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Anti-Dumping Review Panel Secretariat
GPO Box 2013
Canberra City ACT 2601

**ADRP Review - Hollow structural sections exported by
Kukje Steel Co., Ltd from the Republic of Korea**

Dear Panel Member,

Kukje Steel Co. Ltd (Kukje) makes this submission in response to the baseless grounds of appeal raised by Orrcon Manufacturing Pty Ltd (Orrcon) in its application for review.

The facts as established by the Australian Dumping Commission (the Commission) in Review 529 and the ten preceding inquiries listed in table 1 below, are that Kukje has participated in each and every review and duty assessment inquiry since the imposition of the dumping measures and in each such inquiry, Kukje was found to have not exported the subject goods at dumped. The dumping margins determined during the four completed reviews ranged from -1.9% to -6.7%.

Case	Type of inquiry	Period of investigation	Margin of dumping	Outcome
177	Original investigation	1 July 2010 to 30 June 2011	3.2%	Duties imposed
DA #1	Duty Assessment	3 July 2012 to 2 January 2013	n/a	Full repayment
DA #2	Duty Assessment	3 January 2013 to 2 July 2013	n/a	Full repayment
266	Review	1 July 2013 to 30 June 2014	-6.7%	Floor price - 0% duty
DA0048	Duty Assessment	3 July 2014 to 2 January 2015	n/a	Full repayment
DA0058	Duty Assessment	3 January 2015 to 2 July 2015	n/a	Full repayment
291	Circumvention	1 July 2010 to 31 March 2015	n/a	No action as Kukje was confirmed to not have exported circumvented goods
DA0082	Duty Assessment	3 January 2016 - 2 July 2016	n/a	Full repayment
379	Review	1 July 2015 to 30 June 2016	-1.9%	Floor price - 0% duty
DA0097	Duty Assessment	3 July 2016 - 2 January 2017	n/a	Partial-repayment: XX% of duty paid was refunded. Importantly, this assessment period formed part of Review 419 which found that Kukje was not dumping over the 12 month review period.
DA0117	Duty Assessment	3 January 2017 - 2 July 2017	n/a	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Importantly, please note that Kukje was found to not have dumped and the full amount of duty paid was found to be an overpayment.
419	Review	1 July 2016 to 30 June 2017	-3.6%	Floor price - 0% duty
Please note that for importation periods where no duty assessment was undertaken, this is due XX.				

Table 1.

So the clear pattern of exporting to Australia at non-dumped prices has been established over countless reviews, duty assessments and continuation inquiries. As explained and demonstrated to the Commission during its verification visit, Kukje has implemented and utilizes a price setting model that has regard to the Commission's findings in the preceding review of measures. This involves a regular review of its domestic selling prices and costs on the basis of the "models" determined by the Commission in the preceding review. This method allows Kukje to estimate the normal values for each export model and ensure that its weighted average export prices are sold above these non-dumped

levels.

To highlight this point, Kukje presented the Commission with evidence of correspondence as clear examples where it refused to make an export sale to Australia on the basis that the negotiated price offer from the Australian importer was below Kukje's estimated normal value for comparable products sold domestically.

Therefore, the established facts clearly demonstrate that Kukje has never exported the subject goods to Australia at dumped prices since the original investigation period and the imposition of measure. Kukje has made every reasonable effort to ensure that it does not resume dumping to Australia and as such, does not cause material injury to the local industry. It has followed the Commission's determinations and findings, and demonstrated that its price setting model is an accurate tool to prevent dumping from resuming. This positive evidence supports the Commission's decision that dumping by Kukje is not likely to recur.

By contrast, Orrcon's grounds for challenging the Minister's decision are based on mere conjecture or remote possibilities, with no positive evidence to support such assertions.

Section 269ZDA(1A)(b) of the Customs Act ("the Act") explicitly requires that the Commissioner:

...must make a revocation recommendation in relation to the measures, unless the Commissioner is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisations and the material injury that the measures are intended to prevent.

The question then for the Commissioner is whether the revocation of measures would lead, or likely lead, to a recurrence of dumping. The Commission's Dumping and Subsidy Manual provides guidance on the threshold test for establishing whether recurrence of dumping is 'likely'. It explains that:

In examining the likelihood of injury as a result of any future dumping or subsidy, the Commission takes guidance from WTO jurisprudence where 'likely' has been taken to mean 'probable'...

In *US Drums*¹, the WTO Dispute Panel found that the continued imposition of measures must be based on 'positive evidence'. The Panel stated:

Accordingly, we must assess the essential character of the necessity involved in cases of continued imposition of an anti-dumping duty. We note that the necessity of the measure is a function of certain objective conditions being in place, i.e. whether circumstances require continued imposition of the anti-dumping duty. That being so, such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced.

Further, the WTO Appellate Body said of Article 11 in *Corrosion Resistant Carbon Steel*²:

In view of the use of the word "likely" in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated – and not simply if the evidence suggests that such a result might be possible or plausible.

The threshold then prescribed by s.269ZDA(1A)(b) requires that the Commissioner recommend revocation, unless there is positive evidence to demonstrate that the recurrence of dumping in the

¹ US Drums – WT/DS99/R; para 6.42, page 139.

² US – Sunset Review of Anti-dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan – WT/DS244/AB/R; para 111, pages 39-40.

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future is likely or probable, implying a greater degree of certainty that the event will occur than a finding that the event is not “not likely”. In summary then, revocation involves establishing a likelihood through positive evidence, that dumping will recur in the future

It appears that Orrcon’s only ground for challenging the decision to revoke the measures applying to Kukje, relies on a view ‘... that Kukje’s dumping margin trend was on an upward trajectory’. This is despite Orrcon confirming that it does not challenge the Commission’s dumping margin findings relevant to Kukje. Significantly, the table of Kukje’s historical dumping margins in Orrcon’s application for review, disproves its own view with a clear downward trajectory.

The Commission itself confirmed that the analysis submitted by Orrcon was not specific to Kukje’s individual circumstances. In these circumstances, Orrcon has presented no positive evidence which would demonstrate that dumping was probable.

Your sincerely

John Bracic