



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ 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 party² 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: Orrcon Manufacturing Pty Ltd
Address: 121 Evans Road, SALISBURY, QLD, 4107
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:

Pursuant to Section 269ZZC of the Customs Act 1901 (the Act) ³ Orrcon Manufacturing Pty Ltd (Orrcon) is an Australian manufacturer of Hollow Structural Sections (HSS), and was the applicant company in relation to s.269TDA(1) 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.****

³ All legislative references in this application are to the Customs Act 1901, unless otherwise stated.

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 are 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 Act 1995*:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36, 37);
- 7306.50.00 (statistical code 45);
- 7306.61.00 (statistical codes 21, 22, 25, 90); and
- 7306.69.00.10.

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8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: 2022/049
Date AND was published: 30 June 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:

The reviewable decision of the Minister set out in ADN 2022/049 is not the correct or preferable decision on the following ground: Ground: The decision by the Minister to accept the Commissioner's recommendation that the determination of the dumping margin for the Korean exporter Hi-Steel Co., Ltd (HiSteel) be based on an export price assessment using the order date as the date of sale for fair comparison purposes was 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:

The correct or preferable decision ought to be for the Commissioner to recommend, and the Minister accept, that Hi-Steel's export price date of sale be assessed as the date of invoice.

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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 [Confidential Appendix B](#), attached.

12. Set out the reasons why the proposed decision provided in response to question 10 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 proposed decision is materially different to the reviewable decision on the basis that the assessment of HiSteel's export date of sale using invoice date would have likely resulted in a materially different dumping margin when compared to the normal value. This would have consequently impacted the Commissioner's assessment as to whether 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 that the anti-dumping measures are intended to prevent.

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

[Appendix A](#): Copy of the notice of the reviewable decision.

[Confidential Appendix B](#): Elaboration of the grounds raised in question 9.

[Confidential Attachment 1](#): MEPS HRC Price Analysis; Korea/Taiwan.

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*.

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Signature:

Name: [REDACTED]

Position: [REDACTED]

Organisation: [Orrcon Manufacturing Pty Ltd](#)

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: Chad Uphill
Organisation: Chad Uphill Trade Advisory
Address: PO Box 3004 MINNAMURRA NSW 2533
Email address: chad@cutrade.com.au
Telephone number: +61 (0) 412 377 603

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:

Name: [REDACTED]

Position: [REDACTED]

Organisation: Orrcon Manufacturing Pty Ltd

Date: 29 / 07 / 2022

15 August 2022

Anti-Dumping Review Panel
GPO Box 2013
Canberra ACT 2601

Addendum to Merits Review Application

Application for Review – Hollow Structural Sections exported from China, Korea, Malaysia, and Taiwan

On 29 July 2022, Orrcon Manufacturing Pty Ltd (**Orrcon**) lodged an application with the Anti-Dumping Review Panel (**ADRP**) seeking merits review of the decision by the Minister to accept certain of the Commissioner's recommendations into the continuation of anti-dumping measures applying to certain Hollow Structural Sections (**HSS**) exported to Australia from China, Korea, Malaysia, and Taiwan (Investigation No. 590).

On 5 August 2022, the ADRP Panel Member sought clarification on the following matters in relation to Orrcon's merits review application, and convened a conference to address each:

1. In Orrcon's application, in response to Question 13, Orrcon listed the following attachment in support of the application:
 - a. Confidential Appendix B: Elaboration of the grounds raised in question 9.

However, Orrcon only submitted a non-confidential version of Appendix B. Orrcon was requested to clarify whether the reference should have been to "Non-Confidential Appendix B", or whether there was a confidential version of Appendix B.

2. In Orrcon's application, in response to Question 5, Orrcon appeared to have selected that the reviewable decision was a decision under s.269TG, rather than s.269ZHG. Orrcon was requested to clarify whether this was an inadvertent error, that should be corrected.

The conference was held on 15 August 2022, to which Orrcon advised the Panel Member:

- Item 1: A non-confidential only version was provided on the basis that there was no confidential content in Appendix B. The wording at Question 13 of the application should have read 'Non-Confidential Appendix B: Elaboration of the grounds raised in question 9'.
- Item 2: Reference to s.269TG was an inadvertent error. Orrcon should have referenced s.269ZHG.

Yours faithfully,



Chad Uphill
On behalf of Orrcon Manufacturing Pty Ltd

APPENDIX A



Australian Government
Department of Industry, Science,
Energy and Resources

Anti-Dumping Commission

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

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 10

I. Overview

On 27 August 2021, Orrcon Manufacturing Pty Ltd (**Orrcon**) lodged an application with the Commissioner of the Anti-Dumping Commission (**the Commission**) for the continuation of anti-dumping measures applying to certain Hollow Structural Sections (**HSS**) exported to Australia from the People's Republic of China (**China**), the Republic of Korea (**Korea**), Malaysia, and Taiwan, and for countervailing measures in respect of the goods exported from China.

Having considered the application, the Commissioner decided not to reject the application and initiated Continuation 590 (**CON 590**) on 22 September 2021. Public notification of the initiation was also made on 22 September 2021 (refer ADN No. 2021/122).

The Commissioner established an inquiry period of 1 July 2020 to 30 June 2021 (**the inquiry period**). The Commission also examined data from the Australian Border Force (ABF) import database for the period 1 July 2012 to 30 June 2021 and financial data from the Australian industry from 1 July 2016 to 30 June 2021 for the purpose of analysing trends in the market for the goods and assessing the continuation or recurrence of injury.

The Statement of Essential Facts (**SEF 590**) was published on 20 April 2022, detailing the Commission's preliminary findings and conclusions. The Final Report (**REP 590**) was due to be furnished to the Minister on or before 30 June 2022.

Specific to this application, REP 590 concluded, in accordance with section 269ZHG(4)(a)(ii),¹ that the dumping duty notice for the Korean exporter Hi-Steel Co., Ltd (**HiSteel**) continued to remain in force until 3 July 2022 (the specified expiry date), but that after this date, the notice ceased to apply.

As outlined in this application, Orrcon requests that the Anti-Dumping Review Panel (**ADRP**) review the Minister's decision relating to ADN 2022/049. Orrcon has detailed its grounds for review of the Minister's decision below.

¹ All legislative references are to the *Customs Act 1901*, unless otherwise stated.

II. Ground:

The decision by the Minister to accept the Commissioner's recommendation that the determination of the dumping margin for the Korean exporter Hi-Steel Co., Ltd (HiSteel) be based on an export price assessment using the order date as the date of sale for fair comparison purposes was not the correct or preferable decision.

- A. Introduction
- B. Relevant Information – CON 590 Cooperating Exporters
- C. Relevant Information – Trade Remedy Precedent
- D. Relevant Information – Order v's Invoice Date Quantitative Assessment
- E. Conclusion

A. Introduction

In CON 590, the Commission assessed HiSteel's margin of dumping over the inquiry period as being negative 9.3%. In making the comparison between the goods exported to Australia and the equivalent goods sold on the Korean domestic market, the Commission determined HiSteel's normal value under section 269TAC(1) (subject to section 269TAC(8) adjustments), and the export price in accordance with section 269TAB(1)(a).²

The issue at hand in the above assessment is the Commission's determination of the date of sale for the export price in making a fair comparison between the exported and domestically sold goods. The Commission concluded that the order date, rather than invoice date, was the preferred date of sale and would lead to a better comparison between export and domestic sales. This decision was not correct or preferable on the basis that the Commission departed from its evidence-based policy that a date other than the invoice date best reflects the date of sale for a commodity product such as steel, and in coming to such a conclusion did not substantively address the legal considerations required of it.

Orrcon submits that the invoice date provides the preferred data on which to base HSS dumping margin calculations as it reflects the actual price paid and/or volume received, which is the practice approach reflected in Section 15.3 of the Dumping and Subsidy Manual (**the Manual**)³ and is the approach considered to align with WTO practice.⁴

The **Manual** provides as follows:

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.

² REP 590, p. 87-88.

³ Dumping and Subsidy Manual, December 2021, Section 15.3.

⁴ Article 2.4.1 of the WTO Anti-Dumping Agreement.

Any deviation from invoice date as the date of sale would need to substantively address:⁵

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

The conclusion by the Commission to use order date was arrived at following verification discussions between HiSteel and the Commission, subsequently followed by the inclusion of new data. The Commission's reasoning was established in HiSteel's Exporter Verification.⁶

The verification team agreed that the order date is the preferable date of sale and that the order date should be used when comparing export prices to the normal value based on domestic sales.

...

HiSteel also provided additional domestic sales transactions of like goods sold covering the two quarters prior to the inquiry period in order to calculate the normal value for export sales shipped during, but ordered prior to, the inquiry period.

Orrcon refuted this approach in a pre-SEF 590 submission,⁷ stating that:

Orrcon hesitates to speculate on which of the substantive points above were discussed during verification, but presumes that the basis for selecting order date over invoice date may relate to material costs (as the HSS market vis-à-vis the two other points requiring consideration according to the Manual – the degree of difference in domestic and export prices, and contracts for material purchases – have not altered to such an extent that would cause the Commission to deviate from its use of invoice date, as in previous determinations).

The Commission's response in REP 590 to Orrcon's position (and to that of Austube Mills (ATM), as the other Australian industry member who made similar representations opposing the use of order date for fair comparison purposes) was that:⁸

The commission notes that HiSteel originally provided its data with the date of sale set as its invoice date and that in its REQ it 'accepted' that the date of sale is the invoice date. However, during verification of HiSteel's data, the commission 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.

...

The commission also confirmed through verification of commercial documentation supplied by HiSteel that the material terms of sales were set at the order date and did not vary between the order date and the invoice date. This included key terms such as volume, price, exchange rate, delivery terms, packing, etc.

Accordingly, the commission considered that the order date is the preferable date of sale

⁵ Ibid.

⁶ EPR Folio No. 7, p. 10.

⁷ EPR Folio No. 27.

⁸ REP 590, p. 84-85.

when comparing export prices to the normal value based on domestic sales.

In taking this approach, the Commission has failed to arrive at the correct or preferable outcome. Orrcon will evidence below that the correct or preferable decision was for the Commission to use invoice date as the date of export sale for fair comparison purposes.

B. Relevant Information – CON 590 Cooperating Exporters

The use of order date was incorrect and not the preferable decision on the basis that the Commission departed fundamentally from the variable factor and fair comparison assessment approach adopted for all other exporters in CON 590. For these exporters, the Commission has not departed from the approach mandated by the Manual and one that is applicable for commodity products such as steel; being the assessment of date of export sale as the invoice date.

In CON 590, the Commission assessed new variable factors and determined the likelihood of a recurrence of dumping, subsidisation, and materially injury in the absence of measures for (1) Dalian Steelforce Hi-Tech Co., Ltd (**Dalian**) and residual exporters from China, (2) HiSteel from Korea, (3) all exporters from Malaysia, and (4) Shin Yang Steel Co., Ltd (**Shin Yang**), Ta Fong Steel Co., Ltd (**Ta Fong**) and Residual exporters from Taiwan.

- For the cooperative Chinese exporter Dalian, the Commission determined the export price during the inquiry period using the deductive export price method, being the price at which its related party Australian importer, Steelforce Australia, sold the goods, less relevant deductions.⁹ For uncooperative, and all other Chinese exporters, the Commission determined the export price as the lowest weighted average Free on Board export price for the inquiry period as reported in the Australian Border Force import database.¹⁰
- For all Malaysian exporters, a lack of above-negligible export volumes to Australia during the inquiry period required that the Commission calculate the export price in accordance with that as previously ascertained in variable factors review 529 (**REV 529**), with an adjustment for timing.¹¹ The inquiry period for REV 529 covered the 12 months ending September 2019, with the export price calculated for Alpine Pipe Manufacturing Sdn. Bhd under section 269TAB(2B)(b), being the price paid or payable for like goods sold in arms-length transactions during the inquiry period to New Zealand (in the absence of HSS exports to Australia).¹² The Commission had regard to this same price in determining the export price for uncooperative and all other Malaysian exporters.
- For the cooperative Taiwanese exporters Shin Yang and Ta Fong, the export price over the inquiry period was determined under section 269TAB(1)(a) as the price paid by the importer to these exporters, less transport and other costs arising after exportation.¹³ For uncooperative and all other exporters, the Commission used the lowest verified export price of the cooperating exporters during the inquiry period.¹⁴

The key theme here across all subject exporters and countries is the assessment of the export price at invoice date *during the inquiry period* (or during an earlier inquiry period in the absence of contemporary exports). At no point did the Commission deviate from this period and look to include transactions outside of it on an order-date basis on the premise that it was unable to compare domestic with export sales. The Commission's treatment of HiSteel in this manner is therefore an outlier.

⁹ REP 590, p.77-78.

¹⁰ Ibid, p. 81.

¹¹ Ibid, p. 90.

¹² REV 529 Final Report, p. 85-88.

¹³ REP 590, p. 93, 97.

¹⁴ Ibid, P. 99.

Hot rolled coil steel (HRC), as the key feed raw material for HSS contributing approximately 80% of the cost to make, is a globally traded commodity product the price trends of which are broadly consistent, especially in regions such as Asia. All Korean, Malaysian and Taiwanese exporters the subject of CON 590 would have therefore experienced the same fluctuations in feed costs as did HiSteel leading up to and during the inquiry period.

In its pre-SEF 590 submission, Orrcon highlighted with the Commission Korean domestic HRC price movements in the two quarters prior to and for the full length of the inquiry period.¹⁵ Comparing these to Taiwanese domestic HRC price movements over the same periods (as relevant information before the Commission via its exporter verification processes), shows that indeed Taiwan experienced similar feed cost fluctuations.^{16 17} Yet the Commission was of the view that only HiSteel was subject to cost fluctuations during the importation period¹⁸ and that an export price assessment at order date was required.

The economic reality is that all non-Chinese exporters the subject of CON 590 experienced similar commodity HRC feed cost fluctuations, the impact of which in a variable factors assessment is correctly and preferably determined with reference to the exporter invoice date as the date of sale. In contrast to the Commission's conclusion for HiSteel 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" it has done precisely that for all other exporters, utilising invoice date. The Commission's approach has therefore resulted in a mis-aligned variable factors outcome for HiSteel via-a-vis all others, and was not the correct or preferable decision.

C. Relevant Information – Trade Remedy Precedent

The use of order date was not the correct or preferable decision on the basis that the Commission has departed fundamentally from the variable factor and fair comparison assessment approach adopted by it in recent trade remedy inquiries for steel products to which HRC was the key feed raw material. For these inquiries, the Commission has not departed from the approach mandated by the Manual and one that is applicable for commodity products such as steel; being the assessment of date of export sale as the invoice date.

The following tables provides a summary, from earliest to most recent inquiry, of those cooperating exporters who explicitly indicated/agreed in response to the Section B-2 exporter questionnaire requirement that the invoice date¹⁹ is the date of sale as it best reflects the material terms of trade. In contrast to the approach taken with HiSteel, in no instance for any of the below-noted exporters did the Commission subsequently deflect in verification procedures to a date of sale that was any date other than invoice date:

Inquiry No.	Goods	Inquiry Period	Country	Exporter
521	Zinc Coated (galvanised) Steel	Jul. 2018 – Jun. 2019	China	▪ Guanxian Lianhao Metal Material Co. Ltd
			Korea	▪ Dongbu Steel Co. Ltd
			Taiwan	▪ Yieh Phui Enterprise Co. Ltd ▪ Chung Hung Steel Corporation
529	Hollow Structural Sections	Oct. 2019 – Sept. 2019	China	▪ Huludao City Steel Pipe Industrial Co. ▪ Dalian Steelforce Hi-Tech Co., Ltd ▪ Tianjin Youfa Steel Pipe Group Co Ltd
			Korea	▪ HiSteel Co Ltd
			Taiwan	▪ Shin Yang Steel Co. Ltd
			Thailand	▪ Thai Premium Pipe Company Limited ▪ Sahathai Steel Pipe Public Company Ltd
550			China	▪ Yantai Aoxin International Trade Co., Ltd

¹⁵ CON 590, EPR Folio No. 27.

¹⁶ Domestic Malaysian HRC prices are not published or available. Orrcon submits, however, that Malaysian domestic price movements would be similar to Korea and Taiwan.

¹⁷ Refer Confidential Attachment 1: MEPS HRC Price Analysis; Korea/Taiwan. Japan has been included also for comparative purposes.

¹⁸ REP 590, p. 84-85.

¹⁹ Or the date of export bill of loading, as closely aligned in timing to when an invoice is raised.

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	Precision Pipe & Tube	Jan. 2019 – Dec. 2019	Taiwan	▪ Ta Fong Steel Co. Ltd
			Vietnam	▪ Chinh Dai Industrial Co., Ltd ▪ Chinh Dai Steel Technology Co. ▪ Vina One Manufacturing Corporation
558	Aluminium Zinc Coated Steel (wide)	Apr. 2019 – Mar. 2020	Korea	▪ Dongkuk Steel Mill Co., Ltd ▪ KG Dongbu Steel Co. Ltd
			Taiwan	▪ Yieh Phui Enterprise Co. Ltd ▪ Sheng Yu Steel Co., Ltd
			Vietnam	▪ Nam Kim Steel ▪ Hoa Sen Group Joint Stock Company
559	Aluminium Zinc Coated Steel (narrow)	Apr. 2019 – Mar. 2020	Vietnam	▪ Nam Kim Steel ▪ Hoa Sen Group Joint Stock Company

In its pre-SEF 590 submission, Orrcon brought to the attention of the Commission HiSteel’s own claims in a recent United States (U.S.) steel pipe & tube investigation highlighting that the date of invoice is the relevant date of sale – in the *Decision Memorandum for the Preliminary Results of the 2019-2020 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea*,²⁰ HiSteel reported the home market and U.S. date of sale as the earlier of the invoice date or shipment date.²¹ The U.S. Department of Commerce subsequently followed its long-standing practice of basing the date of sale for all of HiSteel’s home market and U.S. sales on the earlier of the invoice date or shipment date.

In its SEF 590 response submission, Orrcon stated further:²²

Orrcon further emphasises its pre-SEF submission view regarding HiSteel’s preliminary date of sale determination, as published in its Exporter Verification Report (EVR), by drawing the Commission’s attention to Anti-Dumping Review Panel (ADRP) review 2018/88²³ where the Commission has stated that:

...the Commission’s approach to the date of sale is well established, as is reflected in the Manual. The level of evidence required to move away from the invoice date is far more extensive than just an argument to the effect that HRC prices may vary over time. (emphasis added).

In relation to evidence required to support the contract date rather than the invoice date, the Commission Representatives indicated evidence needed to have been provided to confirm that at the contract date the price was fixed in stone and that it was not to be varied in any way or given any opportunity for the contract to be cancelled.²⁴

Orrcon submits that the only reason HiSteel proposed order date over invoice date during verification with the Commission in establishing the date of sale was to ensure a lower dumping margin outcome. HiSteel had clearly reassessed its position between lodgment of its EQR and the Commission undertaking the virtual verification, and sought to establish that a variation in HRC prices over time was a sufficient threshold to alter what has been the long-established and procedurally correct conclusion in HSS and other commodity inquiries that the final and conclusive date of sale is the date of invoice.

²⁰ See *Decision Memorandum for the Preliminary Results of the 2019-2020 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea*. A-580-880. September 30, 2021.

²¹ *Ibid*, p. 4.

²² CON 590, EPR Folio No. 33.

²³ 2018/88 – Certain Hollow Structural Sections exported from the People’s Republic of China, the Republic of Korea, Malaysia, and Taiwan (initiated 20 July 2018).

²⁴ *Ibid*, ADRP Conference Summary, 13 August 2018, p. 4.

With such a substantial body of Australian and other jurisdictional invoice-date-for-fair-comparison-purposes precedent, the Commission cannot conclude for one stand-alone exporter that the use of order date was accurate in the variable factors assessment. WTO jurisprudence provides that an affirmative information gathering burden is placed on the investigating authority, and that the authority shall not impose an unreasonable burden of proof on the parties in question making the claims.²⁵ Applied here, Orrcon has shown that the Commission has failed to consider past and present precedential information, resulting in a decision that is neither correct nor preferable.

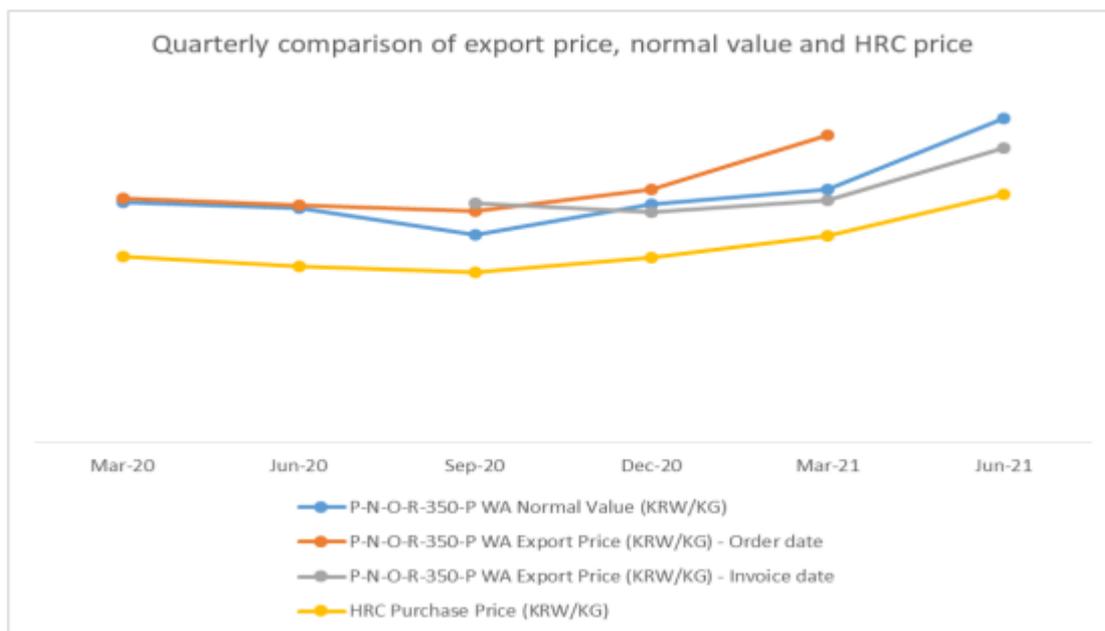
D. Order v’s Invoice Date Quantitative Assessment

The use of order date for HiSteel was not the correct or preferable decision on the basis that the Commission placed narrow emphasis on certain relative domestic and export price points during and prior to the inquiry period vis-à-vis HRC input costs, and failed to consider that a full assessment of the observed price trends supports the use of invoice date as the date of sale.

As noted earlier, the Commission concluded in REP 590 that the significant increase in the cost to HiSteel of HRC feed prevented it from properly comparing domestic with export sales.²⁶ It went on to state that:

The commission considered that domestic prices were likely to have increased in response to these higher export prices more quickly than export prices. Figure 14 [footnote omitted] demonstrates the delay in export prices based on 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.

There are several difficulties presented in the Commission’s Figure 14 analysis. In assessing these, it is instructive to reproduce the Figure, found in REP 590 at p. 85:



CON 590: Figure 14 Reproduced

The Commission claims that the correct export price to normal value comparison is between the orange and blue lines; the normal value being assessed at invoice date, and the export price at order date. This is premised on

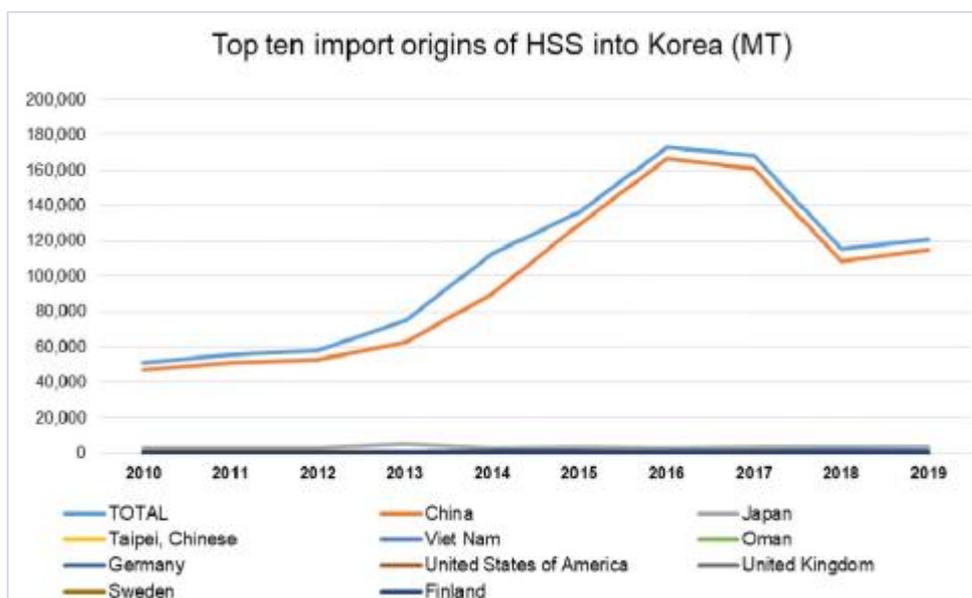
²⁵ See WTO Panel Report, *Egypt – Definitive Anti-Dumping Measures on Steel Reinforcing bar from Turkey* (WT/DS211/R) at para. 7.352.
²⁶ CON 590, p. 84.

the observation that the quarterly export price (at order date) correlates with the underlying movement of the HRC feed purchase price during the same quarter, and that there is no delay in the export price reflecting the HRC feed cost movement, such as when assessing the export price at invoice date.

On this analysis and conclusion, Orrcon submits as follows:

1. The statistical data points and trends presented by the Commission in Figure 14 are incomplete. The period of investigation for CON 590 was July 2020 to June 2021, yet Figure 14 does not include the grey export price (invoice date) line for the first quarter of the inquiry period, nor does it include the orange export price (order date) line for the final quarter of the inquiry period. This therefore cannot permit a fulsome analysis and enable the above conclusions to be drawn.
2. The economic reality of exporting HSS from Korea to Australia is such that the lead time between raising the export order to shipping and invoicing the goods is approximately 3-4 months. This will have been verified by the Commission during the inquiry. Hence the quarterly delay the Commission observes as being the reason for non-comparability between the normal value and the export price based on invoice date is in fact the reason why they should be compared. Export invoices are raised, and the product shipped, 3-4 months following receipt of the order. Figure 14 shows the appropriate alignment between the export price (at invoice date) and the normal value for the Dec. 20, Mar., 21, and Jun. 21 quarters as compared to the HRC purchase price movement. It is only the Sept. 20 quarter where there appears to be a divergence in trend (but again, without the earlier Mar. 20 and Jun. 20 data lines, a full assessment isn't possible).

In the earlier SEF 529, the Commission examined the domestic market for HSS, concluding that China has been a significant presence in the Korean market since at least 2010, comprising an annual share of 83 to 97 per cent of all imports:²⁷



SEF 529: Figure 16 Reproduced

Korean HSS producers would primarily compete at an import parity price level on the Korean domestic market with these Chinese (and other source) imports. Domestic Korean purchases of HSS would seek price offers from HiSteel vis-à-vis Chinese/other import alternatives, for domestic delivery on a lead-time schedule that would align with the imported alternative had they so chosen this supply channel. This lead time would be alike to that of Korean HSS exports to Australia – hence the price considerations between Korean domestic and export HSS sales are substantively the same given the fact that the HRC

²⁷ SEF 529, p. 96.

raw material expenses would be based on a similar time period. As raw material purchasing arrangements would likely not materially differ between export and domestic sales, the correct point of for the date of sale assessment is invoice date.

3. The economic reality is also such that the material terms of sale for exported HSS are set at invoice date (as argued by the Australian industry in pre and post SEF 590 submissions). The fact that the Commission did not find variances in HiSteel's commercial documentation between order and invoice date for key terms such as volume, price, exchange rate, delivery, packing etc,²⁸ does not then mean that the correct or preferable approach was to diverge from the standard evidence-based policy of using invoice date as the date of sale for a commodity product such as steel. On the contrary, if the Commission did not observe differences in these sales terms, and the relationship to the movement in the HRC purchase price is found to be closely correlated on an export invoice date basis (as evidenced above), the Commission did not then need to entertain in the first instance a change to established practice.

E. Conclusion

Based on the available evidence, Orrcon considers that it has detailed the relevant considerations in its ground for appeal that demonstrate that the Minister's acceptance of the Commissioner's recommendation that HiSteel's export price assessment be based on order date and not invoice date as the date of sale for fair comparison purposes was not the correct or preferable decision.

The Review Panel's powers on review are governed by section 269ZZK(1) in recommending that the Reviewable Decision either be affirmed or revoked and substituted with a specified new decision. Further, section 269ZZK(1A) specifies that a recommendation to revoke can only be made in circumstances where the new decision is materially different from the reviewable decision. The Anti-Dumping Review Panel is therefore requested to conduct a review of the Reviewable Decision. Reaching the correct and preferable conclusion will likely result in a material difference to HiSteel's export price variable factor, and therefore the dumping margin.

²⁸ Noting, however, that REP 590 provides no documentary evidence to support the issues raised in the Manual for the date of sale to be any other date other the invoice date, particularly in relation to production schedules, lead times for purchasing main input materials and whether contracts were entered into for material purchases, and materials inventory valuation.