PUBLIC VERSION

PO Box 3026
Manuka, ACT 2603
Mobile: +61 499 056 729
Email: john@jbracic.com.au
Web: www.jbracic.com.au

30 September 2022

The Anti-Dumping Review Panel
GPO Box 2013
Canberra ACT 2601
Australia

Expiry review – Hollow Structural Sections exported by HiSteel Co., Ltd from Korea

Dear Panel Member,

This submission is made on behalf of HiSteel Co. Ltd. ("HiSteel") to the Anti-Dumping Review Panel's (ADRP) review of a decision by the Minister in respect of Hollow Structural Sections (HSS) exported to Australia from Korea (the Reviewable Decision). HiSteel is an exporter of HSS from Korea, and the reviewable decision involved the applicable dumping duty notice ceasing to apply to exports by HiSteel.

Ground 1 - Incorrect determination of date of sale

The applicant's both claim that the Anti-Dumping Commission (Commission) erred in determining the order date as the date of sale relevant to HiSteel's exports. The applicants consider that order date was not correct as there was insufficient evidence to support the determination. Austube Mills Pty Ltd ("ATM") specifically points to HiSteel's answer in its questionnaire response as 'evidence' that the date of sale ought to be the date of invoice.

The Commission's assessment and determination of the relevant date that establishes the material terms of sale is well established. The Commission's existing policy and practice relating to the determination of date of sale stems from detailed assessment and consideration across numerous cases, and interpretation by the ADRP.

To that end, HiSteel complied with all requests for information by the Commission, which it deemed necessary to be able to properly and fully assess the appropriate date of sale relating to HiSteel's exports. This Commission's request for information was substantial, as it explained that the determination of date of sale must be evidence based and demonstrate that the material terms of sale were established on a date other than the invoice date.

The Commission also clearly explained to HiSteel that failure to present the requested information would prevent proper consideration and determination of the date of sale, which would as a consequence result in the default date of sale being the date of invoice. The substantial request for information included:

- updated transactional export sales listing to include the signed and agreed contract date at the time of order for all exports that were exported during the nominated review period. The order contract dates covered the additional periods of March quarter 2020 and June quarter 2020;
- updated transactional domestic sales listing to include all domestic sales made during the corresponding export contract dates of March quarter 2020 and June quarter 2020. This included providing updated direct selling expenses relevant to these additional domestic sales;
- updated export cost to make and sell information corresponding to the contract order dates of March quarter 2020 and June quarter 2020; and
- updated domestic cost to make and sell information relevant to the additional domestic sales made in March quarter 2020 and June quarter 2020;

It is clear that the evidentiary standard to satisfy the Commission was extremely high. HiSteel spent considerable time and resources to comply with the high evidentiary threshold. It is incorrect for the applicants to suggest that the Commission did not properly assess the question of date of sale, or that sufficient evidence doesn't exist to support the Commission's findings. Upon receiving the extensive updated information, the Commission possessed all information required to properly assess and determine the appropriate date of sale.

Importantly, the applicants provide no evidence which disproves the Commission's finding that HiSteel's contracted order date sets the material terms of sale, and no changes to the agreed material terms of sale are made following that date. The applicants simply question the veracity of the Commission's verification processes, and its ability to comply with its own stated policy and practice.

The applicants' views are erroneous. The Commission gathered and examined all relevant evidence to ensure a determination that was correct or preferable. That evidence confirms that the material terms of sale are agreed at the contracted order date, with no opportunity to change the material terms. Therefore, the evidence requested and gathered by the Commission supports the date of sale determination. That decision is consistent with the Commission's clear guidelines for departing from invoice date as the date of sale, and consistent with the previous views and findings of the Anti-Dumping Review Panel.

Finally, HiSteel wishes to explain its answer in its questionnaire response narrative, where it stated that invoice date was the date of sale. This answer was based on its assessment at the time of completing the questionnaire, that it did not have the resources to prepare the supplementary information that would be required by the Commission to support an alternative claim to date of invoice. As explained to the Commission's verification team during the exporter verification, the lack of resources and cost of engaging external

assistance was exacerbated by the COVID-19 lockdown restrictions operating in Korea in the second half of 2021. Therefore, rather than make an unsupported claim, HiSteel opted to accept the default position of invoice date.

Ground 2 – Normal value

Austube Mills submits that the Commission's decision to include domestic sales of traded goods in calculating HiSteel's normal value, is incorrect as such sales cannot be determined to be have been made in the ordinary course of trade (OCOT). HiSteel notes the ADRP's previous findings[1] on this issue in which it concluded that '[t]*here is no discretion given in the legislation to exclude sales from the determination of the normal value if they meet the description in s.269TAC(1).*'

Austube Mills points to the OCOT provisions requiring comparison of price with costs associated with the production or manufacture of like goods, and submits that in the absence of such production costs, traded goods cannot meet the requirements of subsection 269TAC(1) of the Act. In effect, Austube Mills is seeking to introduce a very narrow interpretation of the OCOT provisions.

HiSteel disagrees. The requirements of section 43(2) of the *Customs (International Obligations) Regulation 2015* (the Regulation) have been met when applied to HiSteel's circumstances:

> *(2) If:*
> *(a) an exporter or producer of like goods keeps records relating to the like goods; and*
> *(b) the records:*
>
> *(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;*
>
> *the Minister must work out the amount by using the information set out in the records.*

First, HiSteel keeps records relating to the like goods, being both produced and traded like goods. Second, HiSteel's records are kept in accordance with GAAP in Korea. Third, HiSteel's records were found by the Commission to reasonably reflect competitive market costs with the production or manufacture of like goods. That is, for self-produced like goods, HiSteel's records reflect the competitive market costs associated their production.

In the case of traded goods, HiSteel's records also reflect the competitive market 'purchase' cost of such goods, and the purchase costs recorded in its accounts are associated with the production of those traded like goods given that they were purchased from unrelated parties at arms-length transactions. It is reasonable therefore to conclude that HiSteel's purchase cost of the traded goods is appropriate for assessing whether it sold those traded goods in the ordinary course of trade on the domestic market.

[1] ADRP Report No. 100, para 93.

Even though the requirements of Section 43 and 44 have been met in HiSteel's circumstances, HiSteel does not agree with ATM's view that the OCOT test must be based on the costs of production of the manufacturer of the like goods. It is noted that the corresponding Article 2.2.1.1 of the Anti-Dumping Agreement emphasises that '… costs shall **normally** by calculated on the basis of records kept by the exporter or producer under investigation, provided that…reasonably reflect the costs associated with the production and sale of the product under consideration.' This confirms that there may be circumstances in which alternative costs and/or records may be appropriate, albeit on rarer occasions. In this case, it was reasonable for the Commission to have relied on the arms-length purchase cost of the traded goods for undertaking the ordinary course of trade test.

Ground 3 – Continuation of the measures

It is understood and accepted that the Act requires the Commissioner to recommend expiry of the measures, unless there is positive evidence to demonstrate that the recurrence of dumping in the future is likely or probable (ie. implying a greater degree of certainty that the event will occur than a finding that the event is not "not likely"). This interpretation is confirmed in the Commission's Dumping and Subsidy Manual, and accords with findings by the ADRP, the Federal Court and WTO Dispute bodies.

Given the evidentiary threshold for establishing the likelihood test outlined in subsection 269ZHF(2) of the Act, the evidence gathered and presented by the Commission in Report 590, strongly supports its recommendation that the dumping duty notice cease to apply to exports by HiSteel.

The Commission's determination that HiSteel's future exports are not likely to be dumped are supported by the following facts.

1. HiSteel was not an exporter of the subject goods during the original investigation which led to the imposition of the measures. As it was not investigated at that time, there is no link between HiSteel's exports and the original material injury experienced by the Australian industry;
2. HiSteel only commenced exporting commercial quantities in [redacted] and its exports have been subject to a floor price measure since that time. In each review of measures since that time, the Commission has determined that HiSteel's exports were not dumped. In REP 529 and the REP 590, HiSteel's dumping margins were -6.2% and -9.3% respectively. Therefore, the evidence gathered confirms that HiSteel has never exported the subject goods to Australia at dumped prices;
3. There is no evidence presented which would support a conclusion that HiSteel would depart from its past behaviour and begin to export at dumped prices in the future. In fact, the evidence confirms the opposite to be true, with the Commission's assessment confirming that HiSteel's selling prices are sufficiently competitive in the Australian market, without needing to introduce price reductions;
4. The Commission observed that HiSteel has a maintained a single and stable distribution link with its exclusive customer, [redacted]. This refutes any

suggestion that HiSteel would seek to expand its market share in the Australian market by targeting new customers;

5. HiSteel's largest export market remains the United States of America, which confirms that US trade remedies imposed in 2018 on Korean exports of steel pipe and tube products, have not impacted Histeel's exports. As such, there is no evidence that HiSteel would likely have excess capacity to be directed to Australia;
6. HiSteel continues to have limited excess capacity, with Australian export sales representing a small percentage of HiSteel's total sales.

Therefore, HiSteel's consistent practice of exporting at non-dumped levels over an extended period (since ████), confirms that future dumping and material injury as a consequence, is highly unlikely. This is confirmed and supported by the facts set out in SEF590.

Further, the Commission's conclusion that HiSteel's future exports would not likely lead to a continuation of, or a recurrence of, material injury, is supported by the clear evidence that exports by Hi-Steel are predominantly outside the scope of local production.

HiSteel has only ever exported goods of a particular type, being '████████████████', which all fall within a single model control code (P-N-O-R-350-P). As is demonstrated in **Confidential Attachment A – ATM Product Availability Guide**, HiSteel only exports goods that fall within a small subset of the production capabilities of ATM, with a large portion of HiSteel's exports being of goods that ATM does not manufacture locally. In attachment A, the following is identified:

i) products crossed out in red – refers to profiles, finishes and sizes that HiSteel do not export into the Australian market;
ii) products highlighted in green – refers to sizes that HiSteel export into the Australian market, and also manufactured by ATM in Australia.
iii) products highlighted in yellow – refers to sizes that HiSteel export into the Australian market, which are not manufactured but instead imported by ATM.

Further, **Confidential Attachment B – Hi-steel vs Local** highlights the relevant sizes exported by HiSteel which are not manufactured locally by either of the applicants. It is noted that of HiSteel's total imports during the nominated review period, which represented approximately █████ tonnes, it comprised of the following:

- approximately ████ tonnes were of sizes within ATM's manufactured range, representing █████ of HiSteel's total volume;
- approximately ███ tonnes were of sizes within Orrcon's manufactured range, representing ██% of HiSteel's total volume;
- approximately ████ tonnes were of sizes outside the production capabilities of the local manufacturers, representing ██% of HiSteel's total volumes.

It is also understood that in the case of ATM, it sources and supplements its local production with imports from countries not subject to measures. So, a substantial portion of the subject goods exported by HiSteel which competes with ATM's product offering, relates to goods sourced from other export sources and not local production.

Therefore, a large portion of HiSteel's exports do not compete with local production of like goods by either of the applicants, but instead competes with other import sources. As such, it was reasonable to consider HiSteel's products outside the production range of the local manufacturers as non-injurious to the domestic industry producing like goods. It follows that expiration of the measures applicable to HiSteel's exports, would not lead to a recurrence of material injury to the Australian industry producing like goods.

Yours sincerely

John Bracic