



Australian Government
**Department of Industry, Science,
Energy and Resources**

Anti-Dumping Commission

Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

Ms Jaclyne Fisher
Panel Member, Anti-Dumping Review Panel
c/o- ADRP Secretariat

By e-mail: ADRP@industry.gov.au

Dear Ms Fisher

Hot rolled structural steel sections exported from Japan, the Republic of Korea, Taiwan and the Kingdom of Thailand

I write with regard to the notices under section 269ZZI of the *Customs Act 1901* (Cth) (the Act) published on 17 January 2020, advising of your intention to review the decisions of the Minister for Industry, Science and Technology to publish notices under sections 269ZDB(1) and 269ZHG(1) of the Act (the Reviewable Decisions). Both notices were published on the website of the Anti-Dumping Commission (the Commission) on 11 November 2019, as Anti-Dumping Notice (ADN) Nos. 2019/125 and 2019/126.

I understand that the Commission has provided you with the information that was requested of me in your correspondence of 17 January 2020, that is:

1. confidential attachments to the Statement of Essential Facts (SEF 499 and 505);
2. submissions commenting on SEF 499 and 505, including confidential attachments relevant to the grounds of the applications for review;
3. confidential attachments to *Anti-Dumping Commission Report Nos. 499 and 505*; and
4. other relevant information (as defined in section 269ZZK of the Act) pertinent to the grounds of review raised by the applicants, including:
 - a. the verification visit report for the Australian industry member and confidential attachments; and
 - b. relevant exporter verification reports, including confidential attachments.

I have considered the applications submitted by Hyundai Steel Co., Ltd (Hyundai), OneSteel Manufacturing Pty Ltd (OneSteel) and Siam Yamato Steel Co., Ltd (SYS) for a review of the Reviewable Decisions and make submissions at **Attachment A**.

A public record version of the submission has been provided.

PUBLIC RECORD

The Commission remains at your disposal to assist you in this matter, and would be happy to participate in a conference if you consider it appropriate to do so.

Yours sincerely

A handwritten signature in cursive script that reads "Dale Seymour".

Dale Seymour
Commissioner
Anti-Dumping Commission

17 February 2020

Attachment A

Background

1. On 21 November 2018, OneSteel, trading as Liberty Steel, lodged an application for a review of the anti-dumping measures, in the form of a dumping duty notice, applying to certain hot rolled structural steel sections (HRS, or the 'goods') exported to Australia from Japan, the Republic of Korea (Korea), Taiwan (except for exports by Feng Hsin Steel Co., Ltd) and the Kingdom of Thailand (Thailand).¹
2. I did not reject this application and subsequently initiated a review of the anti-dumping measures (Review 499) on 3 January 2019.²
3. On 21 January 2019, OneSteel lodged an application for the continuation of the anti-dumping measures applying to the goods exported to Australia from Japan, Korea, Taiwan (except for exports by Feng Hsin Steel Co., Ltd) and Thailand (the subject countries).³
4. I did not reject this application and subsequently initiated an inquiry into whether the continuation of the anti-dumping measures applying to the goods exported to Australia from the subject countries was justified (Inquiry 505).⁴
5. For the purposes of Inquiry 505, I had regard to other matters considered relevant to the inquiry, including the variable factors established in Review 499, to assess whether dumping had occurred during the inquiry period, and whether dumping was likely to continue or recur if the anti-dumping measures were to expire.
6. On 11 November 2019, the Commission published a notice⁵ signed by the then Minister for Industry, Science and Technology (the Minister) in which she declared that she had decided to secure the continuation of the anti-dumping measures applying to the goods exported to Australia from Japan, Korea, Taiwan (except for exports by Feng Hsin and Tung Ho Steel Enterprise Corporation) and Thailand. The Minister also declared that she had decided not to secure the continuation of the measures applying to the goods exported to Australia from Taiwan by Tung Ho Steel Enterprise Corporation (Tung Ho).
7. On 11 November 2019, the Commission also published a separate notice⁶ signed by the Minister in which she declared that, for the purposes of the *Customs Act 1901*⁷ and the *Customs Tariff (Anti-Dumping) Act 1975*, the dumping duty notice applying to the goods exported to Australia from Japan, Korea, Taiwan and Thailand is to be

¹ A non-confidential copy of the application is available on the electronic public record (EPR) for Review 499.

² Anti-Dumping Notice (ADN) No. 2019/2 refers.

³ A non-confidential copy of the application is available on the EPR for Inquiry 505.

⁴ ADN No. 2019/21 refers.

⁵ This notice was published pursuant to section 269ZHG(1) of the *Customs Act 1901* (the Reviewable Decision pertaining to Inquiry 505). ADN No. 2019/126 refers.

⁶ This notice was published pursuant to section 269ZDB(1) (the Reviewable Decision pertaining to Review 499). ADN No. 2019/125 refers.

⁷ All legislative references are to the *Customs Act 1901*, unless otherwise specified.

taken to have effect as if different variable factors relevant to the determination of duty had been fixed.

8. The Minister made the Reviewable Decisions following consideration, and acceptance of, recommendations made by me on 11 October 2019, as set out in *Anti-Dumping Commission Report Nos. 499 (REP 499)*⁸ and *505 (REP 505)*.⁹ These reports outline the investigations, material findings of fact and law on which my recommendations were based, and evidence relied upon to support my findings.
9. Hyundai Steel Co., Ltd (Hyundai), OneSteel Manufacturing Pty Ltd (OneSteel) and Siam Yamato Steel Co., Ltd (SYS) made separate applications for review of the Reviewable Decisions by the Anti-Dumping Review Panel (ADRP).

Application for Review submitted by Hyundai

Ground 1: Errors in the determination of the dumping margin

10. In its application to the ADRP for review of the Reviewable Decisions, Hyundai submits that the Minister's decision with respect to the dumping margin applicable to its exports is not correct or preferable because:¹⁰
 - (a) the Minister did not make an adjustment to the normal value to account for physical differences;
 - (b) the Minister made errors relating to the determination of the domestic sales of like goods in the ordinary course of trade (OCOT); and
 - (c) the Minister incorrectly determined the export price with respect to goods that were both exported and imported by Hyundai.
11. For the reasons outlined in the following sections, the Commission disagrees with Hyundai's assertions. The Commission submits that the Minister made the correct or preferable decision in reviewing the variable factors in respect of Hyundai's exports of HRS to Australia from Korea.

(a) Adjustment to the normal value

12. Hyundai submits that the Commission should have made an adjustment to the normal value, in accordance with section 269TAC(8), given the 'quantifiable cost differences' between the goods exported to Australia and the like goods sold in the domestic market.¹¹ Hyundai asserts that such an adjustment would be consistent with adjustments made in previous cases, including in the original investigation (Investigation 223) and Review 465.
13. The Commission observes that in the past, an upward adjustment to Hyundai's normal value was made to account for physical and cost differences between the

⁸ REP 499 – document no. 68 on EPR 499 refers.

⁹ REP 505 – document no. 59 on EPR 505 refers.

¹⁰ Hyundai's application seeking review of the Minister's decision made under section 269ZDB(1), page 4 refers. Hyundai's application seeking review of the Minister's decision made under section 269ZHG(1) also refers.

¹¹ Ibid, pages 5 and 6 refer.

grade exported to Australia and the grades sold on the domestic market; however, Hyundai is now claiming a downward adjustment to the normal value to account for physical differences in the goods exported to Australian and like goods sold domestically.

14. As explained in REP 499 at section 5.5.1.6,¹² the Commission considers that such an adjustment to the normal value is neither appropriate nor necessary.
15. Contrary to the model matching methodology adopted in Investigation 223 and previous reviews conducted in relation to HRS, in Review 499, the Commission implemented a model control code (MCC) framework in order to allow for the proper comparison of the goods exported to Australia with similar like goods sold on an exporter's domestic market in the review period.
16. The Commission observes that in the past, model matching was based on certain characteristics which included the shape, tensile strength and product dimensions; however the yield strength was not taken into consideration when undertaking model matching. In Review 499, the MCC framework captures the yield strength, which is emphasised in the Australian standard that is widely used in the Australian market.¹³ This ensures that the prices of the goods exported to Australia by Hyundai are properly comparable (in terms of the minimum tensile *and* yield strengths among other characteristics) to the prices of like goods sold on the domestic market.
17. Using the MCC framework to match the most comparable grades, the Commission found that Hyundai sold like goods in the OCOT in the domestic market in sales that are at arms length. The Commission established that the grades sold on the domestic market are 'like' to the grade exported to Australia after considering the physical, commercial, functional and production likeness of the goods, albeit the grades are not identical.
18. The Commission considers that in most cases, an exporter's domestic sales of like goods will not be identical to export sales of the goods. Section 269TAC(8) requires that the normal value calculated under section 269TAC(1) be adjusted where the price for like goods and the export price are not in respect of identical goods so that those differences would not affect its comparison with the export price.
19. The Dumping and Subsidy Manual (the Manual) provides guidance in respect of adjustments to the normal value, and explicitly states that adjustments to the normal value are made *if* there is evidence that a particular difference affects price comparability.¹⁴ The Manual also states that exporters making a claim for an adjustment have to provide evidence to support their claims for an adjustment.
20. Hyundai has not substantiated by way of evidence that the physical and cost differences¹⁵ observed between the grade exported to Australia and comparable

¹² Pages 32 to 34 in REP 499 refer.

¹³ Page 33 in REP 499 refers.

¹⁴ Dumping and Subsidy Manual (November 2018), page 64 refers.

¹⁵ Noting that the cost data provided by Hyundai in support of its claim for an adjustment pertains to costs of the semi-finished goods only (blooms or blanks)—not the finished goods.

grades sold domestically affect price comparability between the goods exported to Australia and like goods sold on the domestic market.

21. Using verified data, the Commission has further assessed the prices and costs of the different grades within the same MCC group and found that prices and costs are not correlated ([REDACTED]), and there are no consistent differences in the grades in terms of their prices or costs [REDACTED]. Further, the Commission observes that the exported grade is of a higher tensile and yield strength relative to grades within the same MCC category that are sold on the domestic market. Therefore, it is expected that [REDACTED].¹⁶

22. In addition, Hyundai has not explained nor identified the relevant physical characteristics or other factors that have resulted in the reversal of the cost differences compared to previous periods, given that the grades sold domestically now have a higher cost of production relative to the exported grade. In its application, Hyundai refers to its submission to the Commission dated 13 June 2019 and notes that it has explained ‘the *possibly* contributing factors for this change...’ [emphasis added].¹⁷ Clearly Hyundai is not aware of the specific factors or characteristics that are driving these inconsistent cost differences in grades. Given that Hyundai did not provide any evidence to demonstrate what (if any) specific physical characteristics contributed to these cost differences, the Commission did not accept Hyundai’s claim for an adjustment to the normal value.

(b) OCOT determination for domestic sales of like goods

23. Hyundai submits that the Commission’s application of the OCOT test does not comply with section 269TAAD(3). Specifically, Hyundai submits that the Commission’s OCOT determination was not based on the weighted average cost, and states that ‘the Commission determined the recoverability of sales based on a mixture of the weighted average cost of production and sales exclusive of inland freight, *plus* the transaction-by-transaction based cost of inland freight’ [emphasis added].¹⁸

24. As shown in Confidential Attachment 2 to REP 499,¹⁹ the Commission has not added the inland freight costs on a transaction by transaction basis. Instead, in determining whether the domestic sales of like goods were in the OCOT and whether the costs of the goods were taken to be recoverable, the Commission deducted the inland freight costs to derive the invoice values and prices at ex-works terms. It is these prices at ex-works that were compared, in accordance with 269TAAD(3), to the weighted average production costs of those goods (including the selling, administration and

¹⁶ For example, [REDACTED].

¹⁷ Hyundai’s application seeking review of the Minister’s decision made under section 269 ZDB(1), page 9 refers. Hyundai’s application seeking review of the Minister’s decision made under section 269ZHG(1) also refers.

¹⁸ Ibid, page 10 refers.

¹⁹ Refer Excel workbook 6. 499 – Hyundai – Appendix 3 – Domestic Sales & OCOT (SEF and Final Report).

general costs) which were also determined at ex-works. The inland freight costs were not added, as suggested by Hyundai, to the weighted average costs of the goods because the price that was used in the OCOT determination was determined at ex-works terms.

25. Therefore, the Commission considers that its OCOT determination is appropriate and consistent with section 269TAAD(3).

(c) Determination of export price

26. Hyundai submits that, in determining the export price, it is neither correct nor preferable to deduct the amount of the interim dumping duty. Hyundai further submits that, in relation to export sales made by Hyundai at duty paid terms, it was neither correct nor preferable to regard Hyundai's Australian customer as the importer of the goods.

27. The Commission's response to Hyundai's assertions is outlined in REP 499 at section 5.5.1.6.²⁰

28. In relation to the relevant consignments imported during the review period, the Commission has not received an application for a duty assessment under Division 4 of the Act.²¹ Section 269Y(4) specifies that, if an application is not lodged for an assessment of duty payable, then the interim duty paid is taken to be duty payable. In Hyundai's case, the interim dumping duty paid is the final duty paid and a cost of importation.

29. Therefore, the Commission considers that it is appropriate to deduct an amount for the dumping duty paid by Hyundai in order to determine the export price at Free on Board (FOB) terms (and exclusive of any duties paid, including dumping duty) and allow for a proper comparison to the normal value. To do otherwise would not allow for a proper comparison of the export price and normal value.

30. In response to Hyundai's assertion that the Commission should have determined that Hyundai is the importer of the goods sold at 'duty paid terms'²², the Commission maintains that Hyundai's Australia customer was the beneficial owner of those goods at the time of arrival in Australia and therefore is the importer of the goods. The sales were made on [REDACTED] terms. In accordance with the provisions of the International Commercial Terms (Incoterms), [REDACTED].

31. The Commission observes that in the sales contract [REDACTED] (refer the sampled sales contract at **Confidential Attachment 2**). Therefore, and contrary to Hyundai's claim that [REDACTED]

²⁰ Pages 35 to 36 of REP 499 refer.

²¹ In relation to importation periods (being 20 November 2017 to 19 May 2018; 20 May 2018 to 19 November 2018; and 20 November 2018 to 19 May 2019) relevant to the review period. The relevant duty assessment application periods are 20 May 2018 to 19 November 2018, 20 November 2018 to 19 May 2019, and 20 May 2019 to 19 November 2019.

²² The actual sales terms are at [REDACTED].

[REDACTED]

32. In accordance with section 269(T)(1), an importer of the goods is defined as the beneficial owner of the goods *at the time* of their arrival within the limits of the port or airport in Australia at which they have landed. Clause 4 in the sampled sales contracts stipulates that [REDACTED]. [REDACTED]. As such, the Commission considers that Hyundai's Australian customer is the beneficial owner and therefore importer of the goods, in accordance with section 269(T)(1).

Ground 2: Determination of the non-injurious price

33. Hyundai submits that it is not correct or preferable to determine that there is no suitable method to work out an unsuppressed selling price (USP), and submits that by setting the non-injurious price (NIP) at the level of the normal value for each exporter, the Commission appears to have ensured that the 'dumping margin is given the maximum effect in terms of duty collection'.²³
34. The Commission's approach to determining the USP and NIP is set out in Chapter 6 of REP 499. The Commission maintains that a suitable method to calculate the USP, and therefore the NIP, cannot be established using any of the usual methods. In the absence of a suitable method, the NIP for each exporter should be the price equal to the respective normal value.
35. The explanation for this approach is outlined in REP 233. The Commission found that, at that time, OneSteel's prices were based on an equivalent into-store import parity price plus a local premium. In Inquiry 505 (which has the same inquiry period as Review 499), the Commission found this still to be the case.
36. The Commission considers that in a market unaffected by dumping, it is reasonable to expect that OneSteel would continue to set its prices with regard to the benchmarked import prices. As the price of imports would be higher at least by the dumping margin, it would be expected that OneSteel's prices would also be higher at least by the percentage of the dumping margin found. Accordingly, the Commission considers that the NIP for each exporter should be a price equal to the respective normal value. The effect of this is that as long as the goods are not exported below the normal value, then the Australian industry will not be injured by dumping.
37. The Commission draws the Reviewing Member's attention to the fact that this particular approach to determining the NIP has also been adopted in another dumping investigation (Investigation 418).²⁴ This approach was subsequently reviewed by the ADRP. In *Anti-Dumping Review Panel Report No. 80*, the Reviewing

²³ Hyundai's application seeking review of the Minister's decision made under section 269ZDB(1), page 19 refers. Hyundai's application seeking review of the Minister's decision made under section 269ZHG(1) also refers.

²⁴ Refer Steel Reinforcing Bar exported to Australia from Greece, the Republic of Indonesia, Spain, Taiwan and the Kingdom of Thailand – Anti-Dumping Commission Report No. 418 refers.

Member considered that the methodology and approach taken by the Commission in that particular case was reasonable.²⁵

38. Further, the Commission does not agree with Hyundai's claim that the NIP should be determined for the Australian industry as a whole and not in relation to the normal value for each exporter. Section 269TACA does not prescribe a method for determining the NIP—it only specifies that the NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, to the Australian industry. Based on the rationale outlined at paragraph 36 of this submission, the Commission considers that the approach adopted in Review 499 is consistent with section 269TACA.

Ground 3: Not correct or preferable for the Minister to continue the measures because there was no probable likelihood of material injury that the measure is intended to prevent

(a) Economic analysis of the Australian industry

(1) Refusal to engage in a forward looking analysis

39. Hyundai submits that the Commission has not 'correctly considered the Australian industry's likely economic conditions in the future, should the anti-dumping measures is [sic] allowed to expire'.²⁶ Hyundai further submits the Commission failed to consider whether the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of the material injury.
40. The Commission's assessment of the economic condition of the Australian industry is outlined in Chapter 5 of REP 505. The Commission has assessed the condition of the Australian industry from 1 January 2010 to 31 December 2018. This period has been examined in order to assess trends before and after the imposition of the anti-dumping measures. Based on this assessment, the Commission has found that the Australian industry has experienced injury in the forms of price suppression and reduced sales volumes, revenue, profit and profitability, market share, capacity utilisation, return on investment, employment, wages and productivity.
41. The Commission disagrees with Hyundai's assertion that, because the Australian industry has received increased investment and government support and has acquired a steel distributor, it is unlikely that material injury will continue or recur. The Commission considers that this does not suggest that injury *caused by dumping* will not continue or recur should the measures expire.
42. The Commission's assessment of the likelihood that material injury will continue or recur is outlined in Chapter 8 of REP 505. Fundamentally, pricing in the Australian market is influenced by prices of HRS exported from Japan, Korea, Taiwan and Thailand and import price offers in the market are used by customers to negotiate with the Australian industry to achieve lower prices. The Commission found that the Australian industry competes with importers of HRS on the basis of price. Therefore, should the measures expire, it is likely that the Australian industry will reduce its selling prices. Consequently, price suppression and the resulting impact on revenue

²⁵ Refer *ADRP Report No. 80*, pages 62 to 64, and pages 102 and 103, refer.

²⁶ Hyundai's application seeking review of the Minister's decision made under section 269ZH(1), page 25 refers.

and profits is likely to continue if measures applying to HRS exported to Australia from the subject countries expire.

(2) Refusal to take into account Steelforce acquisition

43. Hyundai submits that the Commission has not considered the Liberty Group's acquisition of Steelforce (a steel trader and distributor) and the impact on the Australian market for HRS.²⁷
44. The Commission did consider this issue, as noted in REP 505 at section 9.3.1. The acquisition of Steelforce by the GFG Alliance occurred in mid 2019, which is after the inquiry period. The Commission's analysis is focussed on the Australian industry producing like goods. Steelforce is a distributor, not a producer of like goods.

(3) Refusal to take into account shifted focus to rail products

45. Hyundai submits that the Commission has not considered Liberty Steel's production of rail products and the effect on the production of like goods.
46. In REP 505 at section 9.3.3, the Commission has considered the production of rail products by Liberty Steel and found that the increased sales volumes of rail products did not have a considerable impact on Liberty Steel's production and sales volumes of HRS.

(4) Refusal to examine 'real market performance' of the Australian industry

47. Hyundai submits that the Commission has not considered the Australian industry applicant's sales of like goods in the Australia market for HRS.²⁸ In particular, Hyundai submits that the Commission has not adequately considered Liberty Steel's intra-group based distribution model.
48. The Commission has considered Liberty Steel's (an Australian manufacturer of like goods) sales of like goods in the Australian market. The Commission's assessment and findings based upon Liberty Steel's sales of like goods are contained in Chapters 5 and 8 of REP 505.
49. Further, and as noted in REP 505 at section 9.3.1, the Commission found that prices of all HRS sales by Liberty Steel are affected by imported HRS, including those in respect of its sales to its related party, Liberty Metalcentre. The Commission does not agree with Hyundai's assertion that the inability of Liberty Steel to supply the goods at a profitable margin may be the result of the absence of competition from its intra-group distribution arm.

(b) Treatment of 'other factors'

50. Hyundai submits that the Commission has not considered the injurious effect of exports from Tung Ho and TS Steel in order to ensure that this effect is not attributed to Hyundai's exports. Hyundai further submits that REP 505 does not provide any

²⁷ Hyundai's application seeking review of the Minister's decision made under section 269ZHG(1), page 26 refers.

²⁸ Hyundai's application seeking review of the Minister's decision made under section 269ZHG(1), page 31 refers.

evidence or explanation as to why the observed price suppression, unprofitability or reduced capacity utilisation and market share were and will likely continue to be materially caused by Hyundai or the other dumped imports subject to measures.²⁹

51. Chapter 8 of REP 505 outlines the Commission's assessment of whether the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or recurrence of, the material injury that the measures are intended to prevent. The Commission's consideration of the 'other factors' referred to by Hyundai in its application are addressed in Chapter 9 of REP 505.

(c) The likelihood of continued and increased exports at dumped prices by Hyundai

52. Hyundai submits that the Commission's claim relating to its perceived production overcapacity is 'wrong and unrealistic'. Hyundai further submits that it is not reasonable to expect that exporters of HRS to Australia from Korea will maintain their levels of export sales volumes to Australia, as this expectation is 'without basis'.³⁰
53. As stated in REP 505 at section 9.3.4, the Commission maintains that the magnitude of Hyundai's capacity compared to that of Liberty Steel is sufficiently large that a relatively small change in Hyundai's production scheduling could result in an increase in capacity utilisation by Hyundai that would be material relative to Liberty Steel's production levels and relative to the size of the Australian HRS market.
54. Further, as stated in REP 505 at section 7.2.2, the Commission has found that exports of HRS to Australia from Korea continued to increase after measures were initially imposed in November 2014, albeit imports decreased in 2018, following Review 465.
55. The Commission has found that Hyundai has continued to export HRS to Australia at dumped prices and that it has maintained its distribution links in Australia.
56. The Commission also considers that it is reasonable to expect that exporters of HRS to Australia from Korea will aim to maintain their levels of export sales volumes. The Commission considers that it is likely that the expiration of anti-dumping measures would improve the competitiveness of HRS exported to Australia from Korea and that this would encourage importers to acquire HRS from Korea at dumped prices and in greater volumes.
57. In these circumstances, the Commission considers that it is likely that exports of HRS at dumped prices by all exporters from Korea would continue if the measures expire.

²⁹ Hyundai's application seeking review of the Minister's decision made under section 269ZHG(1), pages 33 to 35 refer.

³⁰ Ibid, pages 35 to 37 refer.

Application for Review submitted by OneSteel

Ground 1: Errors in the determination of the dumping margins for Hyundai, Tung Ho, TS Steel and ‘all other exporters’ from Taiwan

(a) Incorrect determination of the date of sale in relation to Hyundai’s exports to Australia

58. OneSteel submits that the Commission has erred in its treatment of the date of sale in relation to Hyundai’s exports sales of HRS to Australia. In particular, OneSteel submits that the Commission has erred in treating the date of order placement as the date of sale rather than the invoice date.³¹
59. As explained in REP 499 at section 5.5.1.6, the Commission considers that, in respect of Hyundai’s exports of the goods to Australia, the material terms of sale were established upon placement of the order. As such, the Commission maintains that it is appropriate to treat the order date as the date of sale for the purpose of determining the export price for Hyundai in the review period.

(b) Incorrect determination of the normal values for Tung Ho and TS Steel

60. OneSteel submits that the Commission should not have determined the normal values in respect of certain models sold by Tung Ho Steel Enterprise Corporation (Tung Ho) and TS Steel Co., Ltd (TS Steel) in accordance with section 269TAC(2)(c).³²
61. As noted in REP 499 at section 5.6.1.5, there were insufficient volumes of domestic sales that were in the OCOT in respect of three models exported to Australia by Tung Ho. The Commission was unable to quantify the differences in price or cost to enable a specification adjustment to be made (in accordance with section 269TAC(8)) for differences between the export and domestic models. In these circumstances, the Commission constructed the normal value for these three models in accordance with section 269TAC(2)(c).
62. In relation to TS Steel’s normal value, as noted in REP 499 at sections 5.6.2.2 and 5.6.3, there were insufficient volumes of domestic sales of an equivalent model in the OCOT that was comparable to the export model. Further, the Commission was unable to quantify the differences in price or cost to enable a specification adjustment to be made in accordance with section 269TAC(8). Therefore, the Commission determined the normal value in accordance with section 269TAC(2)(c).

(c) Error in adjusting TS Steel’s normal value for domestic credit expenses

63. OneSteel submits that the downwards adjustment made to the normal value determined for TS Steel to account for domestic credit expenses was not ‘authorised’ under section 269TAC(9).³³

³¹ OneSteel’s application seeking review of the Minister’s decision made under section 269ZDB(1), pages 1 to 4 refer. OneSteel’s application seeking review of the Minister’s decision made under section 269ZH(1) also refers.

³² Ibid, page 6 refers.

³³ Ibid, page 7 refers.

64. As stated in REP 499 at section 5.6.3, the adjustment to the normal value for domestic credit expenses pursuant to section 269TAC(9) is required to ensure a fair comparison of normal values to export prices. The Commission maintains that there is no requirement for the costs applied for an adjustment to reflect only those of transactions in the OCOT.

Ground 2: It is not correct or preferable to not secure the continuation of the anti-dumping measures applying to HRS exported to Australia from Taiwan by Tung Ho

65. OneSteel submits that, to the extent that the Minister's decision relies on the determination of the normal value for three models sold by Tung Ho in accordance with section 269TAC(2)(c), should the dumping margin calculated for Tung Ho no longer be negative, then the decision not to secure the continuation of the anti-dumping measures currently applying to HRS exported to Australia by Tung Ho is not correct or preferable. OneSteel further submits that, even if the dumping margin for Tung Ho continues to be negative or *de minimis*, then the decision not to secure the continuation of measures is not correct or preferable because the determination of the likelihood of recurrence of dumping by Tung Ho relies on the assumption that its export price will not fall below the proposed floor price.³⁴

66. The Commission notes that the assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the ADRP in the context of continuation inquiries, which noted that the Commission must consider what will happen in the future should a certain event (in this instance, being the expiration of the measures) occur. However, the Commission's conclusions and recommendations must nevertheless be based on facts.³⁵

67. The Commission's task in a continuation inquiry is to inquire about the *likelihood* of the effects of not continuing the existing measures. The Commission considers that in the context of a continuation inquiry the word *likely* has been interpreted to mean more probable than not.³⁶ The Commission also considers that past conduct can often be a guide to future conduct.³⁷ Further, in *Anti-Dumping Review Panel Report No. 44*, the Reviewing Member considered that 'past conduct is probably the most reliable indication of future conduct'.³⁸

68. The Commission's reasons for finding that the expiration of the measures would not be likely to lead to a recurrence of the dumping are outlined in REP 505 at section 7.2.3.3. The Commission found that Tung Ho has not exported HRS to Australia at dumped prices for a significant period of time.³⁹ The Commission has also found that

³⁴ OneSteel's application seeking review of the Minister's decision made under section 269ZHG(1), pages 8 to 10 refer.

³⁵ Refer clear float glass exported to Australia from the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand – *ADRP Report No. 44* refers.

³⁶ *Siam Polyethylene Company Ltd v Minister of State for Home Affairs and Another (No. 2)* [2009] FCA 838 [50].

³⁷ *Ibid* 504.

³⁸ Refer clear float glass exported to Australia from the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand – *ADRP Report No. 44* refers.

³⁹ As determined in *Anti-Dumping Commission Report No. 345* and six duty assessments.

Tung Ho did not dump HRS over the review period.⁴⁰ Having observed that Tung Ho has exported the goods at undumped prices over a long period of time, the Commission was not satisfied that the expiration of the measures applying to Tung Ho's exports would lead to a continuation or a recurrence of dumping and material injury to the Australian industry.

Application of Review submitted by SYS

Ground 1: Determination of normal value

69. SYS submits that the Commission failed to properly base the normal value on relevant quarterly sales of identical goods exported to Australia. SYS further submits that where there are domestic sales of identical goods then the normal value should be determined on those identical goods provided they satisfy the sufficiency and OCOT tests.⁴¹
70. As stated in Chapter 5 of REP 499, in Review 499, the Commission has implemented a MCC framework in order to properly compare export prices to normal values of like goods sold domestically in the country of export.⁴²
71. Further, as stated in section 5.7.2.1 of REP 499, in its calculation of the dumping margin, the Commission is required to compare export prices to the corresponding normal values of like goods. The legislation does not require the Commission to only consider domestic sales of identical goods where they are present. The Commission has found the differences in physical characteristics between grades ██████ and ██████ did not give rise to distinguishable and material differences in price in the domestic market. The Commission notes that while the MCC framework facilitates closer matching of Australian and domestic models, its intent is not to confine model matching to identical models
72. By applying the MCC framework, the Commission found that SYS had sufficient volumes of like goods sold in the OCOT for home consumption in the country of export. Given this, the Commission determined the normal value in accordance with section 269TAC(1).

Ground 2: Adjustments to the normal value for domestic credit

73. SYS submits that it does not agree with the Commission's comment in REP 499 that it 'did not find that the actual [domestic] credit costs as claimed... were incurred'.⁴³ SYS further submits that there 'is no legal basis to ignore the true, factual domestic

⁴⁰ As determined in Review 499.

⁴¹ SYS' application to the ADRP seeking review of the Minister's decision made under section 269ZDB(1), page 8 refers. SYS' application seeking review of the Minister's decision made under section 269ZHG(1) also refers.

⁴² As per ADN No. 2018/128.

⁴³ SYS' application to the ADRP seeking review of the Minister's decision made under section 269ZDB(1), page 8 refers. SYS' application seeking review of the Minister's decision made under section 269ZHG(1) also refers.

price mechanism and instead impose some hypothetical pricing that adversely affects the normal value calculation'.⁴⁴

74. As stated in REP 499 at section 5.7.2.1, the Commission does not accept the domestic credit costs as claimed by SYS because these costs rely on an interest rate set by an internal company notice. The Commission did not find that the *actual* credit costs as claimed by SYS were incurred, and did not find that the interest rate was based on short-term borrowings or term deposits. Therefore, in this circumstance, the Commission considers that it is appropriate to apply the external lending rate for commercial loans in Thailand as an adjustment to SYS's normal value, consistent with the Commission's policy and practice as described in the Manual.⁴⁵
75. The Commission disagrees with SYS's assertion that the determination of the due allowance in relation to domestic credit costs was only conveyed 'at the time of the Minister's decision being published' and therefore that it has had no opportunity to respond.⁴⁶
76. The Commission initially flagged in the verification report that its determination of the adjustment for domestic credit (based on the lending rate for commercial banks in Thailand) differed to that claimed by SYS.⁴⁷ The Commission provided the verification report, including the worksheets pertaining to the normal value and dumping margin calculations (which included the interest rate that the Commission had regard to in working out the adjustment for credit), to SYS for review prior to publishing the verification report. Further, SYS made submissions prior to and following the publication of the Statement of Essential Facts.⁴⁸ One of the matters that SYS raised in these submissions was relevant to the determination of the domestic credit adjustment. Therefore, it is disingenuous for SYS to claim that it has had no opportunity to respond to the Commission's determination of the domestic credit adjustment, given that it was provided with the opportunity and did respond.

Ground 3: Adjustments to the normal value for export credit

77. SYS submits that the adjustment to the normal value, in accordance with section 269TAC(8), should not have been made to account for the 'export credit situation' given that SYS does not factor in such an expense in the export price.⁴⁹

⁴⁴ Ibid, page 9 refers.

⁴⁵ As per the Commission's policy outlined in the Manual (page 75 refers), the interest rate in respect of credit adjustments is generally applied, in order of preference, as follows:

- the rate, or average of rates, applying on actual short term borrowings or an overdraft facility by the company; or
- the rate, or average of rates, applying to term deposits or other cash product (e.g. bonds) invested in by the company; or
- the prime interest rate prevailing for commercial loans in the country for credit terms that most closely approximate the credit terms on which the sales were made; or
- such other rate considered appropriate in the circumstances.

⁴⁶ SYS' application to the ADRP seeking review of the Minister's decision made under section 269ZDB(1), page 8 refers.

⁴⁷ Refer *Exporter Verification Report: Siam Yamato Steel Co., Ltd*, item no. 26 on EPR 499.

⁴⁸ Refer SYS' submissions dated 8 July 2019 and 2 September 2019, items no. 32 and 47 on EPR 499.

⁴⁹ SYS' application to the ADRP seeking review of the Minister's decision made under section 269ZDB(1), page 9 refers.

78. The Commission considers that in establishing export credit terms, it has appropriately taken into account sales that were not subject to payment terms as well as payments in respect of Australian export sales that were subject to payment terms. The Commission observes that, should the adjustment to normal value for export credit costs not be applied, the impact on the dumping margin would be negligible.

Ground 4: Ordinary course of trade

79. SYS submits that this ground relates to its domestic sales of certain like goods 'identified as being MCC P-C-A... that were obviously sold at a nett loss and such were not considered by the Commission in the determination of normal value'.⁵⁰ SYS further submits that while the Commission has treated these sales strictly in accordance with the legislation, it would have been open to the Commission to give more consideration as to whether those sales could have been recoverable in a reasonable period of time and thus could have been included in the determination of normal value.

80. The Commission observes that SYS made no sales of like goods in the review period which were grouped within MCC P-C-A.⁵¹ Therefore, the Commission does not understand how SYS' claims are relevant to the determination of the normal value.

⁵⁰ Ibid, page 9 refers.

⁵¹ Refer Excel workbook 52. 499 and 505 – SYS – Appendix 3 – Dom Sales.