Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 6 July 2021 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

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

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

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

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

Further application information
You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the ADRP website for more information.

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

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

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

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Austube Mills Pty Ltd
Address: Austube Mills Building 7 Industrial Drive Mayfield, NSW 2304
Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: [redacted]
Position: [redacted]
Email address: [redacted]
Telephone number: [redacted]

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

The applicant considers it is an interested party within the meaning of paragraph 269ZX(ab) of the *Customs Act 1901*, as it was the applicant in relation to an application under s.269ZHB that led to the making of the reviewable decision.

4. **Is the applicant represented?**

Yes ☒ **No** ☐

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

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

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

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

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

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

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

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

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

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

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

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

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

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

The goods which were the subject of the reviewable decision are:

Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include in-line galvanised (ILG), pre-galvanised or hot-dipped galvanised (HDG) and non-galvanised HSS.

Sizes of the goods are, for circular products, those exceeding 21 mm up to and including 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3 mm. Categories of HSS excluded from the goods are conveyor tube; precision RHS with a nominal thickness of less than 1.6 mm and air heater tubes to Australian Standard (AS) 2556.

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

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff Subheading	Statistical Code	Description
7306	OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL:	
7306.30.00	Other, welded, or circular cross-section, of iron or non-alloy steel:	
	Exceeding 21 mm but not exceeding 60.3 mm external diameter:	
	31	Wall thickness not exceeding 2.5 mm
	32	Wall thickness exceeding 2.5 mm but not exceeding 3.6 mm
	33	Wall thickness exceeding 3.6 mm
	Exceeding 60.3 mm but not exceeding 114.3 mm external diameter:	
	34	Wall thickness not exceeding 3.2 mm
	35	Wall thickness exceeding 3.2 mm but not exceeding 4.5 mm
	36	Wall thickness exceeding 4.5 mm
	37	Exceeding 114.3 but not exceeding 165.1 mm external diameter
7306.50.00	45	Other, welded, or circular cross-section, of other alloy steel
7306.6	Other welded, of non-circular cross-section:	
7306.61.00	Of square or rectangular cross-section of iron or non-alloy steel:	
	Not exceeding 279.4 mm perimeter:	
	21	Wall thickness not exceeding 2 mm
	22	Wall thickness exceeding 2 mm
	25	Exceeding 279.4 mm
	90	Other
7306.69.00	10	Of other non-circular cross-section

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: 2022/049
Date ADN was published: 1 July 2022

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

PART C: GROUNDS FOR THE APPLICATION

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

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

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

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

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

Ground 1:

There are errors in the determination of the dumping margin for Hi-Steel Co., Ltd (**Hi-Steel**), in particular, incorrect determination of the date of sale for the export sales to Australia and as a consequence whether dumping is likely to continue or recur if the anti-dumping measures were to expire.

Ground 2:

For the purposes of subsection 269TAC(1) of the *Customs Act 1901* the normal value of the goods exported to Australia by Hi-Steel were wrongly ascertained by reference, in part, to sales of goods not 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.

Ground 3:

The decision by the Minister not to secure the continuation of the anti-dumping measures applying to the goods and like goods exported to Australia from South Korea by Hi-Steel is not the correct or preferable decision.

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

Ground 1:

The correct or preferable decision would be for the Minister to compare the invoice dates for the domestic and export sales of Hi-Steel for the purpose of determining whether dumping has occurred and the levels of dumping.

Ground 2:

The correct or preferable decision would ascertain the normal value of the goods exported to Australia by Hi-Steel under subsection 269TAC(1) without reference to sales of goods not produced by Hi-Steel, and would not include sales of such goods in any low volume assessment finding under subsection 269TAC(14) and any determination of SG&A costs under subparagraph 269TAC(2)(c)(ii).

Ground 3:

The correct of preferable decision would be for the Minister:

- in accordance with paragraph 269ZHG(1)(b) to declare that he has decided to secure the continuation of the anti-dumping measures relating to the goods exported to Australia from South Korea by Hi-Steel; and
- in accordance with subparagraph 269ZHG(4)(a)(i) to determine that the dumping duty notice continues in force after 3 July 2022 and as such continues to apply to Hi-Steel.

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

Elaboration of the grounds raised in question 9 can be found at Appendix B, attached.

12. Set out the reasons why the proposed decision provided in response to question 0 is materially different from the reviewable decision:

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

The correct or preferable decision provided in response to question 10 is materially different from the reviewable decision as follows:

Ground 1:

By comparing the invoice dates for the domestic and export sales of Hi-Steel, the levels of dumping will increase.

Ground 2:

The correct or preferable decision would increase the ascertained normal value of the goods exported to Australia by Hi-Steel under subsection 269TAC(1), and increase the level of dumping determined for this exporter.

Ground 3:

A decision by the Minister under paragraph 269ZZM(1)(b) to revoke the reviewable decision and substitute a new decision may result in a declaration under paragraph 269ZZM(3)(d) that the dumping duty notice, as in force immediately before its expiry, is reinstated and applies to Hi-Steel.

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

Appendix A: Copy of the notice of the reviewable decision.

Appendix B : Elaboration of the grounds raised in question 9.

PART D: DECLARATION

The ~~applicant/~~the applicant's authorised representative *[delete inapplicable]* declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: [sgd]

Name: XXXXXXXXXXXX

Position: Applicant's authorised representative

Organisation: InfraBuild Steel

Date: 29/07/2022

PART E: AUTHORISED REPRESENTATIVE

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

Provide details of the applicant's authorised representative:

Full name of representative: [redacted]
Organisation: InfraBuild Steel
Address: [redacted]
Email address: [redacted]
Telephone number: [redacted]

Representative's authority to act

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

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

Signature: [sgd]
(Applicant's authorised officer)

Name: [redacted]

Position: [redacted]

Organisation: Austube Mills Pty Ltd

Date: 29/07/2022

ANTI-DUMPING NOTICE NO. 2022/049

Customs Act 1901 – Part XVB

Hollow structural sections

Exported to Australia from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan

Findings of Continuation Inquiry No. 590 into Anti-Dumping Measures

Public Notice under section 269ZHG(1) of the Customs Act 1901 and sections 8 and 10 of the Customs Tariff (Anti-Dumping) Act 1975

The Commissioner of the Anti-Dumping Commission (**the Commissioner**) has completed an inquiry, which commenced on 22 September 2021, into whether the continuation of the anti-dumping measures applying to hollow structural sections (**HSS**) exported to Australia is justified. The anti-dumping measures are in the form of a dumping duty notice for HSS exported to Australia from the People's Republic of China (**China**), the Republic of Korea (**Korea**), Malaysia and Taiwan (collectively, **the subject countries**) and a countervailing duty notice for HSS exported to Australia from China.

Exports from Korea by Kukje Steel Co., Ltd (**Kukje**) are not covered by that inquiry as it relates to the dumping duty notice, as the notice currently in place does not apply to that company's exports of HSS. Exports from China by Dalian Steelforce Hi-Tech Co. Ltd (**Dalian Steelforce**) and Huludao City Steel Pipe Industrial Co. Ltd (**Huludao**) are not covered by that inquiry as it relates to the countervailing duty notice, as the notice currently in place does not apply to those companies' exports of HSS.

The Commissioner's recommendations resulting from that inquiry, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 590* (**REP 590**).

I, ED HUSIC, Minister for Industry and Science, have considered REP 590 and have decided to accept the recommendation and reasons for the recommendation, including all the material findings of fact and law set out in REP 590.

Under section 269ZHG(1)(b) of the *Customs Act 1901* (**the Act**), I declare that I have decided to secure the continuation of the anti-dumping measures:

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

In accordance with subsections 269ZHG(ii) and (iii) of the Act, I determine that the dumping duty notice continues in force after 3 July 2022 but that, after that day:

- the notice ceases to apply to Hi-Steel Co., Ltd (**HiSteel**), and
- with the exception of exporters not subject to the existing measures and HiSteel, the notice has effect as if different specified variable factors relevant to the determination of duty had been fixed in relation to all exporters from China, Korea, Malaysia and Taiwan.

In accordance with subsections 269ZHG(i) and (iii) of the Act, I determine that the countervailing duty notice continues in force after 3 July 2022 but that, after that day:

- with the exception of exporters not subject to the existing measures and Tangshan Youfa Steel Pipe Manufacture Co. Ltd (**Tangshan Youfa**), Tangshan Zhengyuan Steel Pipe Co. Ltd (**Tangshan Zhengyuan**), Tianjin Youfa Steel Pipe Group Co. Ltd. No.1 Branch Company (**Youfa Steel Pipe No.1**) and Tianjin Youfa Steel Pipe Group Co. Ltd. No.2 Branch Company (**Youfa Steel Pipe No.2**), the notice has effect as if different variable factors relevant to the determination of duty had been fixed in relation to all exporters from China, and
- the notice continues in force unchanged in relation to exporters Tangshan Youfa, Tangshan Zhengyuan, Youfa Steel Pipe No.1 and Youfa Steel Pipe No. 2.

Interim dumping and countervailing duty

I determine that in accordance with section 8(5) and 8(5BB) of the *Customs Tariff (Anti-Dumping) Act 1975* (**Dumping Duty Act**), and the *Customs Tariff (Anti-Dumping) Regulation 2013* (**the Regulation**), the amount of interim dumping duty (**IDD**) payable on goods, the subject of the dumping duty notice, is an amount worked out in accordance with the following methods:

- for all Chinese, Korean, Malaysian and Taiwanese exporters (except Taiwanese exporters Ta Fong Steel Co. Ltd (**Ta Fong**), Tension Steel Industries Co. Ltd (**Tension Steel**) and Shin Yang Steel Co. Ltd (**Shin Yang**)), a combination of fixed and variable duty method as specified in section 5(2) of the Regulation, and
- for Taiwanese exporters Ta Fong, Tension Steel and Shin Yang, a floor price duty method as specified in section 5(4) of the Regulation.

I determine that, in accordance with section 10(3B)(a) of the Dumping Duty Act, the amount of interim countervailing duty (**ICD**) payable on goods the subject of the countervailing duty notice in respect of Chinese exporters be ascertained as a proportion of the export price of those particular goods.

Consideration of the lesser duty rule

China

In relation to Dalian Steelforce, pursuant to section 8(5BAAA) of the Dumping Duty Act, I am not required to have regard to the desirability of fixing a lesser amount of duty. This is because the normal value of the goods for this exporter was not ascertained under section 269TAC(1) of the Act because of the operation of section 269TAC(2)(a)(ii) of the Act.

In relation to Huludao, pursuant to section 8(5B) of the Dumping Duty Act, I have had regard to the desirability of specifying a method such that the sum of:

- the export price of goods of that kind as so ascertained

- the interim dumping duty payable on the goods,

does not exceed the non-injurious price of goods of that kind, as ascertained for the purposes of the notice. For Huludao, these amounts do not exceed the non-injurious price of the goods. Therefore, a lesser amount of duty has not been applied.

In relation to all other exporters of the goods from China, pursuant to section 8(5BA) of the Dumping Duty Act, I have had regard to the desirability of specifying a method, such that the sum of:

- the export price of goods of that kind as so ascertained
- the interim dumping duty payable on the goods
- the interim countervailing duty payable on the goods,

does not exceed the non-injurious price of goods of that kind, as ascertained for the purposes of the notices. For the following exporters of the goods, these amounts do not exceed the non-injurious price, and therefore, a lesser amount of duty has not been applied:

- Hengshui Jinghua Steel Pipe Co. Ltd (**Hengshui Jinghua**)
- Tianjin Ruitong Huaxing International Trade Co. Ltd (**Tianjin Ruitong**)
- Tangshan Youfa
- Tangshan Zhengyuan
- Youfa Steel Pipe No.1
- Youfa Steel Pipe No.2.

For all other exporters of the goods from China, these amounts do exceed the non-injurious price, and therefore, a lesser amount of duty has been applied.

Korea, Malaysia and Taiwan

In relation to all exporters from Korea, Malaysia and Taiwan, pursuant to section 8(5B) of the Dumping Duty Act, I have had regard to the desirability of specifying a method such that the sum of:

- the export price of goods of that kind as so ascertained
- the interim dumping duty payable on the goods,

does not exceed the non-injurious price of goods of that kind, as ascertained for the purposes of the notice. For all exporters from all exporters from Korea, Malaysia and Taiwan, these amounts do not exceed the non-injurious price of the goods. Therefore, a lesser amount of duty has not been applied.

Effective duty rates

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

Country	Exporter	IDD method	Effective IDD rate	ICD[1]
China	Dalian Steelforce	Combination	9.4%	N/A
	Hengshui Jinghua		9.4%	0.0%
	Tianjin Ruitong		1.0%	8.4%
	Youfa Steel Pipe No.1		6.1%	3.3%
	Youfa Steel Pipe No.2		6.1%	3.3%
	Tangshan Youfa		6.1%	3.3%
	Tangshan Zhengyuan		6.1%	3.3%
	Huludao		30.4%	N/A
	All other exporters		22.0%	26.3%
Korea	All other exporters[2]	Combination	13.8%	N/A
Malaysia	All other exporters	Combination	20.8%	
Taiwan	Shin Yang	Floor price	0.0%	
	Ta Fong	Floor price	0.0%	
	Tension Steel	Floor price	0.0%	
	All other exporters	Combination	23.5%	

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

REP 590 has been placed on the public record, available at www.adcommission.gov.au

Enquiries about this notice may be directed to the Case Manager by phone on +61 3 8539 2527 or by email investigations3@adcommission.gov.au

30 day of JUNE 2022.

ED HUSIC
Minister for Industry and Science

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[1] Dalian Steelforce and Huludao, and all exporters from Korea, Malaysia and Taiwan are not subject to the countervailing duty notice.
[2] I am ceasing the dumping duty notice against HiSteel and the Korean exporter Kukje is not subject to the dumping duty notice.

APPENDIX B

Elaboration of the grounds raised in question 9

Ground 1: Errors in the determination of the dumping margin for Hi-Steel, in particular, incorrect determination of the date of sale for the export sales to Australia.

In *Report No. 590*[1] (**REP 590**), the Commissioner reversed the exporter's evidence presented in its *Response to Exporter Questionnaire* equating the date of sale for its exports to Australia as the invoice date. The Commissioner did so by ignoring the exporter's own conclusion concerning the date of establishment of the material terms of sales. Instead, the Commissioner:

> …***identified*** *that it may not be able to properly compare domestic sales with export sales because of the significant increase in the cost of steel during the importation period. The* ***commission considered that domestic prices were likely to have increased in response to these higher export prices more quickly than export prices****.* (**emphasis** added)[2]

By so concluding the Commissioner ignored its policy and practice with regard to establishing the date of sale, which takes a number of factors into account. The Commissioner has erred in reaching this decision by failing to have regard to the broader considerations set out in the *Dumping and Subsidy Manual*,[3] a matter which has been previously addressed by the Anti-Dumping Review Panel in *ADRP Report No. 88*.

In that decision, Panel Member O'Connor observed that the Manual outlines Commission policy and practice with regard to establishing the date of sale:

> *In establishing the date of sale, the Commission will normally use the date of invoice as it best reflects the material terms of sale. For the goods exported, the date of invoice also usually approximates the shipment date.*
>
> *Where a claim is made that a date other than the date of invoice better reflects the date of sale, the Commission will examine the evidence provided.*
>
> *For such a claim to succeed it would first be* ***necessary to demonstrate that the material terms of sale were, in fact, established by this other date. In doing so, the evidence would have to address whether price and quantity were subject to any continuing negotiation between the buyer and the seller after the claimed contract date****.*
>
> *…*
>
> *Any claim for an adjustment would need to substantively address:*
>
> - *whether, why, and to what degree, the considerations in determining price differed between export and domestic sales;*
> - *whether the materials cost differs at the time of subsequent invoicing of that export sale (compared to domestic sale invoices in the same invoice month of that export*

[1] Report No. 590, *Inquiry concerning the continuation of Anti-dumping measures applying to Hollow Structural Sections exported to Australia from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan* (1 July 2022)
[2] REP 590, p. 84.
[3] Anti-dumping Commission, *Dumping and Subsidy Manual* (December 2021) (**Manual**)

> *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.*[4] [**emphasis** added]

Applied here, the Commissioner did not satisfactorily address the standard of proof required to reverse the presumption that the *date of invoice* reflects the *date of sale*. The Commissioner simply observed that *…the material terms of sales were set at the order date and did not vary between the order date and the invoice date*.[5] The Commissioner cites no confidential attachment containing such analysis of the "evidence". The applicant is not confident that any analysis meeting the standard set out by Panel Member O'Connor was conducted by the Commission in this case.

Instead, the key focus of the Commissioner's analysis was contained in a *…quarterly comparison of export price, normal value and HRC price*.[6]

Based on four data points commencing mid-way through the analysis period, the Commissioner relied on a graphic to conclude that:

> *Figure 14 demonstrates the delay in export prices based of the invoice date responding to changes in the underlying HRC price: in the Dec-20 quarter, the export price falls at a similar rate to the fall in HRC prices from the previous quarter, and rises in the Mar-21 quarter at a similar rate to the rise in HRC prices from the Dec-20 quarter. The commission does not observe such a delay with the normal value or an export price based on the order date.*[7]

The Commissioner's analysis is flawed. Firstly, the Commissioner purports to have taken the '*HRC Purchase Price'* as the baseline for comparison. However, the only other data series that covers the six data points available for the '*HRC Purchase Price'* is the '*Normal Value'* data series. Only four data points are available for the '*Export Price – Invoice date'* data series; which commences six-months (two data points) into the series; and the *'Export Price – Order Date'* series compromising five data points for comparison and ending three months short of the analysis period. In other words, no meaningful assessment of the correlation (or otherwise) of the '*Order Date*' versus '*Invoice Date*' to the HRC baseline can be drawn.

Second, visually, *Figure 14,* shows no meaningful correlation between the HRC baseline and the export price and normal value data points. The Commissioner's entire analysis is based on what occurred during the September 2020 quarter weighted average values. The Commissioner vaguely points to the apparently inverse movement in the '*Export Price – Invoice Date*' data point, and suggests that it indicates a delay in export prices responding to HRC purchase price movements. However, the Commissioner completely ignores the visually apparent downward movement in the normal value in that quarter, and then the non-correlative movement in the normal value in the proceeding December 2020 quarter. In other words, the Commissioner cannot meaningfully draw the conclusions he has reached based on *Figure 14*. For this reason, the relationship between material cost differences and invoicing requires, as Panel Member O'Connor suggests, more evidence of any relationship. Here consideration of:

[4] ADRP Report No. 88, p. 38.
[5] REP 590, p. 85.
[6] REP 590, Figure 14, p. 85.
[7] REP 590, p. 84.

> …**factors such as the production schedules for domestic and export; and lead times for purchasing main input materials**; [and]
>
> whether **contracts were entered into for the materials purchases, and materials inventory valuation**,

are required. There is no evidence to suggest that the Commissioner performed this analysis. There is also no explanation on what basis the *HRC Purchase Price* is calculated. Is it the weighted average cost of inventory movements into production, or the weighted average buy-in price when entering inventory? Further, is the HRC Purchase Price calculated on the invoice or has it also been adjusted to the date of order also? Furthermore, there is no discussion or analysis of the inventory carrying period apparent here.

In a previous HSS related matter, the Commission has demonstrated its ability to take a more accurate and nuanced view of the interaction between material costs and domestic and export price setting. For example, in *Reinvestigation Report 419* relevant to Panel Member O'Connor's review of Ministerial decision, the Commission found:

> *in setting prices for domestic sales, Ursine would have regard to HRC inventory costs that reflect prices of HRC purchased on average [original redacted] prior to the invoice being raised … This is inconsistent with Ursine's claim that, from the perspective of HRC purchases to production to delivery, the lead time for domestic sales is fairly short. In this sense, prices for both export and domestic sales are based on HRC with significant lead times between purchase, production and sale.*
>
> *…*
>
> *The Commission considers that Ursine's price considerations for domestic and export sales on the date of invoice are substantively the same because:*
>
> - *it is reasonable for Ursine to have regard to its raw material expenses in setting prices for domestic and export sales of HSS; and*
> - *the raw material expenses used to produce domestic and export HSS derive from purchases from a very similar time period (with a discrepancy of [original redacted]*
>
> *Further, based on the finding that HSS produced during the review period was made from HRC [original redacted] for both domestic (in all cases) and export sales (in the majority of cases), and that the purchases of this HRC occurred over similar periods, the Commission is of the view that an adjustment for due allowance is not required.*
>
> *Consequently, the Commission considers that comparing the invoice dates for domestic and export sales is reasonable in these circumstances. .*[8]

In accepting the recommendations contained in the Commission's *Reinvestigation Report 419*, Panel Member O'Connor decided:

[8] *Anti-Dumping Commission,* 'Report to the Anti-Dumping Review Panel, Reinvestigation of certain findings in Report 419, Hollow Structural Sections exported from China, Korea, Malaysia and Taiwan' (January 2019), pp. 14-15.

> *In light of the Commission's analysis and reasoning set out in the Reinvestigation Report, I reject Ursine's claim that the Commission ought to have adopted the date of the export sales contract as the operative date and therefore reject Ground 2 of Ursine's Review Application.* [9]

Applied here, the correct or preferable decision would also be to compare the invoice dates for domestic and export sales in these circumstances.

Ground 2: For the purposes of subsection 269TAC(1)[10] the normal value of the goods exported to Australia by Hi-Steel were wrongly ascertained by reference, in part, to sales of goods not 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.

Subsection 269TAC(1) reads in relevant part:

> *Subject to this section, for the purposes of this Part, 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* (*emphasis* added)

The manner of considering whether *…like goods sold in the ordinary course of trade…* is described within section 269TAAD. The issue of whether … *the price paid or payable for like goods…* is in the ordinary course of trade is, in part, a function of comparison of the *price* and *…the cost of such goods*. In turn the *cost of such goods* is determined under subsection 269TAAD(4):

> *The cost of goods is worked out by adding:*
>
> *(a) the amount determined by the Minister* ***to be the cost of production or manufacture of those goods in the country of export****; and*
>
> *(b) the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.*

Amounts determined by the Minister for the purposes of paragraphs (4)(a) and (b) must be worked out in such manner, and taking account of such factors, as sections 43 and 44 the *Customs (International Obligations) Regulation 2015* (the **Regulation**) provide, specifically, paragraph (b) of subsection 43(2) provides with respect to determination of cost of production or manufacture, that the amount be determined in line with records that:

> (i) are in accordance with generally accepted accounting principles in the country of export; and
>
> (ii) reasonably reflect competitive market **costs associated with the production or manufacture of like goods**… (**emphasis** added)

There is no provision within the Act or the Regulation that permits the Commission to assess the ordinary course of trade of the like goods by a comparison of the price and the "buy-in" or "purchase price" of finished goods from another seller of the goods. However, the Commissioner requested,

[9] ADRP Decision No. 88, p. 49 at [143].
[10] All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

and included, *…HSS purchased from other Korean manufacturers of the goods in [Hi-Steel's] domestic sales listing*.[11] The Commissioner found that:

> *…the inclusion of non-manufactured goods in the calculation of the normal value is consistent with section 269TAC(1).*[12]

In our view the Commissioner's conclusion is inconsistent with the requirement under subsection 269TAC(1) 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*. As the price of the non-manufactured goods cannot be compared to the *…costs associated with the production or manufacture of like goods…* the Commissioner was unable to reach such a conclusion. Instead, the Commissioner claims that he *…tested profitability by comparing the net invoice price against the relevant costs for each domestic sales transaction*. In the case of non-manufactured goods we fail to see how this can be done, given that the Regulation only permits comparison to costs associated with the production or manufacture of like goods, not a purchase price. If the Commissioner is instead suggesting that he compared the *price paid or payable* of the non-manufactured goods to the exporter's own costs of production or manufacture of like goods, then this approach fails to meet the requirements of the Regulation and section 269TAAD. This is because, the Commissioner has performed no assessment of whether Hi-Steel's cost of production or manufacture of the non-manufactured goods *…reasonably reflect competitive market costs…* of those goods purchased and resold. How can the Commissioner claim to reach a reasonable satisfaction concerning that assessment? He did not verify the costs of production or manufacture of the producer (and likely vendor) of those goods sold to Hi-Steel.

Indeed, it is observed that subsection 269TAC(1) deals with the treatment of non-manufactured goods specifically, i.e. the determination of the normal value by reference to sales *… by other sellers of like goods*. In other words, the treatment of non-manufactured goods are dealt with under subsection 269TAC(1), and is only to be invoked in circumstances where *…if like goods* ***are not so sold*** *by the exporter*. Applied here, this is not the case; the evidence points to direct sales of like goods produced by the exporter; and as such non-manufactured goods need not be included in the determination of the exporter's normal value.

Therefore, the inclusion of non-manufactured goods in the determination of the normal value of any goods exported to Australia by Hi-Steel as exporter was not the correct or preferable decision. We request that the Panel sets aside the Commissioner's assessment of normal value and undertakes a fresh assessment that excludes like goods not manufactured by Hi-Steel from all calculations relevant to the ascertainment of normal value.

Ground 3: The decision by the Minister not to secure the continuation of the anti-dumping measures applying to HSS exported to Australia from South Korea by Hi-Steel is not the correct or preferable decision

In Report No. 590, the Commissioner indicated that:

> *…the commission does not consider that the expiration of the current measures against HiSteel would lead, or be likely to lead, to a continuation of, or a recurrence of, dumping by*

[11] REP 590, p. 85.
[12] REP 590, p. 86.

> *HiSteel. It is therefore unnecessary for the commission to consider whether material injury would continue or recur as a result of such dumping.*[13]

The dumping margin determined for Hi-Steel was **negative 9.3 per cent**.

In concluding that *…the Commissioner is not satisfied, in relation to HiSteel, that there is sufficient evidence to support a finding that exports of HSS at dumped prices would or are likely to continue or recur…*[14] the Commissioner was significantly influenced by the finding that *…HiSteel's current and historical dumping margins, [means that] the Commissioner is not satisfied that the expiration of the anti-dumping measures in respect of exports of the goods from HiSteel would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping and the material injury that the anti-dumping measures are intended to prevent.*[15]

Although the Commission performed an analysis and comparison between Hi-Steel's export price and normal value, this is all premised on a conclusion that its ascertained export price (as determined) is undumped, and that the ascertained normal value was correctly determined under subsection 269TAC(1). In our *Ground 2* (above) of our application for review, we contend that the calculation of the negative dumping margin is unsound as it was not based on a normal value correctly determined under law, and in Ground 1 (above) of our application for review, we claim that the comparison between the ascertained normal value and ascertained export price was not correctly performed.

Therefore, to the extent that the Minister's decision relies on the Commissioner's determination of the normal value for Hi-Steel incorrectly under subsection 269TAC(1), and that the dumping margin calculated for this exporter is no longer negative, then the Minister's decision not to secure the continuation of the anti-dumping measures currently applying to the goods exported to Australia from South Korea by Hi-Steel is not the correct or preferable decision.

However, even if the dumping margin calculated for Hi-Steel continues to be negative or *de minimis*, then the Minister's decision not to secure the continuation of the anti-dumping measures currently applying to Hi-Steel is not the correct or preferable decision because the Commission's determination of the likelihood of recurrence of dumping by Hi-Steel in the absence of measures was influenced by the following 'comparative landed price' analysis:

> *The commission's has also analysed HiSteel's pricing in the Australian market. The commission compared the landed duty free price of HiSteel's exports against the landed duty free prices for exports from India, the UAE and Vietnam, the lowest priced exports in the Australian market during the period of analysis.* ***The commission identified that by the conclusion of the inquiry period HiSteel's prices were in fact lower than the weighted average prices from each of these sources****. Further, the commission's price undercutting analysis identified that* ***HiSteel sold HSS in Australia during the inquiry period at prices that undercut the Australian industry****.*[16] (**emphasis** added)

Implicit in this analysis is the assumption that if Hi-Steel's export price is currently the lowest in the market, and it has recorded a negative dumping margin, and it is currently undercutting the

[13] REP 590, p. 120.
[14] REP 590, p. 139.
[15] REP 590, p. 8.
[16] REP 590, p. 118.

Australian industry, then there is no incentive to further reduce export prices in the absence of measures, i.e. a recurrence of dumping.

The problem with the Commissioner's analysis is that it has not compared Hi-Steel's export prices to Australia on the basis of the relevant models. This significantly undermines the Commissioner's analysis because, Hi-Steel exported a single model to Australia:

> *HiSteel only exported the goods to Australia with the MCC **'P-N-O-R-350-P'** during the period.*[17]

In summary, this is a base model of the goods, namely unpainted, ungalvanized and unfinished. By comparison, the goods exported from …*India, the UAE and Vietnam…* include intrinsically higher priced goods by virtue of their coating finish. The Commission's comparison does not take this difference into account. In other words, the Commission is concluding that Hi-Steel has no incentive to further reduce export prices by falsely comparing its historic exports of a lower price base model, to more expensive models of HSS. Similarly, it is not clear that the Commission has performed its price undercutting analysis between Hi-Steel's exports and the Australian industry's domestic sales at the same model level.

Therefore, the correct or preferable decision would be to secure the continuation of the measures.

[17] EPR Folio No. 590/021, p. 8.