Steel's Australian exports of the goods during the POI had dates of sale, based on their sales order dates, that fell within 2017. Report 499 determined the normal value of these exports based on the normal value of corresponding periods during 2017 from Review 465 – being periods in which the Commission had applied the physical difference adjustment in working out the normal value.[26] In conducting this calculation, the Commission was able to use Hyundai Steel's Product Code based normal value determined in Review 465 directly as the MCC based normal value in Report 499 – because the model matching outcome generated by Hyundai Steel's pre-MCC model matching method, which was adopted in Report 223 and

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23 See Hyundai Steel's Exporter Questionnaire response, at Attachment E-5.1.

24 See, Commission's Report 465 - Confidential Appendix 4 – Hyundai – Normal value calculation.

25 EPR505-37, SEF Margin Submission, at pages 5 and 6.

26 See, Report 499, "*Confidential Appendix 2 – Hyundai variable factors calculation*", "Normal Value" tab.

Report 465, was consistent with the outcome arrived at by using the MCCs. In our view, the use of a normal value with a physical adjustment (in relation to 2017), and one without a physical adjustment (in relation to 2018) further highlights the incorrectness and unreasonableness of the findings with respect to the treatment of the physical difference based adjustment.

We submit that the Review Panel should find that the treatment of the physical adjustment in working out the normal value for Hyundai Steel in Report 499 was not the correct and preferable decision. The correct and preferable decision is that, consistent with the Minister's finding in the original investigation and Review 465, the exported goods and the like goods sold by Hyundai Steel on its domestic market meant were not identical, and that it was reasonable to make an adjustment based on the cost differences between the goods, in the calculation of the normal value.

(b) Incorrect OCOT determination for domestic sales of like goods

In this regard, we refer to the Commission's treatment of the inland freight costs associated with Hyundai Steel's domestic sales of like goods as part of its OCOT determination as required by Section 269TAAD of the Act. As noted in Report 499, Hyundai Steel took issue with the Commission's approach, which was to use "per transaction" inland freight cost, in its OCOT determination, rather than the "weighted average" inland freight cost as required by Section 269TAAD(3) of the Act.

Section 269TAAD(3) states:

> *(3) Costs of goods are taken to be recoverable within a reasonable period of time if, although the selling price of those goods at the time of their sale is below their cost at that time, the selling price is above the weighted average cost of such goods over the investigation period.*

The Commission refused to follow this method. Instead, it insisted on using the actual transaction-by-transaction cost of inland freight. The Commission determined the "recoverability" of the sales based on a mixture of the weighted average cost of production and sales exclusive of inland freight, plus the transaction-by-transaction based cost of inland freight. Thus, it was submitted by Hyundai Steel that the Commission's OCOT determination was not conducted based on the "weighted average cost".

Report 499 rejected Hyundai Steel's submission, stating:

> *The Commission considers that where information on the actual delivery expenses on a line by line basis is available, it is appropriate and preferable to have regard to the actual cost of delivery for each domestic sale in determining whether the domestic sale is made in the OCOT. This is the Commission's current practice, is consistent with 269TAAD(3) and yields a more accurate and preferable application of the OCOT test. Importantly, having regard to the actual cost of delivery yields a more accurate cost of such goods as required under 269TAAD(3).*
>
> *Adopting Hyundai's suggested approach of comparing an invoice price to a weighted average CTMS would result in comparing the same cost of delivery to domestic sales with differing delivery distances, which would have differing delivery costs. The Commission considers that Hyundai's suggested approach yields a less accurate outcome compared to the Commission's current practice of comparing the ex-works selling price to the equivalent costs. Hyundai's suggested approach would disregard these differences in delivery expenses.* [footnote omitted, underlining in original]

We submit that the statements in Report 499 clearly support Hyundai Steel's claim that the Commission decided not to comply with the requirement under Section 269TAAD(3) to use the *"weighted average cost"*.

Further, Report 499's comment that *"Hyundai's suggested approach would disregard these differences in delivery expenses"* displays an irrelevant consideration. Section 269TAAD(3) requires the Minister to consider if a loss-making sale is nonetheless cost recoverable despite the fact that the selling prices of the goods may be below the cost *"at that time"* by having regard to the weighted average cost of the goods over the entire POI. This mandates that the Minister conduct the test by using a weighted average cost which has the effect of "disregarding" any differences that would otherwise result from timing, or transactional circumstances. Accordingly, the disregarding of any potential differences that might result from "Hyundai's suggested approach" is exactly as intended by the legislation.

It follows that the Commission's "preferred application of the OCOT test" is inconsistent with the legal requirement.

(c) Incorrect determination of export price

In this regard, we refer to the determination in Reports 499 and 505 that for the HRSS that was both exported and imported by Hyundai Steel to Australia during the POI the export price should be worked out on the following bases:

- on the basis that *"for the sales made by Hyundai on duty paid terms, the export price has been ascertained under section 269TAB(1)(a)*" Hyundai Steel's Australian customer is to be regarded as the importer of the goods, [CONFIDENTIAL TEXT DELETED – sales contract terms]; and

- on the basis that the amount of interim dumping duty ("IDD") as paid by Hyundai Steel upon importation of these goods, is deducted for the purpose of determine the export price at FOB level under Section 269TAB(1)(a)[27]

Hyundai Steel submits that the Commission's findings are neither correct nor preferable.

Firstly, Hyundai Steel submits that it is neither correct nor preferable to deduct the amount of IDD in the determination of export price for the purpose of the determination of variable factors in a review or continuation inquiry. We respectfully refer the Review Panel to Hyundai Steel's submission dated 27 June 2019:[28]

> *In Hyundai Steel's view, in a variable factors review or continuation inquiry – which is a review of the necessity for the dumping duty and its appropriate level under Article 11 of the WTO Anti-Dumping Agreement – it is the export price charged by an exporter such as Hyundai Steel and the impact of which that must be reviewed. The amount of dumping duty paid, either by the exporter or by the importer, represents the amount of duty required to offset the dumping margin and the level of dumping duty previously determined by the Commission. Such duty, and the formerly determined dumping margin, are the very subjects being reviewed. The purpose of the review cannot be achieved if the export price is adjusted downward by the same extent of the IDD. The IDD imposed is intended to reflect and offset the margin of dumping. The*

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27 See Report 499, at page 35.

28 See EPR505-018, at pages 9 to 11.

deduction of IDD from the export price distorts the export prices and creates a "double counting" of dumping margin by the existing dumping margin. The first count being at the border when these duties are paid, and second count when they are removed in the process of reviewing the dumping margin.

Further, the deduction of IDD from the export price leads to a situation where the export price appears artificially low, thereby causing there to be an exaggerated dumping margin, unreflective of the actual differences between export price of the goods and their normal value. This potentially results in a situation where exporters are considered to be "dumping" in ever-greater amounts and are required to pay interim dumping duties in greater and greater amounts following each variable factors review because the dumping margin is artificially increased by the amount of interim dumping duty itself. This is so even if the un-deducted variable factors remain the same and dumping does not occur. From an injury perspective, the reduced export price also fails to reflect the actual impact of the exported goods on the Australian industry.

We illustrate this in the example below:

	Original investigation	*Review period 1*	*Review period 2*
Export price	*100*	*110*	*110*
Normal value	*110*	*110*	*110*
IDD		*11*	*12.2*
Export price reduced by IDD		*99*	*97.8*
Dumping margin	*10%*	*11.1%*	*12.5%*

As the above table shows, even though the exporter increased its export price to the same level as the normal value in response to the finding of dumping from the original investigation, and was thereby not dumping, the subsequent reviews fail to correct and update its dumping margin to 0%. Instead, the IDD deduction method means that the exporter is "trapped" with ever higher dumping margins, despite the fact that goods were exported into Australia at higher, un-dumped prices. The IDD deducted export price also fails to correctly reflect the actual market and price impact of the exported goods, thereby also affecting any accompanying injury assessment.

In Hyundai Steel's view, such treatment of the IDD is unfairly punitive and distortive. It undermines the function of a variable factors review and of a continuation inquiry as a mechanism intended to assess the necessity and the level of dumping duty required to offset dumping-caused injury. Based on the above example, an exporter must export the goods at 122.2 per unit, being 11% higher than the normal value, in order to achieve a 0% dumping margin.

Hyundai Steel notes that the double counting effect of deducting IDD from export price is recognised in the USA. Hyundai Steel respectfully refers the Commission to the following example of the practice of the US Department of Commerce ("USDOC") concerning this issue:

> *However, our longstanding practice is not to deduct antidumping duties as costs, expenses or import duties because antidumping duties are neither selling expenses nor*

> *normal customs duties. Equally significant, in order to follow the petitioner's suggestion, we would have to adjust the respondents' dumping margins to account for their dumping margins. That is, the petitioner would require that the margin calculations be performed as follows: 1) calculate the antidumping duty margins for the respondents; 2) determine the antidumping duties pursuant to those margins that, in the normal course of business, would be paid by the respondents acting as importers; 3) increase the dumping margin for each company by deducting that initial assessed amount from the respondents' export prices; and then 4) calculate new, higher antidumping duties to apply to each respondent. Such an outcome would impermissibly force the companies to pay additional duties that "doublecount" the antidumping rate which originally addressed the companies' pricing behavior. Moreover, this conclusion has repeatedly been upheld by the CIT. See, e.g., AK Steel, 988 F. Supp. at 607 (finding the Department's rationale that including antidumping duties would result in double-counting to be a reasonable justification for not including them in the Department's calculations); and Hoogovens, 4 F.Supp.2d at 1220 ("...an antidumping order is designed to raise the price of dumped goods to a fair level in the import market. It is not a normal import duty or an extra 'cost' or 'expense' to the importer - it is an element of a fair and reasonable price").*[29]
>
> *In Hyundai Steel's view, the USDOC's rationale on this issue is reasonable and logical. Hyundai Steel respectfully asks the Commission to take the same approach towards IDD and export price determination in the current and future reviews. Hyundai Steel submits that the same non-deduction of IDD approach, recognising the special nature of IDD, can be accommodated in Australia under Section 269TAB(1)(c), where the exporter exported the goods on a duty paid basis, thereby also being the importer of the goods on the record.*

Report 499 and Report 505 do not address Hyundai Steel's above submission, except to comment on the applicability of Section 269TAB(1)(c).

Secondly, we note that "variable factors" is defined by Section 269T(4D) as follows:

> *(4D) In this Act, a reference to variable factors relevant to the determination of duty payable under the Dumping Duty Act on particular goods the subject of a dumping duty notice … is a reference:*
>
> *(a) if the goods are the subject of a dumping duty notice:*
>
> *(i) to the normal value of the goods; and*
>
> *(ii) to the export price of the goods; and*
>
> *(iii) to the non-injurious price of the goods;…*

Section 269T provides that *"interim duty"* means "*interim dumping duty or interim countervailing duty*", whilst *"interim dumping duty"* means *"interim dumping duty imposed under section 8 of the Dumping Duty Act*" or *"interim third country dumping duty imposed under section 9 of that Act*". Section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* ("the Dumping Duty Act") provides that interim dumping duty is

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[29] Attachment 1 - See *Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India* page 17.

to be calculated by the method there prescribed, with reference to one or more of the variable factors, being export price, normal value and non-injurious price.

The legislative definitions of the variable factors do not refer to "anti-dumping duty" or "interim duty". Naturally, the variable factors are determined for the very purpose of determining a dumping margin and the collection of the IDD and ultimately the final duty. In other words, IDD is the amount of duty collected once the variable factors have been determined. IDD cannot be part of the determination of the variable factors themselves.

In contrast, Section 8(5B) of the Dumping Duty Act suggests that IDD is concept that is independent from export price, and should not form part of the exercise of export price determination:

> *(5B) If:*
>
> > *(a) the Minister is required to perform the function under subsection (5) in respect of goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act; and*
> >
> > *(b) the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained;*
>
> *the Minister must, in performing that function, have regard to the desirability of specifying a method such that the sum of the following does not exceed that non-injurious price:*
>
> > *(c) the export price of goods of that kind as so ascertained or last so ascertained;*
> >
> > *(d) the interim dumping duty payable on the goods the subject of the notice.*

Similarly, Section 269ZDB of the Act provides:

> *(3) If:*
>
> > *(a) the Minister makes a declaration under subsection (1); and*
> >
> > *(b) under that declaration, new variable factors are taken to have been fixed, in relation to goods exported to Australia by a particular exporter, with effect from a date specified in the declaration; and*
> >
> > *(c) interim duty paid on such goods on the basis of the variable factors as previously fixed exceeds the interim duty that would be payable on the basis of the new variable factors;*
>
> *the person who paid the interim duty may apply under Division 3 of Part VIII for a refund of the excess.*

In our view this supports Hyundai Steel's characterisation of IDD as a contingent special duty, decided by the variable factors, and subject to finalisation through duty assessment procedures, rather than a finalised normal "post-exportation" charge which forms part of the determination of export price, being one of the variable factors to be determined by the Minister.

Indeed, the Act only envisages the possibility of deducting IDD as part of export price determination as part of a duty assessment conducted under Division 4 of Part XVB of the Act. In the context of ascertaining the final duty payable, Section 269X provides:

> *(5B) In provisionally ascertaining the export price of goods as described in subsection (5A), the Commissioner must:*
>
> > *(a) take account of the following in relation to the goods:*
> >
> > > *(i) any change in normal value;*
> > >
> > > *(ii) any change in costs incurred between importation and resale;*
> > >
> > > *(iii) any movement in resale price which is duly reflected in subsequent selling prices; and*
> >
> > *(b) despite paragraph 269TAB(1)(b), not deduct the amount of interim duty if the Commissioner has conclusive evidence of the things mentioned in subparagraphs (a)(i), (ii) and (iii) of this subsection.*
>
> *An expression used in this subsection and subparagraph 3.3 of Article 9 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 set out in Annex 1A to the World Trade Organization Agreement has the same meaning in this subsection as it has in that subparagraph.*

As shown above, even under Section 269X(5B) the deduction of IDD is provided for in the context of the Commissioner's obligation not to make such a deduction, if the export price is calculated under Section 269TAB(1)(b), being a provision which specifically and expressly refers to *"any duties of Customs*" as a prescribed deduction. There is no indication that IDD was ever envisaged as a possible "deductive factor" for the determination of export price under any other sections.

Accordingly, we respectfully submit that in the case of Hyundai Steel's Australian sales of HRSS based [CONFIDENTIAL TEXT DELETED – sales information] it was not correct or preferable for the Minister to deduct the amount of IDD in the determination of the export price, as part of her determination of the variable factors for the POI.

Thirdly, with respect to the question of the importer of the goods, Hyundai Steel respectfully refers the Review Panel to its SEF Margin Submission:

> *… the Commission considers that Section 269TAB(1)(c) cannot be applied, because of its view that Hyundai Steel is not the importer of the relevant sales:*
>
> > *In section 5.5.1.1 of this report, it is explained that for the sales by Hyundai on duty paid terms, the export price has been ascertained under section 269TAB(1)(a). For these duty paid sales, the delivery term is of a kind that the risk and beneficial ownership of the goods is transferred to the buyer upon loading on the ship. The Commission considers that the payment of IDD does not change the point at which risk and beneficial ownership passes to the buyer and therefore considers the Australian customer to be the importer of the goods for Hyundai's duty paid sales.*

> *In accordance with 269TAB(1)(a), the Commission has deducted all the post-exportation costs from the import price of the goods in order to determine the export price for the goods at the FOB level. This includes the IDD, which is a charge arising after exportation.*

The observation that "[f]or these duty paid sales, the delivery term is of a kind that the risk and beneficial ownership of the goods is transferred to the buyer upon loading on the ship" is incorrect. As shown in clause 4 of the sales contract for the sampled duty paid sales, the sales term between Hyundai Steel provides that the title and risk to the goods are passed to the Buyer after the vessel arrives in Australia, not "upon loading on the ship".

Clause 13(2) of the contract also states:

> ***[CONFIDENTIAL TEXT DELETED – contract clause about duty payment]***

Consistent with these sales terms, Hyundai Steel is also identified as the importer of such sales on the N10S customs declaration form.[30]

Accordingly, Hyundai Steel submits that it should be recognised as the importer of such sales. It is the importer of record for customs declaration purposes, and has the contractual ***[CONFIDENTIAL TEXT DELETED –contractual rights as importer].***

Despite Hyundai Steel's clarification, Report 499 continues to claim the following:

> *Notwithstanding Hyundai's submission that shipping documents indicate that it is the importer of the goods for these duty paid sales, the delivery term is of a kind where the risk and beneficial ownership of the goods is transferred to the buyer upon delivery of the goods on board the vessel. The Commission considers that the payment of IDD does not change the point at which risk and beneficial ownership passes to the buyer. As such, the Commission considers the Australian customer to be the importer of the goods for Hyundai's duty paid sales.*

This is incorrect. Based on **[CONFIDENTIAL TEXT DELETED – information about sales contracts and ownership]**.

The facts here are quite clear. Hyundai Steel entered into those sales contracts with its customers in **[CONFIDENTIAL TEXT DELETED – delivery terms and sales contract information]** was entered to specifically set up a relationship whereby Hyundai Steel **[CONFIDENTIAL TEXT DELETED – contractual rights as importer]**.

Hyundai Steel registered its Australian Business Number ("ABN") and its **[CONFIDENTIAL TEXT DELETED – company information]**. This is also evidenced by **[CONFIDENTIAL INFORMATION – sales terms and arrangements]**.

Accordingly, Hyundai Steel respectfully submits that it is clearly intended and should be recognised that Hyundai Steel is the importer of those goods it exported **[CONFIDENTIAL TEXT DELETED – delivery terms]**. The sales contract between Hyundai Steel and its customer, and the practice in reality,

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30 Ibid, at page 45.

support the view that it was intended by the parties that Hyundai Steel was **[CONFIDENTIAL INFORMATION – sales arrangements]** would be denied.

Accordingly, we respectfully submit that the Review Panel should find that the correct and preferable decision is that Hyundai Steel was the importer in relation to the goods **[CONFIDENTIAL TEXT DELETED – delivery terms]**, and that the export price of these goods should be determined under Section 269TAB(1)(c) of the Act, and without any deduction of IDD.

10 Correct or preferable decision

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

In relation to the **determination of any physical differences based adjustment** for normal value purposes, Hyundai Steel submits that the correct and preferable decision is for the Minister to direct that an adjustment to account for the physical differences should be made to the prices of Hyundai Steel's domestic sales of like goods, consistent with the adjustment applied in Review 465.

In relation to the **OCOT determination** for normal value purposes, Hyundai Steel submits that the correct and preferable decision is to conduct the OCOT test by using the weighted average cost of Hyundai Steel's domestic sales of like goods over the investigation period, as directed by Section 269TAAD(3) of the Act, and not to use the transaction-by-transaction inland freight cost.

In relation to the **determination of export price**, Hyundai Steel submits that the correct and preferable decision is to ascertain Hyundai Steel's export prices of the HRSS without any deduction of IDD, and to recognise that Hyundai Steel was the **[CONFIDENTIAL INFORMATION – sales terms and arrangements]**.

11 Grounds in support of decision

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

The grounds raised in question 9 support the making of the proposed correct or preferable decision by demonstrating the margin assessment as in Report 499 is incorrect

12 Material difference between the decisions

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

Based on Hyundai Steel's estimation, the making of the correct or preferable decision referred to under 10 above would result in a decision that is materially different from the reviewable decision, because it would result in changes to the variable factors and a reduction to the dumping margin with respect to the exported goods. Hyundai Steel estimates that the combined effect of the proposed decisions would be to reduce that dumping margin from 4.7% to 3.4%.

In so far as the determination of export price issue is concerned, the proposed decision is also materially different from the reviewable decision because it would reinstate Hyundai Steel's right both as exporter and importer of the goods under the Act with respect to future exports of the goods.

C Second ground – determination of non-injurious price was not correct and preferable

9 Grounds

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

Hyundai Steel submits that it is not correct or preferable for the Commission to claim that there is no suitable method of determining an unsuppressed selling price ("USP"), and that the non-injurious price ("NIP") is the price equal to each exporter's respective normal value.

One of the variable factors the Minister was required to consider both as part of Inquiry 505 and Review 499 is the NIP. The NIP is defined under subsection 269TACA(a) as the minimum price necessary to "*prevent the injury, or a recurrence of the injury, or to remove the hindrance*". This is a key consideration for the purpose of determining the legitimacy for continuing the measure as against a particular exporter, so as to not lead to the recurrence or continuation of material injury the measure was intended to prevent, and, if the measure is to be continued, for the purpose of determining the appropriate level of duty and the applicability of the lesser duty rule.

In this respect, Report 505 claims that it was unable to determine the NIP. In this regard it refers the determinations in the original investigation as follows:[31]

> *The Commission determined in the original investigation that the cost plus profit approach was not suitable in the determination of the unsuppressed selling price (USP) because a correlation between the profit rate proposed by the applicant and HRS sales could not be established. The Commission considers this to be the case in respect of this inquiry as well. In Review 499, the Commission did not find there to be a suitable method of determining the USP and the Commissioner proposed that the NIP for all exporters should be a price equal to the respective normal value. As such, the Minister is not required to have regard to the lesser duty rule as the NIP is not less than the normal value.*

Additionally, Report 499 states:

> *The Commission has found in this review that the Australian HRS market is affected by dumping and considers that historical sales data is not a suitable method for calculating the USP.*
>
> *In the original investigation, it was determined that the cost plus profit approach was not suitable for the determination of the USP because a correlation between the profit rate proposed by the applicant and HRS sales could not be established. The Commission considers this to be the case for this review as well.*
>
> *The Commission has not found there to be a suitable method of determining the USP and considers that the approach to determining the NIP in REP 223 and in Review 465 remains valid for the purpose of this review.*

[31] Report 505, page 53.

> *The Commission considers that the NIP for all exporters should be a price equal to the respective normal value. As such, the NIP for each exporter has changed but is not operative and therefore does not affect the effective rates of duty set out in Table 8 of this report.*[32]

In light of the above, we respectfully submit that Report 499 failed to genuinely and objectively determine the NIP for the POI.

Further, by setting the NIP at the level of the normal value of each exporter respectively, the Commission's objective appears to have been to ensure that dumping margin is given the maximum effect in terms of duty collection, rather than to determine a NIP for the purpose of preventing injury or a recurrence of the injury to the Australian industry, as required by Section 269TACA of the Act. Such finding deprives the requirement to work out a non-injurious price for the Australian industry as a whole under the Act of any meaning, and is unsustainable given that the Australian industry competes in the Australian market for rebar with goods at dumped prices as well as goods at un-dumped prices, and with goods under investigation and goods not under investigation.

The NIP, as one of the variable factors that the Minister is required to determine, implies the full margin of dumping may not need to be negated even if dumping has caused material injury, in other words, that the dumping margin exceeded the degree of injury caused by dumping. This requires the Commission to work out the minimum price necessary to prevent the injury caused by dumping, for the Australian industry as a whole.

In our view, Report 505 and Report 499 decided that there was no suitable method to determine the USP with no regard to the evidence in Continuation 505 and Review 499.

In the original investigation the Commission made the following assessment in relation to the determination of a USP:

> *The Commission has noted OneSteel's claims that the historical sales data provided in the investigation has been affected by dumping. While claims made about the existence of dumping preceding the investigation cannot be substantiated, the Commission is not satisfied that using historical sales data is a suitable method for calculating the USP.*
>
> *The Commission has also considered OneSteel's argument that a USP should be calculated using industry's costs plus a profit. The Commission considers, however, that the relevance of the profit proposed by OneSteel cannot be linked to HRS sales.*
>
> *The Commission does not consider that the price from other countries in the Australian market are a suitable basis for a USP as it cannot determine whether those countries are also impacted by the dumped imports of the countries under consideration.*
>
> *In the absence of a suitable method of determining the USP, the Commission has considered an alternative approach to establishing the NIP. As highlighted earlier in this report, OneSteel's prices are based on an equivalent into-store IPP plus a local premium to account for the benefits of local supply.*
>
> *The Commission is of the view that in a market unaffected by dumping, it is reasonable to expect that OneSteel would continue to set its prices with regard to benchmarked import prices. In this case, as the price of imports would be higher at least by the dumping margins*

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[32] Report 499, page 49.

> *found, it would be expected that OneSteel's prices would also be higher at least by the percentage of the dumping margin's found.*
>
> *Accordingly, the Commission considers that the NIP for each exporter is a price equal to the respective normal value. This redresses the effects of dumping without redressing the effects of any other factors influencing price.*
>
> *As the NIP is set at the same price as the normal value, the lesser duty rule does not come into effect.*[33]

The Commission adopted and followed this approach in Review 465, determining that the approach above remained valid for the purpose of that review.[34]

The Commission's Anti-Dumping and Subsidy Manual states that it will:

> *generally not depart from the approach taken in the original investigation or a previous review, unless there has been a change in circumstances that either makes the earlier USP approach unreasonable, or less preferred amongst the other available options.*[35]

Hyundai Steel submits that there has been such a change in circumstances that makes the approach in Review 499 both incorrect and unreasonable.

This change is evidenced by the Commission's finding that for the POI the largest source of exports was Taiwan, and that most exports from Taiwan were made by Tung Ho.[36] Two of the Taiwanese exporters, presumably accounting for the largest portion of the exports from Taiwan, were found not to have been dumping during the POI. Further, Report 505 notes that exports from Taiwan increased by about 50% during the POI before taking into account any exports to Liberty Steel, however its prices were not the lowest on the market. In relation to Tung Ho, Report 505 also finds that:

> *The Commission considers that if Tung Ho reduces its prices relative to other exporters, and does so in a rising market, the margin between Tung Ho's export price and the proposed floor price is sufficiently large that it is not likely that it will export HRS at prices below the proposed floor price...*
>
> *In these circumstances, the Commission considers that it is not likely that exports of HRS at dumped prices by Tung Ho would recur if the measures expire.*[37]

And

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33 EPR 223, Doc 096 page 87.

34 EPR 465 Doc 025, page 28.

35 See Anti-Dumping Commission Dumping and Subsidy Manual, page 137.

36 See Report 505, pages 22 and 34.

37 Report 505, page 37.

> *The Commission has not found dumping by Tung Ho to be the cause of the injury experienced by Liberty because for a significant period of time, exports by Tung Ho have not been at dumped prices.*[38]

The Minister then decided not to secure the continuation of the anti-dumping measure as against Tung Ho.

Further, we refer the Review Panel to the price undercutting analysis in Report 505, which shows that:

- *In respect of Tung Ho, the Commission has found price undercutting during the inquiry period between 1.6 per cent and 5.7 per cent*;[39] and
- [in respect of imports from Hyundai Steel], *the Commission has found price undercutting during the inquiry period between 2 per cent and 7 per cent*.[40]

Report 505 notes that with respect to the price undercutting by Tung Ho, the "*Commission also found consistent price undercutting when the analysis was replicated on a common customer basis*".[41] This is not mentioned in relation to the price undercutting analysis with respect to imports from Hyundai Steel. Therefore it is unclear whether Hyundai Steel's HRSS did indeed compete with and undercut the Australian industry's HRSS. Nonetheless, for the purpose of determination of USP and NIP, the above price undercutting analysis indicates that the prices of Tung Ho's exports undercut the Australian industry at a similar level to Hyundai Steel's exports. Hyundai Steel's exports shrank during the POI, whilst the exports from Tung Ho expanded. Report 505 anticipates that Tung Ho will be able to further reduce its prices and increase its exports without engaging in any dumped pricing – noting its negative 1.6% dumping margin. This means that it is most likely that Tung Ho has been or will become the price leader amongst the HRSS imports, and that it will further secure its position as the largest source of imports in the Australian market. Report 505 expects that the Australian industry will maintain its import parity pricing ("IPP") mechanism in the future. Therefore, it can cogently and reasonably be assumed that Tung Ho's prices will become the benchmark for any such IPP exercise. It follows that Tung Ho's normal value during the POI provides the reasonable and suitable basis for the determination of a USP and ultimately a NIP. Such price level would represent both:

- the market price unaffected by dumping; and
- the selling prices of un-dumped imports in the Australian market.

Accordingly, we respectfully submit that it was not an option for Report 505 to claim that there was not a "suitable method" for the determination of USP during the POI. Such a decision was neither correct nor preferable.

10 Correct or preferable decision

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

38 Report 505, page 44.

39 Ibid.

40 Report 505, page 43.

41 Report 505, page 44.

Hyundai Steel submits that the correct or preferable decision is that:

- the NIP should be determined for the Australian industry as a whole, and not in relation to the dumping margin of each exporter;

- the NIP is to be determined based on Tung Ho's export price, representing the market price unaffected by dumping and the selling prices of un-dumped imports during the POI, or its normal value during the POI, representing the probable market price unaffected by dumping after the expiry of the measure as against Tung Ho.

In light of Report 505's observed similarity between Hyundai Steel prices and those from Tung Ho, we expect that the NIP so determined will be lower than Hyundai Steel's normal value, and should become the basis for the operative measure, through the application of the lesser duty rule.

11 Grounds in support of decision

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

The grounds raised in question 9 support the making of the proposed correct or preferable decision by demonstrating that the NIP ought to be the operative measure.

12 Material difference between the decisions

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

The proposed decision would render incorrect the Commission's determination under Section 269TACA of the Act and its recommendation that the NIP be set at each exporter's normal value. It would also require a substantially different determination of the non-injurious price, as part of the variable factors determination and the determination of the likely impact of allowing the measure to expire.

D Conclusion and request

The decisions to which this application refers are reviewable decisions under Section 269ZZA of the Act. Where references are made to the Commission and its recommendations, it is those recommendation which were accepted by the Minister and form part of the reviewable decision that Hyundai Steel seeks to have reviewed.

Hyundai Steel is an interested party in relation to the reviewable decisions.

Hyundai Steel's application is in the prescribed form and has otherwise been lodged as required by the Act.

We submit that the application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct and preferable decisions that should result from the grounds that are raised in the application are dealt with and detailed above.

Lodged for and on behalf Hyundai Steel Company by:

Charles Zhan
Senior Associate