



CUSTOMS ACT 1901 - PART XVB

**ANTI-DUMPING COMMISSION  
REINVESTIGATION REPORT FOR THE  
ANTI-DUMPING REVIEW PANEL**

**REINVESTIGATION OF CERTAIN FINDINGS  
IN REPORT NO 590**

**HOLLOW STRUCTURAL SECTIONS  
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA,  
REPUBLIC OF KOREA, MALAYSIA AND TAIWAN**

**5 May 2023**

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### ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADA	<i>Anti-Dumping Agreement</i>
ADC	Anti-Dumping Commission
ADRP	Anti-Dumping Review Panel
ATM	Austube Mills Pty Ltd
China	People's Republic of China
CTM	cost to make
CTMS	cost to make sell
the Commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
EPR	electronic public record
ERP	enterprise resource planning
the goods	the goods the subject of this reinvestigation
Hi-Steel	Hi-Steel Co Ltd
HRC	hot rolled coil
HSS	hollow structural sections
Korea	Republic of Korea
Macsteel	Macsteel International Australia Pty Ltd
MEPS	MEPS International Ltd
the Manual	<i>Dumping and Subsidy Manual</i>
Minister	Minister for Industry and Science
Orrcon	Orrcon Manufacturing Pty Ltd
order	purchase contract
PO	purchase order
REP 590	<i>Anti-Dumping Commission Report No 590</i>
RFI	request for information
USDOC	United States Department of Commerce
US ICT	United States Court of International Trade

## 1 SUMMARY

### 1.1 Introduction and findings

On 31 October 2022, the Anti-Dumping Review Panel (ADRP) requested that the Commissioner of the Anti-Dumping Commission (the Commissioner) undertake a reinvestigation of certain findings arising from *Anti-Dumping Commission Report No 590* (REP 590).<sup>1</sup> After considering the findings in REP 590, the Minister for Industry and Science (the Minister) decided to declare the continuation of anti-dumping measures in the form of:

- a dumping duty notice applying to HSS exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia and Taiwan, and
- a countervailing duty notice applying to HSS exported to Australia from China.

In relation to the dumping duty notice, the Minister determined that the notice should cease to apply to Korean exporter Hi-Steel Co Ltd (Hi-Steel).

Pursuant to section 269ZZL of the *Customs Act 1901* (the Act),<sup>2</sup> the ADRP requested that certain findings in REP 590, relating to Austube Mills Pty Ltd's (ATM) Ground 1 and Orrcon Manufacturing Pty Ltd's (Orrcon) Ground 1, be reinvestigated.<sup>3</sup> The findings related to the Commissioner's recommendation that the dumping duty notice cease to apply to Hi-Steel.

This report sets out the findings of the Commissioner in relation to the reinvestigation request.

The Commissioner reaffirms that order date, rather than invoice date, is the preferred date of sale for comparison between export and domestic sales for the purpose of determining whether dumping occurred during the inquiry period for Hi-Steel.<sup>4</sup>

As it is recommended to not change the date of sale, there is no change to Hi-Steel's dumping margin. The Commissioner has therefore not considered whether this impacts the commission's assessment of the likelihood of dumping and material injury continuing or recurring.

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<sup>1</sup> Electronic Public Record (EPR) 590, document no 41.

<sup>2</sup> References to any section or subsection in this report relate to provisions of the Act, unless specifically stated otherwise.

<sup>3</sup> '*Orrcon and ATM have similar first grounds of review, challenging the determination of the dumping margin for the Korean exporter Hi-Steel based on export price assessment using the order date as the date of sale for fair comparison purposes*'. ADRP letter to the Commissioner requesting a reinvestigation, 31 October 2022, on the ADRP's website: [ADRP 2022/156](#)

<sup>4</sup> In REP 590 in reference to Hi-Steel, 'the commission considered that the order date is the preferable date of sale when comparing export prices to the normal value based on domestic sales' (EPR 590, document no 41, p 85).

## **1.2 Background to reinvestigation**

### **1.2.1 Reviewable decision**

On 22 September 2021, the Commissioner initiated an inquiry into whether to continue anti-dumping measures applying to certain hollow structural sections (HSS or the goods) exported to Australia from China, Korea, Malaysia and Taiwan. The inquiry was initiated as a result of applications lodged by ATM and Orrcon.

In REP 590 the Commissioner recommended the Minister declare the continuation of anti-dumping measures in the form of:

- a dumping duty notice applying to HSS exported to Australia from China, Korea, Malaysia and Taiwan, and
- a countervailing duty notice applying to HSS exported to Australia from China.

In relation to the dumping duty notice, the Commissioner recommended that the notice cease to apply to Korean exporter Hi-Steel.

On 31 June 2022, the Minister accepted the Commissioner's recommendations. The commission published a public notice of the Minister's decision on 1 July 2022.<sup>5</sup>

### **1.2.2 Review of the Minister's decision**

The ADRP received applications for a review of the Minister's decision from ATM and Orrcon. The ADRP initiated its review of the decision by public notice on 1 September 2022 (ADRP Review No 2022/156).<sup>6</sup>

On 31 October 2022 the ADRP requested that the Commissioner undertake a reinvestigation, under section 269ZZL(1) of the Act, of the following findings in REP 590:<sup>7</sup>

- Finding 1: The finding of the commission that the order date, rather than invoice date, was the preferred date of sale for comparison between export and domestic sales for the purpose of determining dumping for the Korean exporter, Hi-Steel.
- Finding 2: Should the finding in relation date of sale be changed as a result of the above reinvestigation request, resulting in adjustments to Hi-Steel's dumping margin, consideration should be given as to whether this impacts the commission's assessment of the likelihood of dumping and material injury continuing or recurring.

The ADRP originally requested that the Commissioner report the result of the reinvestigation by 23 February 2023. The ADRP subsequently granted an extension of time to complete the reinvestigation, which is now due by no later than 5 May 2023.<sup>8</sup>

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<sup>5</sup> Anti-Dumping Notice No 2022/049 refers.

<sup>6</sup> Notice under section 269ZZI at ADRP Review No 2022/156.

<sup>7</sup> ADRP letter to the Commissioner requesting a reinvestigation, 31 October 2022, on the ADRP's website: [ADRP 2022/156](#)

<sup>8</sup> See relevant correspondence on the [ADRP case page](#) for its review of the decision.

## **1.3 Conduct of reinvestigation**

### **1.3.1 Approach to the reinvestigation**

The commission has conducted the reinvestigation in accordance with section 269ZZL(2). In conducting the reinvestigation, the commission has considered:

- the grounds accepted for review (as published by the ADRP under section 269ZZI)
- the ADRP’s reasons for requesting the reinvestigation
- relevant information contained in the applications to the ADRP for the review of the Minister’s decision
- additional information the commission requested from certain parties
- other information where directly specified in this report.

The commission has assisted the Commissioner in undertaking the reinvestigation, pursuant to the commission’s function specified in section 269SMD.

### **1.3.2 Reinvestigation report**

This report sets out the findings of the Commissioner in response to the reinvestigation request from the ADRP.

### **1.3.3 Submissions**

The Commissioner published a preliminary reinvestigation report on the electronic public record (EPR) on 21 March 2023 and invited submissions in response.<sup>9</sup> The Commissioner received the following submissions in relation to the preliminary reinvestigation report:

<b>EPR document number</b>	<b>Interested party</b>	<b>Date published on EPR</b>
45	Australian Industry - Orrcon	5 April 2023
46	Australian Industry - ATM	5 April 2023
47	Exporter – Hi-Steel	5 April 2023
48	Australian Industry - ATM	13 April 2023

**Table 1: Submissions received**

The Commissioner, in preparing their findings outlined in this report, has considered the submissions noted in Table 1.

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<sup>9</sup> EPR 590, document no. 44.

## 2 Finding 1 – Order date as the preferred date of sale

### 2.1 Findings

The Commissioner finds that order date is the preferred date of sale for comparison between export and domestic sales for the purpose of determining whether dumping occurred during the inquiry period by Korean exporter, Hi-Steel. This finding reaffirms the Commissioner's finding from REP 590.

### 2.2 ADRP request for reinvestigation

The ADRP outlined its request for a reinvestigation into certain findings in REP 590 on 31 October 2022 in a letter to the Commissioner.<sup>10</sup>

The first finding that the ADRP requested be reinvestigated was as follows:

*The finding of the [commission] that the order date, rather than invoice date, was the preferred date of sale for comparison between export and domestic sales for the purpose of determining dumping for the Korean exporter, Hi-Steel.*

In the reinvestigation request, amongst other things the ADRP has requested that:<sup>11</sup>

3. *In regard to the first basis for the [commission's] determination that the order date was the preferable date of sale, being the confirmation through verification of commercial documentation supplied by Hi-Steel that the material terms of sales were set at the order date and did not vary between the order date and the invoice date:*  
  
...
  - d. *In reinvestigating this issue the Commissioner is requested to determine if there is positive fact-based evidence, such as: sales contracts; printed terms of sales on transaction documents; or payment documents (as examples) that meet the [commission's] own evidentiary burden reflected in the Dumping and Subsidy Manual (the Manual), of demonstrating that a date other than the date of invoice better reflects the date of sale and that the material terms of sale were, in fact, established by this other date.*
4. *In regard to the second basis for the [commission] determining that the order date was the preferable date of sale ... being the analysis of the quarterly comparison of export price, normal value and HRC price depicted in Figure 14 of REP 590, ...:*
  - a. *First, [the ADRP] considers that there is merit in ATM's and Orrcon's criticisms of the [commission's] analysis related to Figure 14 in that: (i) there are incomplete data series for 'Export Price – Invoice date' data series and 'Export Price – Order Date' data series, casting doubt over the likelihood of a meaningful assessment of the correlation (or otherwise) of the 'Order Date' versus 'Invoice Date' to the [hot rolled coil (HRC)] baseline; and (ii) the [commission] appears to have ignored the apparently non-correlative*

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<sup>10</sup> ADRP 2022, Letter to the Commissioner requesting a reinvestigation, 31 October 2022, on the ADRP's website: ADRP's website: [ADRP 2022/156](#)

<sup>11</sup> ADRP 2022, Letter to the Commissioner requesting a reinvestigation, 31 October 2022, pp 3-7.

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*movement of the normal value data series with the HRC purchase price data series, casting doubt over the likelihood of meaningful conclusions to be drawn.*

- b. *Second, it does not appear that the analysis in Figure 14 addresses the second part of the requirements in the Manual ... relating to: the materials cost differences between export and domestic sales, and setting of prices; having regard to factors such as: the production schedules for domestic and export; lead times for purchasing main input materials; whether contracts were entered into for the materials purchases, and materials inventory valuation [...].*
- c. *In reinvestigating this issue and in order to addresses the second part of the requirements in the Manual ..., the [commission] should conduct a more in-depth analysis of the interaction between material costs and domestic and export price setting. For such an analysis, the [commission] may need to examine various issues relating to the production and HRC inputs, including:*
- whether the HRC used in the production of the domestic and export sales was sourced from inventory or purchased contemporaneously from Hi-Steel's suppliers;*
  - the material terms of such input purchases, including the pricing;*
  - evidence to show when the HRC was ordered and when it was received;*
  - evidence to show the price of HRC used in production and the date of production of HSS;*
  - whether contracts were entered into for HRC purchases in response to HSS orders; and*
  - the timing of HRC purchases relative to the production and sale of the HSS, i.e., the lead times for how long stock was held in inventory before production and shipment.<sup>12</sup>*

The ADRP has also requested that the commission recalculate Hi-Steel's dumping margin based on a comparison of export price and normal value at invoice date to provide to the ADRP, regardless of the commission's finding in the reinvestigation on the preferable date of sale.<sup>13</sup>

### 2.3 Relevant legislation

Section 269TACB describes how to work out whether dumping has occurred and the levels of dumping:

- (1) *If:*
- (a) an application is made for a dumping duty notice; and*
  - (b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and*

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<sup>12</sup> In this regard, the Member referred the commission to the Reinvestigation of Certain Findings in Report 419, in reference to ADRP Report No 88, which was referenced by ATM and Orrcon in their applications for review, and where, in the Member's assessment, 'the issues were not dissimilar as in the present case'.

<sup>13</sup> ADRP 2022, Letter to the Commissioner requesting a reinvestigation, 31 October 2022, p 7.



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*(c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC; the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.*

The subsequent provisions of section 269TACB provide detail on the available methods of comparison between export prices and corresponding normal values.

Section 269TAB and section 269TAC set out, respectively, how export prices and normal value are to be ascertained.

Section 269TAC(1) relevantly provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter.<sup>14</sup> The commission notes that section 269TAC(1) does not constrain or limit the Minister's focus to any particular domestic transaction. However, where the price paid or payable for like goods in the domestic market and the export prices of the goods exported relate to sales occurring at different times, the price paid or payable (for the domestic like goods) is taken to be such a price adjusted so that the difference does not affect its comparison with the export price.<sup>15</sup>

### 2.4 The commission's policy on date of sale

The Manual affirms that *'when comparing export price and normal value, it is desirable that sales to which the prices relate occur as near as possible in time'*.<sup>16</sup>

The commission identifies the date of sale of export sales and relevant domestic sales of like goods in order to ascertain export price and normal value and compare them in accordance with section 269TACB to determine whether dumping has occurred. The 'date of sale' is not defined in Part XVB of the Act nor does the legislation set out any particular methodology for determining the date of sale. The commission's general practice is set out in the Manual:

*In establishing the date of sale, the commission will normally use the date of invoice as it best reflects the material terms of sale.*<sup>17</sup>

This approach provides predictability for parties, reduces administrative burden and costs for interested parties, and supports the timeliness of verifications and investigations. However, there are circumstances where using invoice date may not be appropriate. The commission retains flexibility to deal with such situations. As the Manual states:

*Where a claim is made that a date other than the date of invoice better reflects the date of sale, the Commission will examine the evidence provided.*

*For such a claim to succeed it would first be necessary to demonstrate that the material terms of sale were, in fact, established by this other date. In doing so, the evidence would have to address whether price and quantity were subject to*

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<sup>14</sup> Section 269TAC(1) is subject to other subsections of section 269TAC, which set out different methodologies for ascertaining normal value in certain circumstances. Relevantly, Hi-Steel's normal value was ascertained under section 269TAC(1).

<sup>15</sup> In accordance with directions by the Minister; section 269TAC(8).

<sup>16</sup> The Manual, December 2021, p 51.

<sup>17</sup> Ibid.

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*any continuing negotiation between the buyer and the seller after the claimed contract date.*<sup>18</sup>

The Manual goes on to set out other factors the commission will have regard to in deciding whether to use a date other than invoice date as the date of sale:

*Any claim for an adjustment would need to substantively address:*

- *whether, why, and to what degree, the considerations in determining price differed between export and domestic sales;*
- *whether the materials cost differs at the time of subsequent invoicing of that export sale (compared to domestic sale invoices in the same invoice month of that export sale) having regard to factors such as the production schedules for domestic and export; and lead times for purchasing main input materials;*
- *whether contracts were entered into for the materials purchases, and materials inventory valuation.*<sup>19</sup>

These factors are not exhaustive, nor does the commission consider that all of these factors will be relevant in all cases. The focus of the second part of the commission's inquiry is whether, where the material terms of sale were set at another date, proceeding to use the invoice date as the date of sale would permit a fair comparison between export prices and normal values.

## 2.5 Commission's assessment

### 2.5.1 Request for evidence

For the purposes of the reinvestigation, and to fully reinvestigate certain areas that the ADRP have requested, the commission sought the following additional information from Hi-Steel through a request for further information (RFI):

- Provide a full description of how export prices for HSS are set for customers in Australia. This may include information on how prices are set in relation to hot rolled coil (HRC) costs/purchase prices. Provide copies of any pricing policies, pricing guidance or other documents relating to price setting and pricing strategy for export sales of HSS to Australian customers.
- Provide a full description of how domestic prices for HSS are set for sales on the domestic market. This may include information on how prices are set in relation to HRC costs/purchase prices. Provide copies of any pricing policies, pricing guidance or other documents relating to price setting and pricing strategy for sales of HSS on the domestic market.
- Provide a copy of the terms and conditions applying to sales orders/contracts for sales to Australian customers, highlighting any terms that state that the terms of the sales contract cannot be amended, and the sale cannot be cancelled. Also

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<sup>18</sup> The Manual, December 2021, p 51. As explained in the Manual, '*[t]his arises because there can be circumstances where an exporter and importer agree on price and quantity and make a sales agreement to that effect, but this may not establish the date on which terms were finally agreed upon because an element of informality continues, and conditions can be changed.*'

<sup>19</sup> The Manual, December 2021, p 52.

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provide evidence of these terms and conditions being communicated to the Australian customers.

- Are there any terms and conditions in the sales orders/contracts which allow for unit price changes, volume changes, or cancellation of sales, based on raw material purchase price increases?
- If not, how does Hi-Steel guard against changes in raw materials purchase prices when receiving orders from Australia?
- Is HRC used in the production of HSS ordered by Australian customers sourced from inventory or ordered after execution of export sales contracts/orders?
- For each of the sample export sales to Australia provided in Hi-Steel's exporter questionnaire response and selected for verification provide:
  - the signed sales contracts/orders
  - evidence to establish the particular coil or coils of HRC used in the production of the goods
  - was this HRC purchased under a contract with the supplier and, if so, what were the terms of that contract
  - evidence to show when the HRC was ordered
  - evidence to show when the HRC was received by Hi-Steel
  - evidence to show the price of the HRC used in the production
  - evidence to show the date of production of the HSS.
- For all selected domestic sales that were examined at verification, please provide documentary evidence of the order dates for these sales.
- For each of the sample domestic sales provided in Hi Steel's exporter questionnaire response and selected for verification provide:
  - evidence to establish the particular coil or coils of HRC used in the production of the goods
  - was this HRC purchased under a contract with the supplier and, if so, what were the terms of that contract
  - evidence to show when the HRC was ordered
  - evidence to show when the HRC was received by Hi-Steel
  - evidence to show the price of the HRC used in the production
  - evidence to show the date of production of the HSS.

On the 20 December 2023, Hi-Steel provided a response to the commission's RFI at **Confidential Attachment 1**.

The commission sought clarification and explanation on some of the responses provided in Hi-Steel's response to the RFI. The commission received follow-up responses on 9, 18 and 31 January 2023. These responses are provided in **Confidential Attachment 7**.

A public version of Hi-Steel's RFI response is available on the EPR.<sup>20</sup>

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<sup>20</sup> EPR 590, document no 43.

### **2.5.2 Date at which material terms of sale were established**

As requested by the ADRP, the commission has reinvestigated whether there is positive fact-based evidence—such as sales contracts, printed terms of sales on transaction documents, or payment documents—demonstrating that a date other than the date of invoice better reflects the date of sale and that the material terms of sale were, in fact, established by this other date.

The commission star reaffirms its finding in REP 590 that the material terms of sale were established by the order date.

#### Order and invoice documentation examined by the commission

The commission notes that the ADRP has stated that the commission examined only limited ‘samples’ of transaction documentation, which appeared to confirm the lack of strong positive evidence in this regard.

The commission can confirm that it examined 13 individual sales samples for both export and domestic sales (26 in total), during the verification process. This selection is consistent with the commission’s verification practices across all investigations, is based on a random selection of sales, and forms only part of an extensive verification. For instance, the verification of sales also includes verifying the relevance and completeness of the sales data provided by reconciling volume and value data ‘upwards’ through management accounts to audited financial accounts. This is in addition to verifying the accuracy of data by reconciling selected data submitted ‘downwards’ to source documents. While the selected sales may appear to lack strong positive evidence in exclusivity, when combined with the other verification undertaken during a full verification, it provides the strong evidence that is required for the commission to make accurate assessments.

As part of this reinvestigation the commission has re-examined the samples provided for both export and domestic sales.

For each export sale sample, the following was provided during verification:

- purchase contract (order) – between importer and exporter Hi-Steel
- commercial invoice – exporter to importer
- packing list
- export permit – export declaration certificate
- bill of lading
- certificate of origin
- proof of payment
- bank charge supporting document
- inland transport expense – supporting documents
- port handling expenses – supporting documents.

For each domestic sample the following was provided during verification:

- invoice detail and tax invoice – including screenshots from Hi-Steel’s enterprise resource planning (ERP) system
- delivery invoice
- proof of payment from the ERP system
- credit calculation (includes source documents and evidence from the ERP system)

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- inland freight calculation (includes source documents and evidence from the ERP system)
- inland freight tax invoice.

### Commission's analysis

The commission re-examined the export and domestic sales samples and did not find any variations to the commission's original findings in REP 590.

In this reinvestigation, the commission had particular focus on the documentation provided for export sales. The commission re-examined all documentation, with additional scrutiny on the purchase contract (order) and invoices for each sample.

The commission observed that for each order, there was no movement in price between when the order was placed (order date) and when the goods were invoiced (invoice date). On a unit basis (USD/MT), the price was the same. The commission did observe some slight fluctuation in quantity shipped, however these were within the tolerances stated on the purchase contracts. There were three sales where there appeared to be a substantial variance in quantity observed, however on clarification with Hi-Steel, it was found that they were part of a split shipment, with the second part of the shipment being made outside the inquiry period. The contracts for these orders stated that it allowed for the split shipment of goods. Hi-Steel provided source documents as evidence to support its claim. The commission examined these documents and is satisfied that these variances were due to a split shipment as claimed by Hi-Steel.<sup>21</sup>

As there was no movement in price between order and invoice observed, and there were only slight variances in quantity ordered to that delivered, the commission considers this indicates that the material terms of the sale were set at the date the order was made. The evidence indicates that price and quantity were not subject to any continuing negotiation between the importer and Hi-Steel after the order (contract) date. The purchase contract (order) also does not have any conditions that allow for any fluctuations of prices or quantities.

In addition to requesting that Hi-Steel provide a copy of the terms and conditions applying to sales orders/contracts for sales to Australian customers, the commission requested that Hi-Steel state whether there are any terms and conditions in the sales orders/contracts which allow for unit price changes, volume changes, or cancellation of sales, based on raw material purchase price increases. Hi-Steel stated that apart from two minor clauses,<sup>22</sup> 'there [are] no terms and condition[s] stating that the terms of the sales contract cannot be amended, or sales cannot be cancelled'.

In relation to the two confidential clauses permitting variations in the purchase contracts, the commission has examined these and is satisfied that they are not indicative of 'continuing negotiation between the buyer and the seller after the claimed contract date'.<sup>23</sup> There are no terms allowing for price escalation due to raw material price increases. Hi-Steel states that as it reflects the HRC market price in the month of offering an export price for HSS, after receiving an order for the HSS, Hi-Steel will produce it from HRC in stock or, if not in stock, it will order the HRC. Hi-Steel stated this results in a low risk of raw material price changes.

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<sup>21</sup> Confidential Attachment 5 – Downwards Export Verification.

<sup>22</sup> An example purchase contract containing these clauses is at **Confidential Attachment 11**.

<sup>23</sup> The Manual, December 2021, p 51.

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After examining the purchase contracts, the clauses in these contracts, the explanation provided by Hi-Steel in its RFI regarding these clauses, and then comparing these to Hi-Steel's sales data, the commission did not see any evidence of ongoing negotiation between the buyer and seller after the order was placed. Analysis of the export and domestic sales listing is at **Confidential Attachments 2 and 3**.

### Conclusion

In the commission's assessment, the evidence demonstrates that the material terms of sale were, in fact, established by the order date. The terms of the purchase contracts examined did not permit any continuing negotiation between the buyer and seller regarding price and quantity after the purchase contract (order) date. Based on the evidence analysed by the commission, there were no circumstances where an exporter and importer amended the price and quantity after the sales agreement was in place.

The commission confirms that it considers the evidence it has examined to be sufficient to reach the above conclusions. In this regard, the ADRP expressed concern in its reinvestigation request that the commission had examined 'samples' only. As has been explained, this approach is consistent with the commission's usual verification practices. Further, the commission considers its approach is consistent with not imposing an unreasonable burden on parties claiming adjustments.

### **2.5.3 Commission's examination of whether using invoice date permits fair comparison**

The commission finds that the order date is still preferable in setting the date of sale for export price. This is to ensure a fair comparison with normal values, which are based on domestic sales also with the order date as the date of sale. The commission analysed the additional information and data provided by Hi-Steel in REP 590 and its response to the RFI. The commission concludes that there is a strong relationship between the setting of prices at the date HSS is ordered for both export and domestic markets, and that of the costs and raw material input pricing at the date of order.

### Addressing the second part of the Manual

In reinvestigating its finding that the order date is the preferable date of sale, the commission has conducted further analysis on the interaction between material costs and export and domestic price settings as requested by the ADRP.

The commission has considered:

- Whether, why, and to what degree, the considerations in determining price differed between export and domestic sales.
- Whether the materials cost (of HRC) differs at the time of subsequent invoicing of that export sale (compared to domestic sale invoices in the same invoice month of that export sale) having regard to factors such as the production schedules for domestic and export; and lead times for purchasing the main input material HRC.
- Whether contracts were entered into for HRC purchases, and materials inventory valuation.

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### Additional evidence provided by Hi-Steel

In its response to the RFI, Hi-Steel provided further information regarding:

- price setting for domestic and export sales
- order and production processes for domestic sales and export sales
- how it sources HRC for exported goods and like goods sold domestically.

In addition to the sales information provided during the verification of Hi-Steel in REP 590, the following supporting information/evidence was provided:

For export sales (13 selected samples):

- Purchase contract (order) – between importer and exporter Hi-Steel (resubmitted)
- Production request / order – for HSS
  - Shows the HSS that has been ordered including order date, customer name, PO Number, delivery terms, specifications, price
- Production record
  - Specific production order information (screen shots from ERP system). Details of the pipe production line and the HRC being used. Provides the Production order date (not the same as the order date), HRC details etc.
  - Production record of yield ratio analysis providing various types of information on HRC inputs (screen shots from ERP system)
    - Links production record to the input HRC, includes HRC supplier, coil number, HRC Order Date, HRC Receipt Date, HRC purchase price

For domestic sales (13 selected sales):

- Sales Approval Request Input – Order input for domestic sales (from ERP)

### Order and production process for domestic and export sales

As requested by the ADRP, for the analysis, the commission examined various issues relating to the production and HRC inputs, with Hi-Steel providing the following information:

- HSS for domestic customers are predominately sourced from stock (if available). On the other hand, for export sales, Hi-Steel will produce HSS from HRC that is either in stock or has already been ordered. On the rare occasion where the required HRC is not in stock or on order, Hi-Steel will place an order for HRC to produce the HSS for export to Australia.
- HRC purchases are made on a 'delivered' basis. Furthermore, the agreed terms of payment with its major HRC supplier allows for an early payment discount.
- Source documents showing the average number of days to receive HRC after an order is placed.<sup>24</sup>
- Hi-Steel does not purchase HRC under contract.
- As noted, domestic HSS is mainly sold from stock. Hi-Steel advised that it is not able to provide information for individual domestic sales about when the HRC used

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<sup>24</sup> Confidential Attachment 3 – RFI Analysis – Export.

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to produce the HSS was purchased, as it does not routinely record this information. As such, there is no direct link from each sale to the HRC used in production.

- For export sales, Hi-Steel did provide information about the timing of HRC purchases relative to the production and sale of the HSS, i.e., the lead times for how long HRC stock was held in inventory before production and shipment. The commission was able to reconcile the purchases of HRC provided in the 13 sales samples that were directly linked to export sales, with the HRC raw material purchase ledger provided with Hi-Steel's response to exporter questionnaire and verified in REP 590. All records reconciled for the invoice date, quantity and price.

The commission analysed this information in **Confidential Attachment 3**. The commission found that the average days from when a HRC order is placed to HSS production completion date is longer than the average days from when a HSS order is placed to HSS production completion date. However, the commission observed a large variation between the individual 13 sales examined.

The commission finds that in the absence of similar information about domestic sales, it is not possible to draw any meaningful conclusions from this analysis.

Moreover, in the commission's assessment and as explained below, it is not evident that prices are set in relation to export price and normal value by reference to the cost of the HRC actually used in the production of the HSS the subject of an order.

### Price setting considerations for domestic and export sales

Hi-Steel stated that for export sales of HSS to Australia, on receipt of a customer inquiry, it will internally discuss and set prices of the subject products considering HRC cost, conversion costs and selling expenses. HSS prices are set by Hi-Steel with reference to the HRC market price in the month of offering a HSS price to the Australian customer. The Australian customer will place an order by entering into a sales contract with Hi-Steel. Hi-Steel does not maintain any pricing policies, guidance, or other documents in relation to price setting and strategy for export customers.<sup>25</sup>

Hi-Steel stated that domestic sales prices are set through sales specific negotiations with each customer, although pricing still takes into consideration the prevailing market conditions at the time of price offer, including HRC market prices. Final price can be affected by the market conditions at the time of order, terms of sale, product mix, significance of the customer and their credit standing.<sup>26</sup>

For the commission to assess Hi-Steel's claims that it sets HSS prices with reference to HRC market prices, the commission has first examined the correlation between reported costs provided by Hi-Steel in relation to benchmark pricing in Figure 1.

The commission has mapped Hi-Steel's average purchase price for all HRC based on invoice price at date of purchase, the cost to make and sell (CTMS) for the model exported to Australia, the HRC input cost for that CTMS data, and the MEPS benchmark

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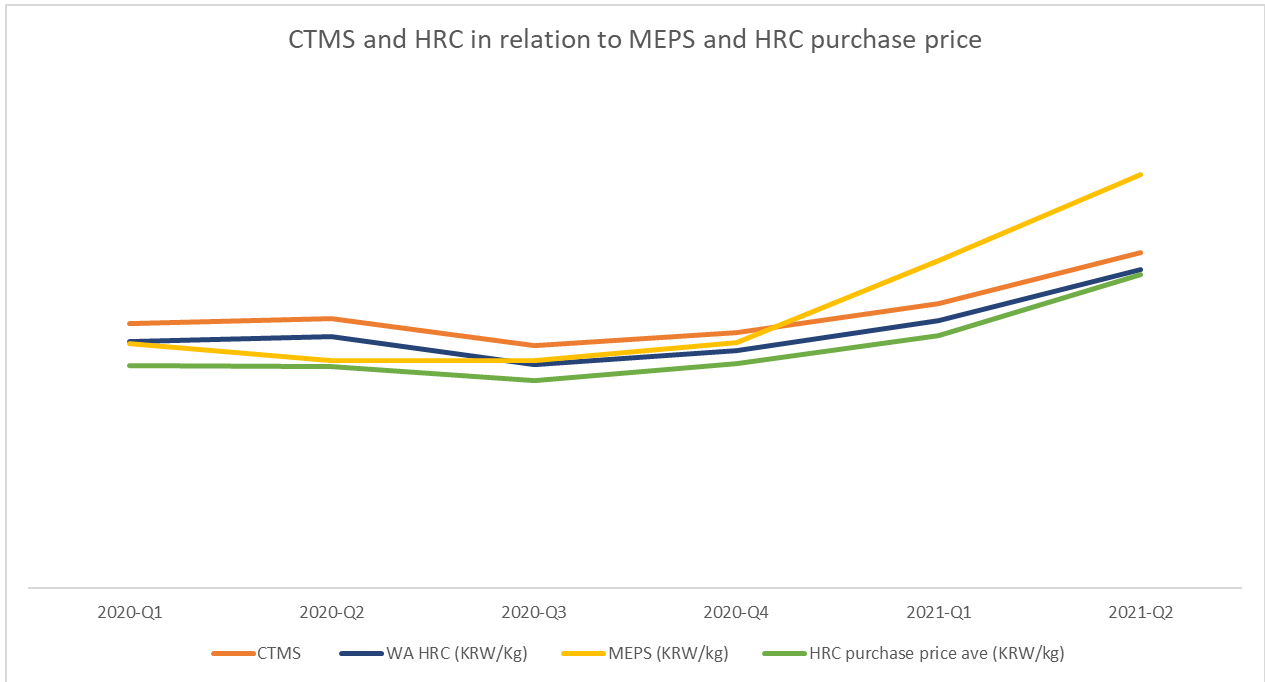
<sup>25</sup> EPR 590, document no 43.

<sup>26</sup> Ibid.



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for HRC from Korea, noting that the CTMS for the model exported to Australia was the same.



**Figure 1: MEPS, Hi-Steel average HRC purchase price v CTMS for MCC exported to Australia<sup>27</sup>**

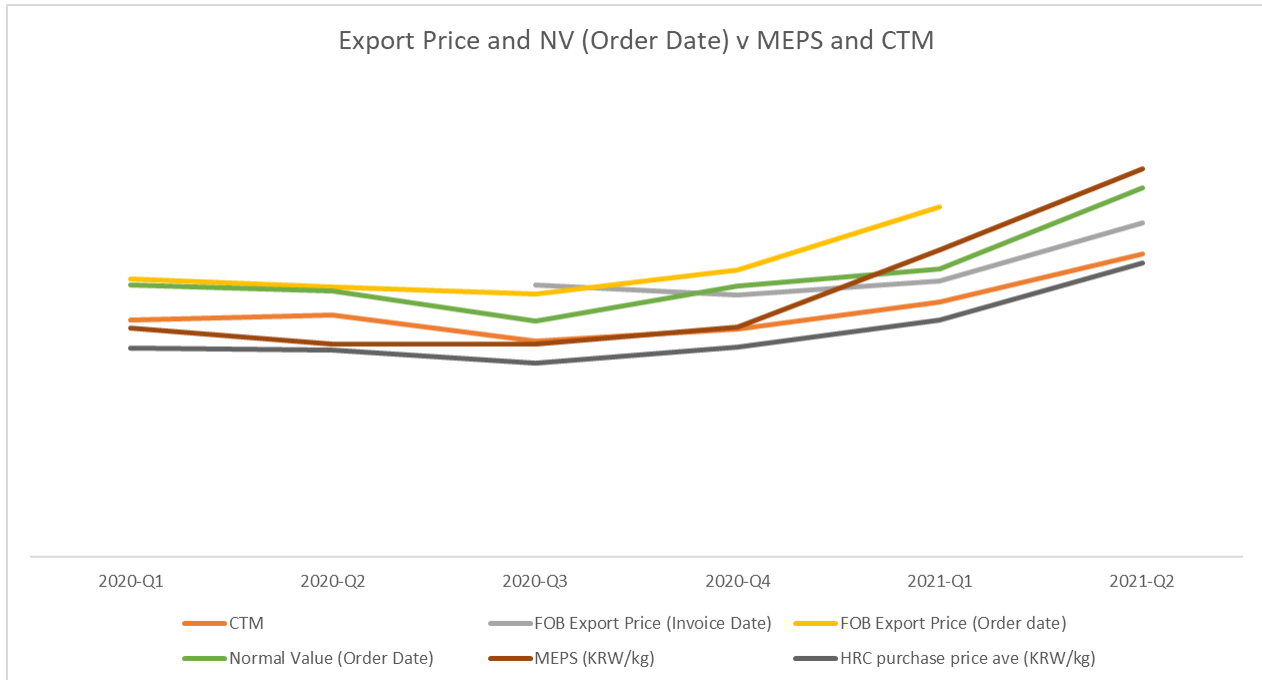
The data presented from Hi-Steel showed a strong correlation between its average purchase price of HRC and quarterly CTMS. However, the HRC purchase prices, while showing similar trends to the MEPS benchmark price, did not increase at the same rate in the first and second quarters of 2021 as the MEPS price. This may indicate a lag in costs of producing HRC to those purchased by Hi-Steel. This analysis can be found at **Confidential Attachment 4 and 6.**

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<sup>27</sup> CTMS and weighted average (WA) HRC is based on the average weighted costs of inventory movements in production for the MCC exported to Australia. HRC purchase average (ave) price is based on all HRC at the date of invoice from Hi-Steel’s raw materials purchase ledger.

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### Examination of costs in comparison with export prices and normal values



**Figure 2: Export Price, NV, CTM and MEPS (based on exported model)**

In Figure 2 the commission has overlaid export prices (by order and invoice date), normal values (by order and invoice date), against cost to make (CTM), and MEPS benchmark pricing for HRC in Korea. The commission notes there are some similarities between this chart (Figure 2) and Figure 14 from REP 590. However, the commission has re-examined this analysis in light of further information provided by Hi-Steel, and to address the criticisms of this analysis that were raised in the ADRP's request for the reinvestigation.

The commission observes:

- Normal value based on order date or invoice date is identical due to the short period between domestic order and invoice date.
- Normal value has a strong correlation to Hi-Steel's CTM.
- Export price by order date has a close correlation to the MEPS benchmark for HRC, and correlates (but to a lesser extent) with CTM.
- Export price by invoice date appears to be less aligned to the changes in either CTM, or HRC benchmark prices at that same point in time.

For REP 590, the commission only examined sales that were made within the inquiry period (1 July 2020 to 30 June 2021). This only included sales that were shipped during that period. However, when these sales are plotted by order date, as seen in Figure 2, the same sales stretch from the first quarter of 2020 to the end of the first quarter of 2021. This is due to export sales being ordered at a different time to when they are invoiced. By including additional export sales to 'complete the data series', would involve analysing export sales made outside the inquiry period. The commission did not request these additional sales as part of normal practice, nor does the commission consider this additional data to be necessary to draw the above conclusions from Figure 2.

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Figure 14 in REP 590 showed the correlation between export prices, normal value in relation to HRC purchase price. By expanding the analysis in Figure 2 above to include CTM and MEPS HRC benchmark data, it shows the export prices are more closely aligned to HRC market prices and HSS CTM at the time of order. A similar correlation is observed with normal values in comparison to CTM and HRC prices. The same correlation and reaction to HRC prices and costs are not observed in relation to export prices at invoice date.

Hi-Steel stated that there are no terms allowing a price escalation due to raw material purchase price increases and that HSS reflects the HRC market prices in the month of offering its selling prices. Figure 2 supports this assertion when reviewing export prices based on order date. Further, Hi-Steel has stated that it either produces HSS for export from HRC in stock or already on order, or on some occasions places an order for HRC after receipt of an order from an Australian customer. As a result, Hi-Steel claims that there is a low risk of raw material price changes affecting future HSS prices. The evidence presented, through outlining the correlation between pricing at order date, with market HRC prices, and actual prices of HRC purchased by Hi-Steel, supports this assertion, and shows a much closer link between the price set at order date and the prevailing costs of HRC.

In its request for reinvestigation, the ADRP stated that *'the ADC appears to have ignore[d] the apparently non-correlative movement of the normal value data series with the HRC purchase price data series, casting doubt over the likelihood of meaningful conclusions to be drawn'*. The commission does not observe significant non-correlation between normal value and HRC purchase prices and CTM in Figure 2. In any event, what the commission considers most significant is the much closer correlation between market HRC prices and export price based on order date, rather than with export price based on invoice date.

The commission notes that it does not rely on the correlation and non-correlation findings in Figure 2 alone. The commission has used this analysis to test the claims made by Hi-Steel regarding its price setting considerations for domestic and export sales. The commission finds that the above analysis supports the information on pricing provided by Hi-Steel. Where, for HSS exported to Australia, Hi-Steel sets prices with reference to the HRC market price in the month of offering. Domestic sales on the other hand are set through sales specific negotiations with each customer and are affected by market conditions at the time the order is negotiated. Figure 2 shows that these market conditions include reference to CTM at the time of sale, based on the correlation between CTM and normal values.

This analysis can be found in **Confidential Attachment 6**.

### Conclusion

The Commission finds that the order date is still preferable in setting the date of sale for comparison between export and domestic sales. This is to ensure a fair comparison with normal values. The commission has established that pricing for both exports and domestic sales have reference to the established market price of HRC at the date the goods are ordered. The commission finds that the order date is still preferable in setting the date of sale for export price. The additional information, along with the data provided by Hi-Steel in REP 590, and its response to the RFI shows that there is a strong relationship between the setting of prices at the date HSS is ordered for both export and domestic markets, and that of the costs and raw material input pricing at the date of order.

#### **2.5.4 Recalculation of variable factors including dumping margin**

The ADRP has requested that the commission recalculate the dumping margin for Hi-Steel based on a comparison of export price and normal value at the invoice date.

The dumping margin was assessed by comparing weighted average Australian export prices to the corresponding quarterly weighted average normal value for the inquiry period.

The dumping margin calculations are at **Confidential Appendices 1, 2, 3 and 4**.

#### **2.6 Submissions on order date as the preferred date of sale**

The commission received the following submissions concerning the preliminary finding that order date is still the preferable date of sale for comparison between export and domestic sales for the purpose of determining whether dumping occurred during the inquiry period by Korean exporter, Hi-Steel.

##### **2.6.1 Orrcon**

Orrcon provided a submission in response to the preliminary reinvestigation report.<sup>28</sup> In summary, Orrcon submitted that in various HSS and other steel cases over the past 4 years, which have included various exporters across multiple countries, the commission has not deviated from invoice date being the preferred date of sale. Orrcon submits that the departure from invoice date requires meeting a higher threshold of positive evidence than that which is consistent with usual verification practices and work programs. Orrcon submits that the commission should have assessed additional samples beyond the 13 assessed in the original continuation inquiry.

Orrcon submits that the commission's analysis focusses on there being no terms or conditions allowing the selling price to be amended based on raw material price fluctuations. However, Orrcon notes that that this could read as there being no terms and conditions that prevent sales contracts from being amended or cancelled. Orrcon submits that it appears price changes are possible between order and invoice date.

##### **2.6.2 ATM**

ATM provided a submission in response to the preliminary reinvestigation report.<sup>29</sup> In summary, ATM have submitted there is a lack of evidence available to the commission to meet the standard (positive fact-based evidence) required to support the change of date of sale from invoice to order date. As a result, ATM submits that no meaningful comparison can be made with respect to the differences between the effects of production costs on the terms and conditions of export and domestic sales.

ATM contest that the preliminary report only focuses on the terms of sale as they relate to export sales but does not identify the analysis of terms of sale on the domestic market. In addition, ATM submits that the commission did not outline any sales where the order was placed, and the sales did not eventuate (that is, cancelled orders), or test what proportion of orders were cancelled.

On the topic of cancelled sales, ATM submits that Hi-Steel stated the terms and conditions of the sales cannot be altered or cancelled. However, ATM claims this

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<sup>28</sup> EPR 590, document no. 45

<sup>29</sup> EPR 590, document no. 46

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contradicts the findings of the commission noting that there are two minor (confidential) clauses, which indicates to ATM that it provides the opportunity for the cancellation of orders by the exporter.

ATM submits that with only 13 sample sales analysed, the commission has not considered any sales that were cancelled prior to the invoice being generated. As such, this undermines the commission's understanding of whether the conditions of the sale can be altered or cancelled and asserts that the analysis conducted by the commission is not comprehensive enough to address the ADRP's comments provided in the reinvestigation request.

ATM also stated it is not convinced that Hi-Steel's systems are unable to determine the cost inputs for each sale and therefore calls into question the comparison of costs for the domestic and export market. This then presents issues when determining the cost to make for the domestic market as opposed to the export market.

In reference to Figure 1 and Figure 2 presented in the preliminary reinvestigation report and included in this report, ATM has submitted that the comparison is fundamentally flawed. This is because the HRC used to produce the models of the exported goods to Australia would be a subset of all HRC included in Hi-Steel's raw materials purchase ledger.

ATM also identified a similar issue in relation to an anti-dumping investigation into exports from Hi-Steel to the United States of America (US) in which the date of sale/order date was a contested issue. ATM outlined the decision of the US Court of International Trade (US ICT).<sup>30</sup> The US Department of Commerce (USDOC) investigation showed that Hi-Steel did amend the quantity and prices after the order date, and therefore the material terms of sale were not established until the invoice date or shipment date. On 3 October 2018, the US ITC upheld the USDOC's decisions to use invoice or shipment date rather than the order date when establishing the 'date of sale'. ATM has sought more explanation as to why Hi-Steel's conduct of exports to the US would appear to be so different to its sales to Australia.

### 2.6.3 Hi-Steel

Hi-Steel has supported the commission's preliminary finding that it did not export the subject goods at dumped prices during the review[*sic*] period in its submission in response to the preliminary reinvestigation report.<sup>31</sup> Hi-Steel states that the finding is consistent and accurately reflects the basis upon which it negotiated its export sales with Macsteel International Australia (Macsteel).

## 2.7 Commission's assessment of submissions

Following receipt of the above submissions the commission contacted Hi-Steel and Macsteel, who imported from Hi-Steel during the inquiry period, to obtain further information on the export sales and their terms and conditions. Hi-Steel and Macsteel's responses are available on the EPR and confidential versions are available at **Confidential Attachments 8 and 9**.<sup>32</sup>

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<sup>30</sup> EPR 590, document no. 46

<sup>31</sup> EPR 590, document no. 47

<sup>32</sup> EPR 590, document nos 49 and 50

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The commission asked each specifically:

- Are there any terms and conditions in the sales orders/contracts which allow for unit price changes, volume changes, or cancellation of sales between the exporter and the importer?
- Were there any orders that were cancelled during the inquiry period?

In response Hi-Steel and Macsteel further highlighted one of the confidential clauses that was already disclosed to the commission in their previous responses. This clause permits cancellation in very narrow circumstances relevant to shipment. The commission remains of the opinion that it does not view this clause as evidence that there is 'continuing negotiation between the buyer and the seller after the claimed contract date'.<sup>33</sup>

Hi-Steel and Macsteel both stated that no orders were cancelled during the inquiry period.

While the commission notes Orrcon's concern that it should have assessed additional sales beyond the 13 selected sales from REP 590, the commission does not believe this was necessary. As outlined in chapter 2.5.1, the commission requested additional information regarding these selected sales. This is additional information to that which was originally collected during verification. There were no issues identified in any of these randomly selected sales. It is not possible for the commission to verify all sales when assessing date of sale claims. The commission considers that the method of sample selection and quality of sample analysis are important factors when assessing the weight that can be placed on conclusions drawn from sample analysis, not just the number of samples.

As mentioned, ATM has submitted that the terms and conditions presented by the commission only focus on export sales. The commission has stated that for domestic sales, the invoice and order date are almost identical. In addition, the commission compared normal values calculated using order date and invoice date, and there is no difference. As established in chapter 2.5.3, domestic sales of HSS are predominantly fulfilled from stock. As a result, the order is taken, invoice issued and the HSS despatched all within a short time period. Therefore, specific terms and conditions for the domestic order are not required to the same extent as export sales. The commission has also looked at production costs in relation to domestic and export sales. While this is important when establishing comparability between export and domestic sales, the commission has put more weighting on how pricing has been set in relation to export and domestic sales when establishing the material terms of the sale.

In relation to ATM's criticism of Figure 1 and Figure 2, the analysis is to show the trend between HRC average costs against the CTM, and prices for the exported model. This is to test whether Hi-Steel's claim that prices are set in relation to market prices at the time of order is correct. The commission can extract the cost of HRC relative to the particular exported model, however this follows the same trend as the CTM of that model, since the CTM is directly linked to HRC pricing.

The commission notes the USDOC investigation that involved Hi-Steel. The commission does not discredit or challenge the finding by the US ICT. However, the commission notes that this was for a different period than this inquiry period, for different importers, and in a different market with its own unique structures and complexities. In this inquiry period Hi-Steel only exported to one importer for a very specific model of HSS. Therefore, the

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<sup>33</sup> The Manual, December 2021, p 51.

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commission can only examine and comment on the specific terms and conditions established between Hi-Steel and this importer.

### **2.8 Conclusion**

After conducting its reinvestigation as outlined above, and taking into consideration submissions, the Commissioner finds that order date, rather than invoice date, is the preferred date of sale for comparison between export and domestic sales for the purpose of determining whether dumping occurred during the inquiry period by Hi-Steel.

The commission has found that the material terms of the sale for export were established at the order date. There was no change in price or quantity of the goods between the date of order or invoice that indicated any ongoing negotiation between Hi-Steel and the importer. The signed purchase orders/contracts that were provided did not have any provision that allowed for a cancellation or renegotiation of the price or quantity of the order.

In light of this finding, the commission considered whether it would nonetheless be appropriate to use the invoice date as the date of sale. The commission found that to do so would not enable a fair comparison between export prices and normal values for the purpose of determining whether dumping occurred. The commission has established that pricing for both exports and domestic sales have reference to the established market price of HRC at the date the goods are ordered. As a result, when making price comparison between export and domestic sales, order date is a more accurate reflection of comparative prices between exports and domestic sales. Therefore, the commission remains of the view that order date is preferable in establishing the date of sale.

### **3 Finding 2 – Impacts on the likelihood of dumping and material injury recurring**

#### **3.1 Findings**

As the Commissioner has found that order date is the preferred date of sale, there is no change to Hi-Steel's dumping margin. The Commissioner has therefore not given consideration to whether this impacts the commission's assessment of the likelihood of dumping and material injury continuing or recurring.

#### **3.2 Submissions on the likelihood that dumping and injury will recur**

The commission notes that submissions have been made by both Hi-Steel and ATM regarding the impacts on the likelihood that dumping, and injury will recur. These are available on the EPR.<sup>34</sup> As the Commissioner has not given consideration to the impacts of the likelihood of dumping and material injury continuing or recurring the commission has not commented on these submissions. However, they will be provided along with this report for the ADRP's review.

#### **3.3 ADRP request for reinvestigation**

The ADRP outlined its request for a reinvestigation into certain findings in REP 590 on 31 October 2022 in a letter to the Commissioner.<sup>35</sup>

The second finding that the ADRP requested be reinvestigated was as follows:

*Should the finding in relation date of sale be changed as a result of the above reinvestigation request, resulting in adjustments to Hi-Steel's dumping margin, consideration should be given as to whether this impacts the ADC's assessment of the likelihood of dumping and material injury continuing or recurring.*

As outlined in Chapter 2, the Commissioner has found that order date is the preferred date of sale for comparison between export and domestic sales for the purpose of determining dumping for Hi-Steel. There is no proposed change to the dumping margin as ascertained for Hi-Steel in REP 590. As a result, the commission has not given consideration to whether this impacts the commission's assessment of the likelihood of dumping and material injury continuing or recurring.

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<sup>34</sup> EPR 590, document nos. 47 and 48.

<sup>35</sup> ADRP letter to the Commissioner requesting a reinvestigation, 31 October 2022, on the ADRP's website: [ADRP 2022/156](#)



**4 ATTACHMENTS AND APPENDICES**

<b>Confidential Attachment 1</b>	Hi-Steel response to RFI (FOUO)
<b>Confidential Attachment 2</b>	RFI Analysis – Domestic
<b>Confidential Attachment 3</b>	RFI Analysis – Export
<b>Confidential Attachment 4</b>	Raw Material Purchases
<b>Confidential Attachment 5</b>	Downwards Export Verification
<b>Confidential Attachment 6</b>	Pricing and CTMS Analysis
<b>Confidential Attachment 7</b>	Correspondence record
<b>Confidential Attachment 8</b>	Hi-Steel response to post preliminary reinvestigation report supplementary questions (FOUO)
<b>Confidential Attachment 9</b>	Macsteel response to post preliminary reinvestigation report supplementary questions (FOUO)
<b>Confidential Attachment 10</b>	Confidential versions of submissions
<b>Confidential Attachment 11</b>	Example export purchase contract
<b>Confidential Appendix 1</b>	Export price – revised calculation
<b>Confidential Appendix 2</b>	CTMS – revised calculation
<b>Confidential Appendix 3</b>	Normal value – revised calculation
<b>Confidential Appendix 4</b>	Dumping margin – revised calculation