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Ms Jaclyne Fisher
Panel Member
Anti-Dumping Review Panel
c/- Anti-Dumping Review Panel Secretariat
Industry House, 10 Binara Street
Canberra, ACT 2601

By email

Dear Panel Member

Hyundai Steel Company

ADRP Reviews 2019/120 and 2019/121 – response to Liberty Steel’s applications

As you know, we act for Hyundai Steel Company (“Hyundai Steel”) in the Anti-Dumping Review Panel’s (“ADRP”) reviews concerning hot rolled structural steel sections (“HRSS”) from Japan, Korea, Taiwan and Thailand, namely ADRP Reviews 2019/120 and 2019/121 (hereinafter the “Reviews”).¹

The Reviews have been initiated in response to applications made by Hyundai Steel as well as two other parties, including OneSteel Manufacturing Pty Limited (“Liberty Steel”). Liberty Steel’s applications request the ADRP to review the variable factors determined for Hyundai Steel following the variable factors review No 499 (“Review 499”)² and continuation inquiry No. 505 (“Continuation 505”).³ Liberty Steel’s applications state:

Ground 1:

There are errors in the determination of the dumping margin for Hyundai Steel, in particular, incorrect determination of the date of sale for the export sales to Australia.⁴

Liberty Steel asserts that the Minister should have determined the date of sales with respect to Hyundai Steel’s exports to Australia based the invoice date. With respect, Liberty Steel’s request is groundless and out of place.

¹ ADRP Notices 2019/120 and 2019/121 dated 17 January 2020, made under Section 269ZZI of the *Customs Act 1901*.

² ADN 2019/125.

³ ADN 2019/126

⁴ Liberty Steel’s ADRP review application re Review 499, at page 6. The same claim is made in its application concerning Continuation 505, at page 7.

The standard adopted by the Commission for determining the date of sale is the date that “*best reflects the material terms of sale*”.⁵ This test reflects the requirement under Section 269TAF(1) of the *Customs Act 1901* (“*the Act*”),⁶ as well as Footnote 8 of the Anti-Dumping Agreement.⁷ The date of sale must also be considered in making comparison between export prices and the “*corresponding normal value*” as required by Section 269TACB of *the Act*.

Accordingly, date of sales determination must be made having regard to the factual circumstances of the sales. It is a determination of contractual fact. This is what the Commission did. Report 499 carefully engaged with the contractual practices and commercial arrangements concerning Hyundai Steel’s Australian sales during the period of review (“POR”), before reaching the view that the sale order date is the most appropriate date for the purpose of establishing the date of sales for those exports during the POR.⁸

By contrast, Liberty Steel’s assertion that invoice date should be adopted is not based on any fact. Liberty Steel has not pointed out any facts or evidence that renders the Commission’s determination incorrect.

Rather, Liberty Steel’s claim focuses on certain paragraphs from the Commission’s Dumping and Subsidy Manual and a dispute before the ADRP⁹ that deals with “*any claim for an adjustment*”¹⁰ – a reference clearly relating to the “*sales occurring at different times*” based normal value adjustment under Section 269TAC(8) of *the Act*.

To be clear, there has been no claims for such adjustment with respect to the variable factors determined for Hyundai Steel in Review 499 and Continuation 505. Nor was it required, because the Commission was able to identify the normal value based on domestic sales having date of sales which were *corresponding* to the date of sales for the goods exported. Those sales did not occur at different times.

Accordingly, Liberty Steel’s criticism that the Minister’s decision is not correct or preferable, because the Commission has not considered the factors concerning timing differences related adjustments, is plainly wrong and misplaced. We respectfully submit that the ADRP dismiss Liberty Steel’s review requests in so far as they concerns Hyundai Steel.

Yours sincerely



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⁵ Commission Dumping and Subsidy Manual at page 66.

⁶ Section 269TAF(1) refers to the date that “*best establishes the material terms of the sale of the exported goods*”.

⁷ Footnote 8 of the Anti-Dumping Agreement states “*Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale*”.

⁸ Review 499 Doc 068 – Final Report at page 31.

⁹ ADRP Review 88.

¹⁰ Commission Dumping and Subsidy Manual at page 66.