



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

# ADRP Report No. 131

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

June 2021

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# Abbreviations

<b>Term</b>	<b>Meaning</b>
Act	<i>Customs Act 1901</i>
ADC	Anti-Dumping Commission
Applicant	Orrcon Manufacturing Pty Ltd
ATM	Austube Mills Pty Ltd
CTMS	Cost to Make and Sell
Commissioner	Commissioner of the Anti-Dumping Commission
FOB	Free on board
Goods	Hollow Structural Sections exported to Australia from the People's Republic of China, the Republic of Korea, Malaysia, Taiwan and the Kingdom of Thailand
HRC	Hot rolled coil
HSS	Hollow structural sections
Kukje	Kukje Steel Co., Ltd
Minister	The Minister for Industry, Science and Technology
REP 529	The report published by the Commission in relation to the goods, dated 8 February 2021
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the Minister made on 9 March 2021
Review Period	1 October 2018 to 30 September 2019

SEF	Statement of Essential Facts
Submission	Applicant's submission to the ADC dated 17 December 2020

# Summary

1. On 9 March 2021, the then Minister for Industry, Science and Technology (the then Minister) made a decision under s.269ZDB(1) of the *Customs Act 1901* (the Act),<sup>1</sup> to revoke the anti-dumping measures (the measures) applying to Kukje Steel Co., Ltd (Kukje) and to fix different variable factors (the reviewable decision).<sup>2</sup> The reviewable decision followed a review by the Anti-Dumping Commission (ADC) of the measures in respect of Hollow Structural Sections (HSS) (the goods) exported from the People's Republic of China, the Republic of Korea, Malaysia, Taiwan and the Kingdom of Thailand.
2. For the reasons set out in this report, I recommend that the reviewable decision be affirmed.

## Introduction

3. On 8 April 2021, Orrcon Manufacturing Pty Ltd (the Applicant) applied under s.269ZZC of the Act for a review of the reviewable decision.
4. The Senior Member of the Anti-Dumping Review Panel (Review Panel) directed in writing that the Review Panel be constituted by me in accordance with s.269ZYA of the Act.
5. The Australian industry manufacturing HSS is 'predominantly comprised'<sup>3</sup> of the Applicant and Austube Mills Pty Ltd (ATM). The Applicant alleges that it will be adversely impacted by the revocation of the measures on HSS exported from South Korea by Kukje and by the application of different variable factors, namely the normal values determined for Chinese exporters.
6. In coming to the reviewable decision the then Minister decided to accept the recommendations and reasons for the recommendations, including all material findings of fact or law pertaining to Kukje and to the variable factors, set out in the ADC Report (REP 529) dated 8 February 2021.

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<sup>1</sup> Unless otherwise stated, all legislative references are to the *Customs Act 1901*.

<sup>2</sup> Refer ADN No. 2021/11.

<sup>3</sup> Anti-Dumping Commission Report (REP 529) dated 8 February 2021 at page 19.

7. The Applicant's application was accepted and notice of the proposed review, as required by s.269ZZI, was published on 16 April 2021.

## Background

8. The ADC's review of measures, which culminated in REP 529, was initiated on 25 October 2019. The review focused upon exports of HSS to Australia in the period 1 October 2018 to 30 September 2019 (the review period). The review was initiated by an application from the applicant in which it alleged, inter-alia, changes during the review period to the variable factors pertaining to the Chinese domestic market for HSS.
9. The measures applying to HSS exported to Australia were initially imposed on 3 July 2012.
10. Since the initial imposition of the measures, Kukje has had a history of participation in anti-dumping investigations, reviews, inquiries and duty assessments. This includes participation in three reviews of measures, the latest of which was REP 529, in which a negative dumping margin of 5.0% was determined. The two previous reviews also determined negative dumping margins of 6.7% and 3.6% respectively.
11. Kukje's participation in the various investigations and reviews was summarised in Table 43 of REP 529,<sup>4</sup> which is set out below:

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

<sup>4</sup> REP 529 at page 108. Note, the Table does not include references to Kukje's participation in several duty assessments.

<b>529</b> – Review of measures	Oct-2018 to Sep-2019	On-site	NA	negative 5.0%
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12. The ADC published a Statement of Essential Facts (SEF 529) on 27 November 2020, in which it foreshadowed a dumping margin of negative 5.0% for Kukje.
13. On 17 December 2020, in response to SEF 529, the Applicant lodged a detailed submission (the 17 December 2020 submission) with the ADC. The 17 December 2020 submission referenced, inter alia, estimated selling prices, quantities and other sales data for Kukje for the latter months of the review period and beyond, i.e. post 30 September 2019. This information was drawn from a number of reputable sources including subscription services, some of which the ADC has relied upon in previous reviews and investigations. The Applicant asserts that this information demonstrates that Kukje's 'normal value and export price trends post the Review 529 inquiry period indicates positive dumping' and identified 'Kukje's lower Australian export price following the review period'.<sup>5</sup>
14. REP 529 acknowledged the 17 December 2020 submission but noted, in relevant part, that 'errors were found' which caused the ADC to believe the Applicant's 'analysis and ... subsequent conclusions to be unreliable'.<sup>6</sup> Accordingly, REP 529 restated the ADC's findings in SEF 529, to the effect that Kukje had a negative dumping margin of 5.0% throughout the review period, and ultimately concluded that it was probable that Kukje's future exports to Australia would continue to be un-dumped and not be a cause of material injury to the Australian industry. The report therefore recommended that the Minister revoke the measures with respect to Kukje.
15. The ADC was satisfied that a particular market situation existed in the Chinese domestic basket for HSS as a result of government influence over the price of HRC, the major raw material input to HSS. Accordingly, the ADC considered it appropriate that HRC costs of production of the Chinese exporters be adjusted to reflect competitive market costs. The ADC adopted the verified HRC purchase costs in the review period for cooperating exporters in Korea, Taiwan and Thailand, with the exception of Chinese originating HRC and HRC from other unknown sources. These prices were then suitably adjusted and substituted for the Chinese exporters'

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<sup>5</sup> Applicant's 17 December 2020 response to SEF 529 at page 6.

<sup>6</sup> REP 529 at page 109.

costs of HRC. The adjustment impacted upon the Chinese exporters normal value, a variable factor. The applicant alleges that the ADC' methodology of excluding only the prices paid by the cooperating exporters for Chinese originating HRC and HRC from other unknown sources was insufficient and that HRC imported from **all** sources ought to have been excluded.

## Conduct of the Review

16. In accordance with s.269ZZK(1) of the Act, the Review Panel must recommend that the Minister either: affirm the reviewable decision, if satisfied that the decision is the correct or preferable one, or revoke it and substitute a new specified decision.
17. Section 269ZZK(1A) relevantly provides that the Review Panel may recommend that the Minister revoke a reviewable decision and substitute another decision 'only if the new decision is materially different from the reviewable decision'.
18. In undertaking the review, s.269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister in like manner as if it were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.
19. Subject to certain exceptions,<sup>7</sup> the Review Panel is not to have regard to any information other than relevant information pursuant to s.269ZZK, i.e. information to which the ADC had regard or ought to have had regard when making its findings and recommendations to the Minister.
20. If a conference is held under s.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. Pursuant to s.269ZZHA of the Act, separate conferences were held with the Applicant and with the ADC on 23 April 2021 for the purpose of clarifying comments in the application and in REP 529. A further conference was convened with the ADC on 21 May 2021 to clarify aspects of *Confidential Attachment 21* to REP 529. Non-confidential summaries of the

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<sup>7</sup> See s.269ZZK(4).



information obtained at the conferences was made publicly available in accordance with s.269ZZX(1) of the Act.

21. Pursuant to s.269ZZJ of the Act, Kukje and ATM lodged written submissions with the Review Panel.
22. In conducting this review I have had regard to: the Applicant's review application and attachments; the 17 December 2020 submission and its attachments; and, to submissions received pursuant to s.269ZZJ of the Act insofar as they contained conclusions based on relevant information. I have also had regard to REP 529, and attachments, the SEF, earlier ADC reports, relevant information obtained at the conferences and any conclusions reached at the conferences based on that relevant information.

## Grounds of Review

23. The Grounds of Review relied upon by the Applicant, which the Review Panel accepted, are as follows:
  - 1) Ground 1: The decision of the Minister to revoke the anti-dumping measures applying to HSS exported to Australia from Korea by Kukje is not the correct or preferable decision as the Commissioner failed to provide the Minister with a sufficient and reasonable explanation why the negative dumping margin found during the inquiry was likely to continue beyond the revocation of the measures.
  - 2) Ground 2: The decision of the Minister to revoke the anti-dumping measures applying to HSS exported to Australia from Korea by Kukje is not the correct or preferable decision as the Commissioner failed to provide the Minister with a sufficient and reasonable explanation why the revocation of the measures would not lead, or be likely to lead, to a continuation of, or recurrence of, material injury.
  - 3) Ground 3: The decision of the Minister set out in ADN 2021/011 is not the correct or preferable decision because for the purposes of ascertaining normal values for Chinese exporters under section 269TAC, the composition of the HRC competitive cost adjustment excluded only Chinese originating and other unknown HRC sources, and failed to exclude all other HRC import sources.

# Consideration of Grounds

## Ground 1:

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

24. Section 269ZDB(1)(a)(ii) of the Act empowers the Minister, after considering a report from the ADC, to revoke measures applying to particular exporters or a particular kind of goods. The reviewable decision reflects the exercise of that power and it is the revocation of the measures applying to a particular exporter which is the focus of Grounds 1 and 2 of the application.
25. Section 269ZDA(1A)(b) relevantly provides that the ADC must make a revocation recommendation in relation to measures **unless** satisfied that ‘revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping ... **and** the material injury that the measures are intended to prevent’ [emphasis added]. Importantly, the ADC needs to be satisfied as to the likelihood of the continuation or recurrence of **both** dumping and material injury.
26. The Applicant and the ADC agree that within the context of s.269ZDA(1A)(b) “likely” is to be taken to mean “probable”. In turn, the *Macquarie Concise Dictionary* defines “probable” as meaning ‘having more evidence for than against, or evidence which inclines the mind to belief but leaves room for doubt’.<sup>8</sup> Therefore, the continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent is to be more probable than not, and not a mere possibility. Further, a finding as to the probability of an occurrence must be based upon positive evidence, or as stated in REP 529, ‘the evidence relied upon will be appropriate to circumstances of practical reasoning intrinsic to a review process’.<sup>9</sup>

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<sup>8</sup> Seventh Edition.

<sup>9</sup> REP 529 at page 106.

27. The application 'does not seek to dispute the Commission's assessment of the [negative 5%] dumping margin as detailed in Report 529'.<sup>10</sup> The Applicant argues that the 17 December 2020 submission demonstrates that dumping had recurred following the review period, i.e. post September 2019, and was likely to continue. The focus of Ground 1 is therefore upon the ADC's, and through it the then Minister's, implied rejection of the Applicant's arguments and evidence that Kukje's likely dumping would recur in the absence of the measures.
28. The Applicant's arguments and evidence with respect to the likely recurrence of dumping are contained in the 17 December 2020 submission, in response to the publication of SEF 529. In SEF 529, the ADC foreshadowed the negative dumping margin. The 17 December 2020 submission is said to demonstrate 'that Kukje's dumping margin trend was on an upward trajectory, and provided a forward-looking view of [Kukje's] likely dumping margin'.<sup>11</sup> Based upon this evidence the application estimated that 'a positive forward view dumping margin of [redacted]%' was evident in the period subsequent to September 2019.<sup>12</sup>
29. The evidence referenced in the 17 December 2020 submission was in turn derived from data published in two trade subscription services, the [redacted] and [redacted]. The Applicant also referenced the United States Department of Commerce's *Global Steel Trade Monitor*. The Applicant based its estimate of normal values upon [redacted] data namely

*Chinese Free-on-Board ('FOB') HSS export prices to Korea, uplifted by the relevant costs incurred in shipping the goods from the China FOB point to a comparable level of trade in the Korean market, against which Korean HSS producers would compete. This includes a theoretical premium domestic Korean HSS producers might achieve over Chinese import parity prices.*<sup>13</sup>

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<sup>10</sup> Appendix B to the Application at page 2.

<sup>11</sup> Ibid at page 4.

<sup>12</sup> Ibid at page 6.

<sup>13</sup> Submission at page 5.

These normal value estimates were then compared with export prices of HSS to Australia derived from [REDACTED] data of the 'weighted average FOB Australian Export prices'.<sup>14</sup>

30. In the absence of access to Kukje's confidential sales data, the data from the subscription services represented the best information available to the Applicant. I note that REP 529 acknowledges that the Applicant's analysis 'ha[d] utilised the data which was available to it'.<sup>15</sup> The application notes that one of the subscription services 'is one that has been accepted by the Commission as valid and reliable in its consideration of numerous steel related anti-dumping applications'.<sup>16</sup> In the conference convened on 23 April 2020, ADC representatives noted the Applicant's 'approach was 'reasonable' and one that had been adopted by the ADC in some previous investigations **in the absence of other relevant information**' [emphasis added].<sup>17</sup>
31. This is not a circumstance in which the ADC failed to consider the relevance of the 17 December 2020 submission. The 17 December 2020 submission was addressed in Chapter 10.3.4 of REP 529 where it was assessed to 'be relevant to inform the Commission's assessment of whether dumping may be likely'.<sup>18</sup>
32. Importantly, *Confidential Attachment 21* to REP 529

*reflected some of the detailed analysis of the submission undertaken by the ADC. That attachment, in turn, incorporated Confidential Attachment 1 of the submission which detailed the Applicant's estimated dumping margins for Kukje for the period 2013 to 2020 inclusive. The estimated margins ranged from negative [REDACTED]% in 2013 to positive [REDACTED]% in 2020.*<sup>19</sup>

*Confidential Attachment 21* contained the following table, taken from *Confidential Attachment 1* to the 17 December 2020 submission:

***Confidential Attachment 1 to Orrcon's post SEF submission (EPR 76)***

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<sup>14</sup> Ibid.

<sup>15</sup> REP 529 at page 109.

<sup>16</sup> Ibid at page 5, footnote 20.

<sup>17</sup> ADC Conference Summary at para 3.

<sup>18</sup> REP 529 at page 109.

<sup>19</sup> ADC Conference Summary at para. 6.

Prices in AUD

YEAR	NORMAL VALUE	EXPORT PRICE	DUMPING MARGIN	%
2013	█ ██████	█ ██████	█ ██████	█
2014	█ ██████	█ ██████	█ ██████	█
2015	█ ██████	█ ██████	█ ██████	█
2016	█ ██████	█ ██████	█ ██████	█
2017	█ ██████	█ ██████	█ ██████	█
2018	█ ██████	█ ██████	█ ██████	█
2019	█ ██████	█ ██████	█ ██████	█
2020	█ ██████	█ ██████	█ ██████	█

33. REP 529 identified two reasons why the ADC considered the 17 December 2020 submission did not support the Applicant’s claims with respect to the likelihood of Kukje resuming dumping in the absence of measures. The first was a doubt as to the data upon which the 17 December 2020 submission relied. It was considered ‘not specific to Kukje’s actual circumstances’,<sup>20</sup> contained certain ‘errors’,<sup>21</sup> and ‘over-and under-estimated certain elements’,<sup>22</sup> which in the ADC’s view ‘caused the analysis of the Applicant’s subsequent conclusions to be un-reliable’.<sup>23</sup>
34. The second reason for rejecting, or not being persuaded by, the 17 December 2020 submission’s estimates was based upon ‘Kukje’s history of not exporting at dumped prices to Australia’.<sup>24</sup> Acknowledging that its finding of a negative dumping margin over the review period ‘alone is not determinative’,<sup>25</sup> the ADC considered whether there were any circumstances impacting upon Kukje, or on the HSS market more broadly, which would make it likely that Kukje would, contrary to its past practice, revert to dumping in the absence of measures.

<sup>20</sup> REP 529 at page 109.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> REP 529 at page 121.

<sup>25</sup> Ibid.

## Consideration of the Applicant's data

35. Regarding the ADC's assessment as to the 'un-reliable' nature of the data contained within the 17 December 2020 submission, as noted above, Kukje had cooperated in a number of investigations and reviews undertaken by the ADC with respect to its exports of HSS to Australia over the period from July 2010 to September 2019.<sup>26</sup> In each of these inquiries Kukje responded to an Exporter Questionnaire in which it provided detailed data relating to its cost to make and sell (CTMS) and domestic and export prices for HSS. All but one of these inquiries involved ADC officers visiting Kukje's premises to verify the accuracy of its submitted data. Kukje's Exporter Verification Report, prepared by ADC officers in the context of REP 529, concluded that Kukje's data 'was found to be complete, relevant and accurate'.<sup>27</sup>
36. Thus the ADC had available to it verified production and sales data for Kukje covering the period from July 2010 to September 2019, and it was this verified data which the ADC compared to that contained in *Confidential Attachment 1* to the 17 December 2020 submission and upon which the Applicant relies.
37. The ADC's comparison and analysis was captured in *Confidential Attachment 21* to REP 529, particularly at the Tab headed "Orrcon's SEF analysis". This comparison highlights a number of instances in which the data upon which the Applicant relied varied from the data which had been received by the ADC from Kukje, which had been accepted as accurate.
38. By way of example, the only occasion on which the ADC had determined a positive dumping margin for Kukje was in 2012 (REP 177) with a positive margin of 3.2%. The Applicant's *Confidential Attachment 1* to the 17 December 2020 submission recorded an estimated margin of negative ■■■% for 2015 whereas the ADC determined a margin of ■■■■■% for a corresponding period (REP 379). Further, for 2018 the Applicant estimated a positive dumping margin of ■■■% whereas ADC investigations undertaken over the period from July 2015 to June 2017 (REP 379 and REP 419) and from October 2018 to September 2019 (REP

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<sup>26</sup> In its submission to the Review Panel dated 16 May 2021, Kukje stated that it 'has participated in each and every review and duty assessment inquiry since the imposition of the dumping measures and in each such inquiry, Kukje was found to have not exported the subject goods at dumped [prices] (sic).'

<sup>27</sup> Ibid at page 79.

529) each determined negative dumping margins. In fact, the dumping margin determined by the ADC over the review period and that estimated by the Applicant for the period immediately following that period were at a significant variance, a difference of [REDACTED] percentage points.

39. The data sourced [REDACTED]. Based upon this data, the Applicant estimated, under [REDACTED], normal values for like goods to the HSS exported to Australia by Kukje over the period FY 2013 Q1 to FY 2021 Q1. The Applicant acknowledged [REDACTED],<sup>28</sup> as it captured a broader range of goods than the goods the subject of the review.
40. *Confidential Attachment 21* highlighted multiple quarters over this period in which the Applicant's estimate of normal values for goods under a specific HS code 'were greater than the ADC normal values by significant multiples',<sup>29</sup> and the attachment noted 'these numbers don't seem realistic to the [goods the subject of the review] and are therefore spiking the data for [the Applicant's] calculations'.
41. In support of its claim that Kukje had been dumping subsequent to the end of the review period (i.e. post September 2019), the Applicant, relied in part upon "*Confidential Chart 1 – Korean HSS Normal Value and Australian Export Price trends*" which formed part of the 17 December 2020 submission. This Chart traced movements in the South Korean [REDACTED] Hot Rolled Coil (HRC) market price and South Korean HSS normal value over the period January 2013 to 30 September 2020. The price data for HRC and HSS in Korea upon which the Applicant relies, was derived from a subscription service.
42. As HRC accounts for the majority of the production costs of HSS it is not surprising that the Applicant noted 'there is a strong correlation between the HRC price and the subsequent price of HSS in the Korean domestic market'.<sup>30</sup> This correlation was acknowledged by the ADC in SEF 529 where it stated 'HSS prices are closely aligned with the prevailing HRC prices and follow the same price trends over the review period'.<sup>31</sup> The Chart depicts that the correlation between HRC prices, Korean

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<sup>28</sup> Submission at page 5.

<sup>29</sup> ADC Conference Summary 23 April 2021 at para 12.

<sup>30</sup> Appendix B to the Application at footnote 24.

<sup>31</sup> SEF 529 at page 118.

export prices of HSS to Australia, and related normal values was consistent throughout the period 2013 to 2019, which included the review period. However, at a point in late 2019, both HRC prices and export prices of HSS to Australia are depicted as trending downwards, whereas Korean HSS normal values are depicted as trending upwards, thereby creating the dumping margin upon which the Applicant relies.

43. In conference, the ADC representatives referred to this departure from the normal pattern of correlation and noted the 'divergence between HRC prices and HSS normal values ... appears severe and very rapid, but not consistent with the ADC's analysis and experience of the markets for both products' over time. The representatives suggested that 'what the Applicant proposed was that the prices for HSS in Korea went up significantly and in isolation from other markets and at a time when the HRC costs in Korea were decreasing'.<sup>32</sup> This observed break in, or deviation from, the historic correlation between HRC and HSS prices was a further contributing factor to the ADC's view as to the reliability of the Applicant's estimates of normal value.
44. Accordingly, the ADC rejected the 17 December 2020 submission as supporting the claim that Kukje had resumed dumping subsequent to the conclusion of the review period and that it was likely to continue to do so were the measures to be revoked. I concur with the ADC's assessment of the 17 December 2020 submission.
45. At the conference convened on 21 May 2021, *Confidential Attachment 21* was further reviewed. To test the Applicant's claim that Kukje had resumed dumping in the period following the review period, I asked the ADC to take data contained within the 17 December 2020 submission relating to the [REDACTED] [REDACTED] export price to Korea for the period FY 2019 Q2 to FY 2020 Q1 and to apply to those estimated prices the Applicant's methodology [REDACTED] [REDACTED]. I then asked the ADC to compare the Applicant's estimated normal values against Kukje's actual export prices for the same period. It was acknowledged that the ADC had considered this export data in the context of REP 529, and therefore such data was considered relevant information. The ADC provided those calculations subsequent to the conference. The calculations

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<sup>32</sup> ADC Conference Summary at para. 9.



indicated that Kukje's average dumping margin was negative and greater than that determined by the ADC over the review period, i.e. greater than negative 5%. The calculations confirm the ADC's assessment that the 17 December 2020 submission does not support the claim that Kukje had been dumping in the period subsequent to the review period and further weakens reliance upon the 17 December 2020 submission as indicative of Kukje's likely future export prices and consequential dumping margins.

## Other circumstances impacting upon likelihood

46. As noted above, the ADC acknowledged that the existence of a positive dumping margin was not determinative and therefore proceeded to consider whether there were any circumstances impacting upon Kukje which would nevertheless make it likely that it would resume dumping in the absence of measures.
47. The Applicant and ATM rely upon 'the constraining effect of the measures' as the reason for Kukje's assessed negative dumping margin. They argued that if the measures were removed, Kukje would be at liberty to decrease its export prices to dumped levels so as to increase export volumes to Australia.
48. REP 529 noted 'when Kukje's floor price measures were revised in July 2017, after REP 379, Kukje began consistently exporting above its floor price, with a further divergence from the floor price demonstrated after REP 419 in June 2018' and that 'since September 2017, Kukje's weighted average quarterly export price has been consistently above its floor price'.<sup>33</sup>
49. In the 17 December 2020 submission, the Applicant pointed to the similarities between the Australian and New Zealand markets for HSS. It argued the ADC 'has recognised the importance of the New Zealand market to Review 529 in its SEF findings, concluding that it is a market most comparable to Australia in terms of size, domestic production and trade measures'.<sup>34</sup> It also noted, 'prior to the imposition of HSS measures in Australia in 2012 ... the Korean export price to New Zealand and Australia were comparable'.<sup>35</sup> Following the imposition of measures 'the Korean

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<sup>33</sup> REP 529 at page 111.

<sup>34</sup> Submission at page 9.

<sup>35</sup> Ibid. at page 10.

export price to Australia and New Zealand quickly diverged, with the absence of measures in New Zealand resulting in continued reduction of prices at dumped and materially injurious levels<sup>36</sup> whilst prices to Australia stabilised. The Applicant therefore claimed: 'it stands to reason that if Kukje's Australian measures are revoked, their prices would again converge with that of New Zealand, resulting in a return to dumping and material injury to the Australian industry'.<sup>37</sup>

50. REP 529 noted the Applicant's arguments with respect to HSS export pricing to New Zealand were advanced 'as evidence of the consequence of not having dumping measures in place'.<sup>38</sup> The ADC had reviewed the pricing data contained in the New Zealand report together with Kukje's verified data relating to its relevant third country export prices and concluded that the Applicant's 'claim is unsupported'.<sup>39</sup> This suggests a further example of the Applicant's claims, admittedly based upon the best information available to it, being at odds with Kukje's verified data.
51. ATM's submission referred to what it described as Kukje's 'price setting model', whereby 'the anti-dumping measures were the prime consideration in Kukje's pricing of its exports' to ensure no interim dumping duty is incurred.<sup>40</sup>
52. REP 529 notes that Kukje had also submitted 'that it uses an export price setting model to determine an appropriate Australian HSS export price, having regard to Korean domestic selling prices and its costs',<sup>41</sup> thereby avoiding a recurrence of dumping. In the course of Kukje's on-site verification, the ADC 'sought evidence of this model, including a policy and/or demonstration of it in practice',<sup>42</sup> but Kukje advised that 'it had not documented the model'.<sup>43</sup> In the conference convened on 23 April 2021, ADC representatives stated that, as a result of Kukje's inability to provide evidence regarding the model

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid at page 11.

<sup>38</sup> REP 529 at page 115.

<sup>39</sup> Ibid.

<sup>40</sup> ATM Submission at page 2.

<sup>41</sup> REP 529 at page 111.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

*the ADC remained doubtful as to Kukje's claims in this regard' and 'what was considered by the ADC to be of more significance was that [Kukje] had demonstrated it had not dumped for several years, and that on each occasion on which [Kukje] was examined it was found not to have been dumping.<sup>44</sup>*

53. This assessment must be read in context. The ADC had observed that Kukje's pricing history had demonstrated that both its domestic sales and export prices to Australia had been profitable and in the absence of measures, whilst the future may entertain many possibilities, there was insufficient evidence of any incentive which would make it probable that Kukje would seek to depart from its apparent entrenched pricing policy.
54. Accordingly, the ADC appeared to give little weight to the Applicant's claims as to the constraining effect of the measures. Whilst the removal of the measures may give rise to the possibility of dumped prices, Kukje's export pricing history suggested this was unlikely. Further, REP 529 noted given Kukje's assessed negative dumping margin for the review period it 'could have reduced its export prices further and still not been dumping'.<sup>45</sup>
55. Like the ADC, I do not consider that the arguments as to the constraining effect of the measures should be given any great weight. I agree with the ADC's characterisation of such arguments as an attempt to justify and maintain the *status quo*, and that 'maintaining the *status quo* is not the relevant test for concluding whether the measures should not be revoked'.<sup>46</sup> Whilst the removal of the constraint would give rise to a possibility that Kukje's export pricing behaviour may change there is insufficient evidence to suggest that such a change would be probable.
56. The Applicant and ATM also relied upon excess capacity within the global steel market, and in particular within the Asian market, as support for the inference that Kukje would likely export at dumped prices in the absence of measures. They also rely on REP 529's concession that Kukje has 'had excess capacity to supply the Australian market since the imposition of measures'.<sup>47</sup> The Applicant noted that whatever the impact upon the Korean steel market of Covid-19, there had not been

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<sup>44</sup> ADC Conference Summary at para.10.

<sup>45</sup> REP 529 at page 112.

<sup>46</sup> Ibid at page 118.

<sup>47</sup> REP 529 at page 110.

any significant reduction in Korean steel production and 'there is no evidence that steel making capacity in South Korea had reduced since 2019'.<sup>48</sup>

57. The Applicant argued that over-capacity within the steel sector would expose the Korean domestic HSS market to increased volumes of HSS imports from China, leading to

*pricing and volume pressure on the Korean home market ... motivat[ing] Korean producers of HSS (including that of Kukje) to export (now higher) surplus dumped and injurious volumes vis-a-vis domestic demand as they seek to maintain volume and cover variable costs.*<sup>49</sup>

58. REP 529 assessed imports of HSS into Korea over the period 2010 to 2019.<sup>50</sup> It noted whilst 'HSS from China has been a significant presence in the Korean market since at least 2010 ... imports from China declined dramatically from 2017, with a small increase in 2019'.<sup>51</sup> Notwithstanding the presence of Chinese HSS imports in the Korean domestic market, REP 529 noted that over time Kukje had been able to increase its domestic sales volume and that domestic sales remained profitable.<sup>52</sup>
59. Regarding Kukje's excess capacity to produce HSS, REP 529 noted that over the period October 2013 to September 2019 Kukje 'has had excess capacity to supply the Australian market since the imposition of measures'. Nevertheless, over the period 'Kukje's [export] volumes to Australia has ... tended to move consistently with overall demand in the Australian market',<sup>53</sup> and since May 2015 'Kukje's exports to Australia have not been more than 3% of the Australian market by volume'.<sup>54</sup>
60. In light of the above, REP 529 rejected the Applicant's claims regarding the likely influence of over capacity impacting upon Kukje's future exports. The report noted

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<sup>48</sup> Submission at page 13.

<sup>49</sup> Submission at pages 17-18.

<sup>50</sup> REP 529, Figure 17 at page 119.

<sup>51</sup> Ibid at page 119.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid. at page 110.

<sup>54</sup> REP 529 at page 109.

'that Kukje has had the ability to produce a greater volume of HSS and export that volume to Australia, but has not done so',<sup>55</sup> and concluded

*there does not appear to be any capacity related incentive for Kukje, if the measures are revoked, to commence dumping in order to maximise its utilisation rates and lower prices to sell excess production, since it has not done so previously.*<sup>56</sup>

61. The Applicant and ATM referred to a number of countries which have taken trade remedies action against imports of Korean steel products, and HSS in particular, and inferred that such actions would place pressure on Kukje to divert increasing volumes of HSS to the Australian market. ATM submitted that

*trade actions in other jurisdictions that affect Kukje are relevant as to the likelihood of dumping continuing or recurring. Kukje's is (sic) an exporter of HSS and like goods, with its main export markets being in the United States of America (US), Japan and Australia.*<sup>57</sup>

62. REP 529 acknowledged that Korea's two largest export markets for HSS are Japan and the US, with these markets accounting for 32% and 24%, respectively, of sales by volume in 2019. In that same year, although Australia was Korea's fourth largest export market for HSS, it comprised approximately 7% of Korea's total pipe and tube exports. Figure 15 to REP 529 tracked the top 10 export markets for Korean HSS over the period 2010 to 2019.<sup>58</sup> The Figure indicates that following the imposition by the US of a section 232 trade action against Korean exports in 2016, export volumes to that market declined. However, exports to Japan increased in 2017 such that 'Japan has replaced the US as the major export market'.<sup>59</sup>

63. REP 529 noted that, although ATM's analysis had 'focused on a percentage change in exporter volumes, comparing 2017 with 2019',<sup>60</sup> when total Korean exporter volumes for those years were examined it was noted that 'Korean exporters have exported substantial quantities of pipe and tube, achieving exports of approximately

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<sup>55</sup> Ibid at page 111.

<sup>56</sup> REP 529 at page 111.

<sup>57</sup> ATM Submission at page 4.

<sup>58</sup> REP 529 at page 116.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid at page 116.

500,000 tonnes in 2013, 2014, 2016 and 2017'. The ADC acknowledged that there had been an increase in export volumes from Korea to Australia of goods the subject of the review but noted that such increase had commenced prior to the imposition of the section 232 trade action and that in the intervening period exports from Kukje appear to have been unaffected. Accordingly, REP 529 observed that the trade diversion impact on Australia of the US section 232 trade action was 'negligible'.<sup>61</sup>

64. Ground 1 relevantly provides that 'the Commissioner failed to provide the Minister with a sufficient and reasonable explanation of why the negative dumping margin found during the [review] period was likely to continue beyond the revocation of the measures'. The Applicant argued that the 17 December 2020 submission demonstrated Kukje had resumed dumping subsequent to the review period and was likely to continue. This was said to be due to a number of factors impacting upon Kukje, including overcapacity and the impact of various trade actions.
65. The ADC identified a number of factors which called into question the reliability of the data upon which the 17 December 2020 submission relied. It identified instances in which the Applicant's data differed from that which the ADC had verified, or which were at odds with the ADC's knowledge of, and experience with, particular markets, including the correlation between HRC and HSS prices.
66. The ADC acknowledged that its assessment of a negative dumping margin over the review period was not determinative and therefore proceeded to assess other factors identified by the Applicant as giving rise to the potential for Kukje to divert from its historic trading patterns with Australia. Such factors included overcapacity within the general steel sector and within the Korean HSS sector in particular, including Kukje's acknowledged excess capacity. The ADC provided a reasoned analysis as to why these factors, viewed individually and collectively, were insufficient to demonstrate that the claimed potential of, or possibility for, dumping could be accepted as being a likely or probable outcome such that dumping would continue and/or recur. Accordingly, I therefore reject Ground 1 of the review.

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<sup>61</sup> Ibid at page 118.

## Ground 2:

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

67. Similar to Ground 1, this Ground of Review seeks to challenge the sufficiency of the ADC's reasoning and the absence of a reasonable explanation why the revocation of the measures would not lead, or be likely to lead, to a continuation of, or recurrence of, material injury.

68. The 17 December 2020 submission notes that

*in assessing the question of the vulnerability of the Australian domestic HSS industry, the [ADC's] assessment of economic factors ... indicates disparate trends. On the one hand, revenue increased over the comparison period, largely driven by changes in price rather than increases in sales volume. On the other hand, market share, profits and profitability declined, and return on investment remained negative. Other economic factors such as productivity, capacity and inventory exhibited a stable trend.<sup>62</sup>*

69. REP 529 notes that a recommendation with respect to the revocation of measures requires a prospective assessment of a hypothetical situation. Importantly, s.269ZDA(1A), provides no guidance as to the matters to which the decision-maker ought to have regard in reaching the requisite level of satisfaction needed to preclude recommending the revocation of measures.

70. Stated differently, the relevant statutory provisions do not prescribe factors (i.e. mandatory relevant considerations) that must be considered in the exercise of the revocation of the power. Accordingly, those matters which may be considered are left to the judgement and discretion of the decision-maker and are not constrained in their scope, save by the purpose and object of the provisions.

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<sup>62</sup> Submission at page 12.

71. As noted above, s.269ZDA(1A)(b) requires satisfaction as to the likely continuation or recurrence of both dumping and material injury in order to authorise the continuation of the measures. Satisfied that the continuation or recurrence of dumping was unlikely, the ADC was not obligated to proceed to make a separate finding with respect to the likelihood of the continuation or recurrence of material injury.
72. That said, Chapter 10.3 of REP 529 is headed “*Will dumping and material injury continue or recur?*” and identified the following issues:
- since the imposition of a floor price in May 2015, ‘Kukje’s exports to Australia have not been more than three% of the Australian market by volume’;<sup>63</sup>
  - the biggest increase of HSS imports over the period October 2013 to September 2019 has been from countries not subject to measures;<sup>64</sup>
  - although ‘Kukje-originating goods undercut the Australian industry prices throughout the review period’,<sup>65</sup> they were nevertheless undumped and as they had ‘an undumped price advantage in the Australian market, the Commission does not consider that Kukje needs to reduce its prices in order to export greater volumes to Australia’;<sup>66</sup>
  - ‘the biggest increase of HSS imports, in terms of both volume and share, has been from countries not subject to measures’;<sup>67</sup> and
  - ‘the Commission agrees with [the Applicant] that there is no minimum threshold for injury caused by dumping’.<sup>68</sup>
73. The ADC’s assessment of the likelihood of Kukje’s future exports being dumped and causing material injury is contained within Chapter 10.4 of the report. The main focus of the narrative within that Chapter is the likelihood of the recurrence of dumping and there is no express analysis of the likelihood of material injury caused by Kukje’s future exports. This is understandable given the ADC’s determination of

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<sup>63</sup> Ibid at page 109.

<sup>64</sup> Ibid at page 110.

<sup>65</sup> Ibid at page 113.

<sup>66</sup> Ibid at page 115.

<sup>67</sup> Ibid at page 110.

<sup>68</sup> Ibid.



a negative dumping margin, Kukje's historic export pricing, and the ADC's view as to the reliability of the data upon which the Applicant's submission relied. The ADC's assessment simply concludes with the statement:

*having considered the evidence before the Commission, the Commissioner is not satisfied that the revocation of the anti-dumping measures applying to Kukje would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping **and** material injury that the anti-dumping measure is intended to prevent [emphasis added].<sup>69</sup>*

74. The ADC's assessment must be read in context of the issues relevant to material injury identified earlier in Chapter 10.3, some of which were referred to in paragraph 72 above. Based upon those issues, a strong inference can be drawn that the ADC was satisfied that the Australian industry was in a precarious financial position as a result of having to compete in a price sensitive market, one in which it had lost market share due to the price of nonsubject imports and that Kukje's HSS was sold in the Australian market at prices that undercut the Applicant's prices.
75. Although Kukje's exports to Australia have not been greater than 3% of the Australian market by volume the ADC acknowledged 'there is no minimum threshold for injury caused by dumping'. Accordingly, I find that had the ADC been satisfied that Kukje's future exports would be at dumped prices there was sufficient information and evidence on the record for the ADC to complete its injury analysis and reach a conclusion regarding the continuance of, or recurrence of, material injury to the Australian industry.
76. In light of the above, I find that contrary to the Applicant's claim:
- the ADC having been satisfied that the continuation or recurrence of dumping was unlikely, it was not obligated to make a separate finding with respect to the likelihood of the continuation or recurrence of material injury; and,

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<sup>69</sup> Ibid at page 122.

- the ADC's report provided a sufficient and reasoned explanation regarding the likely material injury to the Australian industry were the measures to be revoked.

77. Accordingly, I reject the Applicant's second Ground of Review.

### Ground 3:

The decision of the Minister set out in ADN 2021/011 is not the correct or preferable decision because for the purposes of ascertaining normal values for Chinese exporters under section 269TAC, the composition of the HRC competitive cost adjustment excluded only Chinese originating and other unknown HRC sources, and failed to exclude all other HRC import sources.

78. The focus of this Ground of Review is upon the change to the variable factors and is based upon an inconsistency in the practice adopted by the ADC in the composition of the HRC competitive cost adjustment to Chinese normal values, as applied in REP 529, when compared to that adopted in REP 521 and 522. I note that both reports were published in the same month, i.e. February 2021.
79. In REP 529, the ADC had excluded imports of HRC from China and unknown sources from the markets of the cooperating exporters from the HRC cost adjustment, whereas in REP 521 and 522, the ADC had excluded all imports of HRC.
80. In the conference convened on 23 April 2021, ADC representatives were asked to comment on the apparent inconsistency identified by the Applicant. The ADC representatives 'noted there was an inconsistency adopted in the two cases',<sup>70</sup> and went on to provide the following reasons why this had occurred: REP 521 and 522 had followed the methodology adopted in the initial investigations into the goods the subject of those reviews; the markets of the cooperating exporters were not supplied exclusively by Asian producers of HRC, product from European exporters was also present in those markets; the ADC was not satisfied it could totally exclude the influence of the government of China from HRC prices from the markets of the cooperating exporters; and, those markets were considered competitive as they

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<sup>70</sup> ADC Conference Summary at para 16.

were supplied by domestic producers and imports from other Asian exporters and European exporters. Those reasons are summarised in the Conference Summary.<sup>71</sup> In my view those reasons justify the approach adopted by the ADC in REP 529 regarding the HRC competitive cost adjustment.

81. During the conference, the ADC representatives also drew my attention to *Confidential Attachment 6* to REP 529 which is headed “*HRC and HRS analysis*”. The Attachment lists HRC purchases from all countries by cooperating exporters. The Conference Summary states ‘it was noted that even if the approach argued by the Applicant had been adopted, and all imports [of HRC] had been excluded, the difference to the HRC adjustment cost would have been insignificant’.<sup>72</sup>
82. Following the conference, the ADC submitted calculations which compared the competitive cost adjustment adopted in REP 529 with an adjustment in which all HRC imports were excluded, as argued for by the Applicant. On the basis of those calculations, it is apparent that even if the Applicant’s method had been adopted, and imports of HRC from all sources were excluded, the consequential impact upon the reviewable decision would not have been ‘materially different’ such as to warrant revocation of the decision and a recommendation that a new decision be substituted.<sup>73</sup>
83. I therefore reject Ground 3 of the application.

## Recommendation

84. Pursuant to s.269ZZK(1) of the Act and for the reasons given above, I consider that the reviewable decision was the correct or preferable decision.
85. I recommend that the Minister affirm the reviewable decision.



Paul O'Connor  
Panel Member  
Anti-Dumping Review Panel  
15 June 2021

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<sup>71</sup> Refer Conference Summary at paras 16-19.

<sup>72</sup> Ibid at para 20.

<sup>73</sup> Refer s.269ZZK(1A).