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Australian Government
Department of Industry,
Science and Resources

Anti-Dumping Commission

Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Member Leora Blumberg
Anti-Dumping Review Panel
c/o- ADRP Secretariat

By email: ADRP@industry.gov.au

Dear Member Blumberg

ADRP Review No. 156: Hollow structural sections exported to Australia from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan

I write with regard to the notice under 269ZZI of the *Customs Act 1901* (Cth) (the Act) published on 1 September 2022. This notice advised of your intention to review the decision of the Minister for Industry and Science to:

- i. secure the continuation of anti-dumping measures applying to hollow structural sections exported from the People's Republic of China, Republic of Korea, Malaysia and Taiwan pursuant to s.269ZHG(1)(b) of the Act and
- ii. under s.269ZHG(4)(a)(ii) to determine that the dumping duty notice cease to apply to Hi-Steel Co., Ltd (the reviewable decision).

The commission has considered the applications submitted by Austube Mills Pty Ltd and Orrcon Manufacturing Pty Ltd for a review of the reviewable decision and makes submissions, pursuant to section 269ZZJ(aa) of the Act, at **Attachment A** (public version), on my behalf.

The commission remains at your disposal to assist you in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bradley Armstrong'.

Dr Bradley Armstrong PSM
Commissioner, Anti-Dumping Commission

29 September 2022



Australian Government
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Introduction

1. The Anti-Dumping Commission (commission), on behalf of the Commissioner, makes this submission in response to applications for review by Austube Mills Pty Ltd (Austube) and Orrcon Manufacturing Pty Ltd (Orrcon). Both applications challenge the Minister's decision not to continue anti-dumping measures in relation to hollow structural sections (HSS) exported from the Republic of Korea (Korea) by Hi-Steel Co., Ltd (Hi-Steel) (the Reviewable Decision). In making their decision, the Minister considered and accepted the recommendations and reasons for recommendations, including all material findings of fact or law, of the Commissioner in *Anti-Dumping Commission Report No. 590* (REP 590).
2. In section 1, the commission responds to Austube and Orrcon's argument that the commission incorrectly determined the date of sale for Hi-Steel's domestic and export sales. The commission maintains that the order date represented the date at which the material terms of the sale were established and best permitted a fair comparison between domestic and export sales to determine whether dumping had occurred. This is because of an increase in hot rolled coil (HRC) steel costs¹ during the inquiry period, coupled with a significant disparity in time between order and invoicing for export sales compared to domestic sales.
3. In section 2, the commission responds to Austube's argument that the commission should not have included sales of like goods not produced by Hi-Steel in its calculation of Hi-Steel's normal value. The commission maintains that its approach to calculating normal value was within the scope of section 269TAC(1) of the *Customs Act 1901* (the Act).
4. Section 3 relates to Austube's criticism of the commission's comparative landed price analysis. The commission explains how this analysis fits within the Commissioner's overall assessment of whether the expiry of the measures would or would be likely to lead to a recurrence of dumping by Hi-Steel.
5. The commission submits that the ADRP should dismiss each of the grounds for review in the applications and find that the Reviewable Decision was the correct and preferable decision.

Section 1: 'Date of sale' for Hi-Steel's domestic and export sales

6. Austube and Orrcon contend that the commission should have used the invoice date for Hi-Steel's sales, and not the order date, as the 'date of sale' when comparing Hi-Steel's domestic sales and export sales.² The commission maintains that using the order date as the 'date of sale' was correct.
7. In the present case, the commission found that using the invoice date as the date of sale would mean 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

¹ HRC is the main raw material used in the production of HSS.

² Appendix B to Austube's application dated 29 July 2022, pp.1-4, Appendix B to Orrcon's application dated 29 July 2022.

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commission observed that there was a “...*delay in export prices based off the invoice date responding to changes in the underlying HRC price*” which was not apparent for domestic prices.³

8. The purpose of comparing an exporter’s domestic and export sales is to ascertain whether dumping has occurred.⁴ According to the Anti-Dumping Agreement (ADA), this comparison must be a “*fair comparison*”.⁵ To that end, the comparison shall be “*in respect of sales made at as nearly as possible the same time*”.⁶ The ADA does not stipulate a particular methodology for determining the date of sale of goods in order to permit a fair comparison, but considers that “*normally*” this will be the “*date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.*”⁷
9. The commission’s Dumping and Subsidy Manual (the Manual)⁸ provides guidance on the commission’s general practice. The commission normally considers the invoice date to be the appropriate date of sale because it generally represents the date at which the material terms of sale are established. As explained in the Manual, this is because:

“...there can be circumstances where an exporter and importer agree on price and quantity and make a sales agreement to that effect, but this may not establish the date on which terms were finally agreed upon because an element of informality continues, and conditions can be changed.”⁹

10. For the goods exported, the date of invoice also usually approximates the shipment date.¹⁰
11. However, as the Manual acknowledges, in some cases there may be “*a date other than the date of invoice [that] better reflects the date of sale.*”¹¹
12. Contrary to Austube’s application¹², neither the Manual nor ADRP Decision No. 88¹³ set out a particular “standard” that the commission must meet in order to determine that a date other than the invoice date best reflects the date of sale. The Manual provides guidance to stakeholders about the kinds of evidence that will assist the Commissioner to determine the most appropriate date of sale of goods. However, the evidence necessary to satisfy the Commissioner will depend on the facts and circumstances of each case.
13. The commission provides the following explanation of the Commissioner’s determination that the order date best represented the date of sale for Hi-Steel’s sales in REP 590:
 - a. During verification of Hi-Steel’s response to the exporter questionnaire (REQ), the commission identified that Hi-Steel’s domestic sales were generally met from inventory,

³ REP 590, p.84.

⁴ Section 269TACB, *Customs Act 1901*.

⁵ ADA, Article 2.4. Part XVB of the *Customs Act 1901* gives effect to Australia’s obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade* (the Anti-Dumping Agreement or ADA). According to Federal Court precedent, the ADA and WTO jurisprudence can have “*substantial weight*” in interpreting corresponding provisions of the Act where appropriate (see *Siam Polyethylene Co Ltd v Minister of State for Home Affairs* [2009] FCA 837 at [66] per Rares J).

⁶ ADA, Article 2.4.

⁷ ADA, Footnote 8.

⁸ Dumping and Subsidy Manual December 2021, pp.51-52.

⁹ *Ibid*, p.52.

¹⁰ *Ibid*, p. 52.

¹¹ *Ibid*, p.51.

¹² Appendix B to Austube’s application dated 29 July 2022, pp.1-2.

¹³ Anti-Dumping Review Panel Decision No. 88 *Certain Hollow Structural Sections exported from the People’s Republic of China, The Republic of Korea and Taiwan* March 2019.

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whereas production for export sales commenced after order.¹⁴ As a result, the invoice date for domestic sales was proximate to the order date.¹⁵ However for export sales, the commission's analysis of Hi-Steel's data demonstrated a significant gap between the order date and invoice date, in the order of 3 months.¹⁶

- b. Through verification of commercial documentation supplied by Hi-Steel, the commission was able to confirm that for domestic and export sales "...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."¹⁷ Importantly, there was no evidence before the commission of price changes between order and invoicing.
- c. The commission also observed that Hi-Steel's HRC costs¹⁸ had increased over the inquiry period. The commission considered this factor may mean that using the invoice date as the date of sale may not permit a fair comparison between domestic and export sales (and thus, between normal value and export price). This is because domestic and export sales, if compared based on invoice date, would be reflective of sales for which the material terms were set at times when raw material input costs were substantially different. As HRC cost is the clear majority cost element for HSS,¹⁹ the commission considered that HRC costs would have a very significant influence on HSS prices.
- d. The commission tested this by comparing trends in Hi-Steel's normal value, export price based on invoice date, export price based on order date, and HRC costs. Figure 14 in REP 590 showed that Hi-Steel's normal value and export price when based on order date closely aligned with the trend in HRC costs over the inquiry period. However, when a comparison was made with the export price based on invoice date, there was a clear delay in alignment between movement in the export price and Hi-Steel's HRC costs. The commission considered Figure 14 supported its finding that a comparison between domestic and export sales based on invoice date would not constitute a fair comparison.

14. Based on the above, the Commissioner determined that the order date, rather than the invoice date, represented the date at which the material terms of sale were set. The Commissioner found that using the order date as the date of sale would best enable a fair comparison between Hi-Steel's normal value and export price in the circumstances of the present case. The commission maintains that the evidence and its analysis support this finding.

15. This case can be distinguished from other cases, such as that considered in the recent ADRP Decision No. 152.²⁰ In that case there was evidence before the commission of price changes between order and invoicing, such that the material terms of sale could not be said to have been established at the order date. Further, in that case the evidence did not establish that there was a material difference between domestic and export sales regarding the number of days between order and invoice date.

¹⁴ Verification work program, p. 21 (domestic sales), p. 19 (export sales).

¹⁵ Confidential Attachment 17 Hi-Steel – Normal Value. [CONFIDENTIAL TEXT DELETED – number of days between order and invoice date for domestic sales]

¹⁶ Confidential Attachment 15 Hi-Steel – Export Price. [CONFIDENTIAL TEXT DELETED – number of days between order and invoice date for export sales]

¹⁷ REP 590, p. 85. Noting that exported goods were ordered and paid for in USD. The commission observed that there were some instances where volumes changed in immaterial amounts i.e. less than 1%. There were no corresponding unit price changes. See for example, Hi-Steel REQ Attachments B-3.1, B-3.2, D-3.1 and D-3.2.

¹⁸ Hi-Steel REQ attachment G7.4 - Raw Material Purchase Price.

¹⁹ Verification work program, p. 47, REP 590 p.170.

²⁰ Anti-Dumping Review Panel Decision No. 152 *Certain Copper tube exported from the Socialist Republic of Vietnam* July 2022 at [23] to [45].

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16. Orrcon's application claims that the commission's treatment of Hi-Steel's sales was inconsistent with its treatment of sales by other exporters in REP 590, where the Commissioner determined the invoice date to be the date of sale.²¹ The commission notes that the Minister's decisions regarding those other exporters are not under review. Accordingly, the commission does not consider it appropriate or necessary to address the Commissioner's determinations in relation to each exporter individually. However, the commission notes that, based on the information before it, other exporters commenced production for both export and domestic sales after the order date (compared to Hi-Steel which satisfied domestic sales from inventory).²² This meant that there was not the same disparity between the order date and invoice date with other exporters as there was for Hi-Steel. Accordingly, the evidence before the commission with respect to other exporters did not indicate that a date other than the invoice date better represented the date of sale.
17. The commission also disagrees with Austube and Orrcon's submission that Figure 14 in REP 590 does not permit the conclusions drawn by the commission to be drawn because the data points are incomplete.²³ The commission considers that the data presented in Figure 14 is adequate and clearly shows the trends described by the commission in paragraph 13(d). Further, the commission notes that it did not reach its conclusions regarding the appropriate date of sale based on Figure 14 alone. Through the comparison in Figure 14, the commission sought to corroborate the other evidence and reasoning referred to in paragraphs 13(a) to (c).
18. For the reasons articulated above, the commission submits the ADRP should dismiss this ground for review.

Section 2: Inclusion of sales of goods not produced by Hi-Steel in normal value calculation

19. Austube submits that the Commissioner should not have included domestic sales of goods by Hi-Steel that Hi-Steel did not manufacture in determining its normal value.²⁴ The commission maintains that its determination of Hi-Steel's normal value was in accordance with section 269TAC(1) of the Act.
20. The commission provides the following explanation of how the Commissioner calculated Hi-Steel's normal value in REP 590:
 - a. In assessing whether Hi-Steel's sales of like goods on the domestic market were in the ordinary course of trade (OCOT), the Commissioner included sales of like goods which Hi-Steel had purchased from other Korean producers and then sold on the domestic market.
 - b. For the purpose of assessing whether the sales of those goods were in the OCOT:
 - i. The Commissioner applied the cost of production of Hi-Steel's self-produced goods for the relevant domestic MCC model for the purpose of sections 269TAAD(2), 269TAAD(3) and 269TAAD(4) of the Act;
 - ii. In establishing an amount of selling, general and administrative (SG&A) costs associated with the sale of like goods under section 269TAAD(4) of the Act, the Commissioner applied Hi-Steel's domestic sales volumes (including both self-

²¹ Appendix B to Orrcon's application dated 29 July 2022, p.4.

²² See for example Parts B-1 and D-1 of REQ Shin Yang and Ta Fong.

²³ Appendix B to Austube's application dated 29 July 2022, p.2, Appendix B to Orrcon's application dated 29 July 2022, pp.7-8.

²⁴ Appendix B to Austube's application dated 29 July 2022, pp.4-5.

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produced and purchased like goods) to derive a unit SG&A amount relevant to each domestic MCC model;

- c. Sales of purchased goods were included in the Commissioner's assessment of whether Hi-Steel's domestic sales of like goods were made in low volumes in accordance with section 269TAC(2)(a)(i) of the Act;
 - d. Prices of sales of purchased goods assessed to be in the OCOT were included in the Commissioner's ascertainment of Hi-Steel's normal value in accordance with section 269TAC(1) of the Act.
21. Austube submits that the inclusion of these sales is not supported by the legislation. The commission disagrees. The commission considers that section 269TAC(1) of the Act provides the legislative basis for the Commissioner's approach to determining Hi-Steel's normal value in REP 590. The commission observes that the ADRP found this approach to be within the scope of section 269TAC(1) of the Act in ADRP Decision No. 130.²⁵
22. The commission also wishes to bring to the ADRP's attention that the volume of these goods which were of a model exported by Hi-Steel to Australia constituted an immaterial proportion of the total volume of domestic sales of that model.²⁶ On this basis, the commission's view is that the exclusion of these goods from the normal value calculation would not have materially changed Hi-Steel's dumping margin.

Section 3: Commission's price comparison analysis and finding that recurrence of dumping and material injury was not likely

23. Austube's third ground of review challenges the Commissioner's overall finding that the expiry of the measures would not likely lead to the continuation or a recurrence of dumping and material injury caused by Hi-Steel. Austube makes this argument firstly based on the errors it submits the Commissioner has made in determining Hi-Steel's dumping margin. For the reasons explained in sections 1 and 2 above, the commission is of the view that those arguments do not have merit. Secondly, Austube submits that even if the dumping margin for Hi-Steel continues to be negative, the Commissioner's ultimate finding was erroneous because it relied on a comparative landed price analysis which was not model-specific.²⁷ The commission rejects this argument and notes that the landed price comparison was only one factor the Commissioner had regard to in reaching their overall finding.
24. The commission acknowledged in REP 590 that "*pricing data available for countries not subject to the inquiry is limited, and may not allow for a direct like-for-like comparison.*" The commission was nonetheless satisfied from its price undercutting analysis that "*Hi-Steel maintains a price advantage against Australian industry, and has steadily grown its sales volumes and market share with undumped prices.*"
25. The commission conducted a comparative landed price analysis comparing Hi-Steel's prices to prices from the countries with the lowest priced exports in the Australian market during the period of analysis, namely the United Arab Emirates (UAE), India and Vietnam. The commission also conducted a price undercutting analysis comparing Hi-Steel's prices to Australian industry and other subject exporters. The purpose of each of these analyses in REP

²⁵ Anti-Dumping Review Panel Decision No. 130 *Steel reinforcing bar exported from the Republic of Korea, Singapore, Spain (except Nervacero S.A.) and Taiwan (except Power Steel Co. Ltd)* July 2021, at [73] to [87].

²⁶ Confidential Attachment 17 Hi-Steel – Normal Value.

²⁷ Ground 3 in Appendix B to Austube's application dated 29 July 2022, p. 6.

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590 was to ascertain the competitiveness of Hi-Steel's prices against other prices in the Australian market, to assist the Commissioner to make a reasoned determination about Hi-Steel's likely future pricing behaviour. This was in the context of the Commissioner's finding that Hi-Steel did not dump its goods during the inquiry period (with a dumping margin of negative 9.3 per cent).

26. Hi-Steel only exported the goods to Australia with the MCC 'P-N-O-R-350-P' during the inquiry period.²⁸ As Austube highlights in its application, this is a base model of the goods, which is unpainted, ungalvanised and unfinished.²⁹
27. Part XVB of the Act does not prescribe any particular methodology for price undercutting or other price comparison analyses. It is nonetheless appropriate and important to consider factors affecting comparability when conducting any kind of price comparison. In this case, the commission acknowledged that there were limitations with its comparative landed price analysis because it was not able to account for differences in the models sold by the various exporters.³⁰ This is because the UAE, India and Vietnam were not subject countries in continuation inquiry 590. This meant the commission did not have detailed price data for exporters from these countries in order to compare prices at the model level. The commission instead used the best information available to it, which was import data from the Australian Border Force. This data is provided in a spreadsheet format, and among other things includes the tariff classification of each consignment along with a high-level description, however, at insufficient detail to determine the models within each consignment. Importantly, because of the limitations with this analysis and as the Commissioner explained in REP 590,³¹ this comparative landed price analysis was only one part of the Commissioner's overall assessment of whether the expiry of the measures would likely lead to a recurrence of dumping and material injury caused by Hi-Steel.
28. The commission also relied on its price undercutting analysis, which was conducted at the model level. The commission conducted both a macro level analysis by comparing the weighted average quarterly selling prices of Australian industry against the prices achieved by importers at an MCC level, as well as a micro level analysis comparing sales at the direct customer level.³² The commission found that Hi-Steel's export prices were lower than Australian industry prices.³³
29. Based on this price undercutting analysis, the Commissioner was satisfied that Hi-Steel was able to sell at a lower price than Australian industry without dumping.
30. The commission also took into account trends in Hi-Steel's sales volume and market share. Hi-Steel commenced exporting HSS to Australia in 2018 and since that time had achieved year on year growth in sales volumes and market share in the Australian market.³⁴ The commission had examined Hi-Steel's exports on one previous occasion since it started exporting, in Review 529. The commission found that Hi-Steel was not dumping (its dumping margin was negative 6.2 per cent).³⁵

²⁸ Hi-Steel verification report, Table 9 Domestic volumes, p.19.

²⁹ REP 590, Table 8 MCC Structure, pp.32-33.

³⁰ REP 590, pp.118-119.

³¹ REP 590, p.119.

³² REP 590, pp. 130-131.

³³ Confidential Attachment No. 34, worksheets 'Gal and Black', 'MCC undercutting' and 'MCC & customer'. The Korean prices the commission used in its price undercutting analysis were wholly based on Hi-Steel's exports.

³⁴ REP 590, p.118.

³⁵ REP 590, p.118. Hi-Steel was not exporting at the time of the original Investigation 177 or any earlier reviews or inquiries. Accordingly, the commission has not found Hi-Steel to be dumping at any time.

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31. It was based on the totality of these factors that the Commissioner found they could not be satisfied that there was a likelihood of future dumping by Hi-Steel if the measures were permitted to expire. The commission maintains that this finding was the correct finding based on the evidence before the commission.

Conclusion

32. For the reasons explained in sections 1 and 2, the commission maintains that the Commissioner determined Hi-Steel's normal value in the manner required by section 269TAC(1) of the Act and in accordance with the evidence before the commission. Accordingly, the commission considers that Orrcon's application and grounds 1 and 2 of Austube's application should be dismissed.
33. As we have explained in section 3, Austube's criticism pertains to an isolated aspect of the Commissioner's holistic assessment. The commission emphasises that its landed price comparison was only one part of the Commissioner's overall assessment of Hi-Steel's likely future pricing behaviour. The commission recognised the limitations of that analysis in REP 590. It was based on the totality of evidence before the commission, including its price undercutting analysis, past pricing behaviour, and trends in sales volume and market share, that the Commissioner found that they could not be satisfied that the expiry of the measures would lead or would likely lead to a recurrence of dumping and material injury caused by Hi-Steel. As Austube has not addressed other compelling factors which led the Commissioner's overall finding, the commission considers that ground 3 of Austube's application should also be dismissed.