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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 Frank Schoneveld
Anti-Dumping Review Panel
c/o- ADRP Secretariat

By email: ADRP@industry.gov.au

Dear Member Schoneveld

ADRP Review No. 165: Hot rolled coil steel exported to Australia from Taiwan

I write with regard to the notice under section 269ZZI of the *Customs Act 1901* (Cth) (the Act) published by the Anti-Dumping Review Panel (ADRP) on 18 January 2023.

The notice advised of your intention to review the decision of the Minister for Industry and Science to secure the continuation of anti-dumping measures applying to hot rolled coil steel exported from Taiwan pursuant to section 269ZHG(1)(b) of the Act.

The commission has considered the application submitted by China Steel Corporation 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.

Please let us know if we can assist you further in this matter.

Yours sincerely

Isolde Lueckenhausen
Acting Commissioner
Anti-Dumping Commission

17 February 2023

Australian Government
Department of Industry, Science and Resources

Anti-Dumping Commission

Introduction

1. The Anti-Dumping Commission (commission), on behalf of the Commissioner, makes this submission in response to an application for review by China Steel Corporation (CSC). The application challenges the Minister's decision to continue anti-dumping measures in relation to hot rolled coil steel (HRC) exported from Taiwan (the reviewable decision). In making his decision, the Minister considered and accepted the recommendations and reasons for recommendations, including all material findings of fact and law, of the Commissioner in *Anti-Dumping Commission Report No. 594* (REP 594).

2. The commission begins in section 1 (below) by setting out the various intermediate findings and considerations that underpinned the Commissioner's holistic assessment of whether the expiration of the measures would likely lead to a recurrence of dumping and material injury. We observe, in this regard, that CSC's application challenges only individual aspects of the Commissioner's overall conclusion.

3. In sections 2 and 3 (below), the commission responds to CSC's argument that the Commissioner failed to calculate a reasonable estimate of the non-injurious price (NIP) to compare with CSC's export prices as part of the likelihood of recurrence of material injury assessment. CSC also contends that the Commissioner erred in not treating evidence of CSC's export prices being above the NIP in previous periods as "positive evidence" that its future exports would likely also be non-injurious. The commission considers that an analysis of export prices and the NIP during the inquiry period would not have been a persuasive indicator of the likelihood of future injury given the anomalous market conditions found during that period. Similarly, evidence of previous exports above the NIP was not found to be a persuasive indicator of likelihood of future injury in the circumstances of this case.

4. The commission's submission is informed by consideration of the remarks of Wigney J in the recent Federal Court judgment of *Yara AB v Minister for Industry, Science and Technology* [2022] FCA 847 ('*Yara*'). Wigney J affirmed that a review to the ADRP is "*confined and constrained in certain respects … [i]n particular, the Review Panel must conduct the review in relation to the reviewable grounds and no other grounds*" and the Review Panel is not required to determine "*whether every finding made by the Commissioner on the way to arriving at its recommendation to the Minister was the correct or preferable decision*".[1] For instance, and relevantly for this review:

> "*If a reviewable ground was that the Commission had not correctly assessed and calculated the injury caused by the relevant exports, it might reasonably be expected that the Review Panel's reasons would focus on the means by which the Commission assessed and calculated the injury and whether there was any merit in the contention*

[1] *Yara* at [172]-[182]. See also 2015 Explanatory Memorandum, "Outline", "Overview of the Bill" where it is explained that amendments to the ADRP's standard of review were to "*ensure the Review Panel is only considering serious and meritorious reviews*" and to "*raise the procedural and legal threshold for parties to seek a merits review in anti-dumping matters*". The legislative history indicates that isolated or atomised aspects of an overall decision by the Minister should not alone be the basis for overturning that decision if they would not otherwise result in a material change. An applicant to the ADRP should show that the decision under review is not "correct or preferable" on the basis of the totality of factors informing that decision, even if the main grounds for review relate to individual aspects.

> *that the assessment and calculation was erroneous for some reason, or not open on the material."*[2]

5. In light of this guidance on the scope and standard of review, the commission has confined its submission to the precise claims made by CSC regarding the finding that "*recurrence of material injury was likely in the absence of measures*".

6. In so doing, the commission presents its view that the reviewable decision was the correct and preferable decision. CSC has failed to substantiate the deficiencies it alleges in the commission's assessment of the likelihood of recurrence of material injury and has not demonstrated that they would have led to a different overall decision. As a result, the application should be dismissed.

Section 1: The Commissioner's conclusion regarding the likelihood of recurrence of material injury must be assessed as a whole

7. As set out in REP 594, the Commissioner's finding challenged by CSC was comprised of a series of intermediate findings and considerations and was based on a holistic assessment of various factors. CSC's application contains considerations pertaining to individual aspects of the finding. Against that background, we consider it useful to draw the Member's attention to the broader context of the finding under review.

8. This broader context starts with a consideration of the nature of the Australian market for HRC. The commission has found the Australian HRC market to be highly price sensitive because of the substitutable nature of the domestically produced and imported HRC.[3] Historically, there has been a high degree of price competition in the Australian market for imports, particularly from Korea, China and Taiwan.[4] Exports from Taiwan have consistently held the largest volume and market share of all imports and have generally been the lowest priced in the market.[5] The commission has previously found that BlueScope Steel Limited (BlueScope) sets its prices using a benchmark based on import prices. In REP 188, Customs and Border Protection found that where the benchmark used by Australian industry to set its price was based dumped prices, this lowered the level at which industry could set its prices and had a direct flow through effect to revenue and profits.[6]

9. In the original investigation leading to the imposition of measures, these factors persuaded the commission that there was a causal link between dumped imports from Taiwan and material injury to the Australian industry.[7] The commission also found that these fundamental features of the Australian HRC market with respect to exports from Taiwan had not changed in the most recent continuation inquiry concluded in 2017.[8]

10. The task of the Commissioner under section 269ZHF(2) is to review an anti-dumping measure that has already been established, for the purpose of determining whether that

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[2] *Yara*, [185].
[3] REP 594, pp. 46, 56.
[4] REP 594, p. 56.
[5] REP 594, Confidential Attachment 2 – Australian HRC market; Confidential Attachment 19 – Will dumping continue.
[6] REP 188, pp. 57, 68.
[7] See REP 188.
[8] See REP 400.

measure should be continued or expire.[9] The focus of a continuation inquiry is an assessment of what will likely happen in the future; that is, whether the expiration of measures will lead or likely lead to a continuation or recurrence of dumping and material injury. The Act does not set out any particular methodology for undertaking this assessment.[10] Rather, there must be a "sufficient factual basis" for a likelihood of continuation or recurrence of dumping and material injury finding.[11]

11. We recall that the prerequisite findings of dumping and material injury, and a causal link between them, are presumed to have been made in an original investigation for the purpose of imposing measures. Accordingly, the Commissioner need not necessarily establish afresh a causal link between dumping and injury in a continuation inquiry.[12] However, the Commissioner may nonetheless re-examine aspects of causation as part of the continuation test when faced with evidence or submissions that rebut the continued existence of this causal link. This is the approach taken by the Commissioner in the present case.

12. The commission examined the evidence closely to satisfy itself of the continued existence of the causal link between dumping of exports from Taiwan and material injury to the Australian industry because of the following features the commission observed during the inquiry period:

    a. There was a significant improvement in the Australian industry's economic condition during the inquiry period when compared with previous periods.[13] The Australian market for HRC grew strongly[14], and BlueScope increased its sales volumes and achieved record profit levels in 2020 and 2021.[15]

    b. Although price suppression from dumping can still occur in a rising market, there were indicators that, despite being dumped, exports from Taiwan had not injured the Australian industry during the inquiry period. Price correlation between BlueScope's selling prices and imports from Taiwan appeared more partial and inconsistent than in previous periods. The commission's price undercutting analysis showed that whilst prices of exports from Taiwan were lower than BlueScope's prices in relation to some models in some quarters, in other instances BlueScope had achieved sales prices that

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[9] See Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 279. Section 269ZHF(2) was, according to its explanatory memorandum, intended to implement Article 11.3 of the Anti-Dumping Agreement (ADA) and Article 21.3 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Accordingly, the text of section 269ZHF(2) largely mirrors those provisions. As explained by Rares J in Siam Polyethylene Co Ltd v Minister of State for Home Affairs [2009] FCA 837 at 66, "*…although decisions of the WTO Appellate Body are not binding on Australian courts, ordinarily, they should be given substantial weight in selecting the appropriate construction to be given to the provisions of Pt XVB where the language chosen by the Parliament permits.*".

[10] This reflects the position under Article 11.3 of the ADA. See, for example, Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 281.

[11] Appellate Body, *US — Oil Country Tubular Goods Sunset Reviews*, para. 364. We further note that there is no requirement under section 269ZHF(2) to ascertain whether each individual factor or consideration is "likely" in the overall assessment under that section. Rather, the "likely" standard section 269ZHF(2) "*applies to the overall determinations regarding dumping and injury; it need not necessarily apply to each factor considered in rendering the overall determinations on dumping and injury*"; Appellate Body Report, *US – Anti-Dumping Measures on Oil Tubular Goods*, para. 108.

[12] Appellate Body Report, *US – Anti-Dumping Measures on Oil Country Tubular Goods*, para. 121 - 125; see also Panel Report, *EU – Footwear (China)*, para. 7.157; and Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, paras. 106-107.

[13] See Chapter 7 of REP 594.

[14] See Chapter 5.4 of REP 594, pp. 23

[15] REP 594, Figure 4, Figure 7.

were materially higher than those of imports.[16] Relatedly, the commission observed volatility in landed import prices which may have been (at least in part) attributable to fluctuating shipping costs.[17]

13. The commission examined this evidence closely to assess whether this might indicate that the causal link between dumping and injury had been severed. To the contrary, the commission found there was a more persuasive explanation for these circumstances observed during the inquiry period. The commission found that the inquiry period was marked by anomalous supply and demand conditions that could be attributed to the Covid-19 pandemic:

    a. There was a 25% expansion in the size of the Australian HRC market during the inquiry period.[18] The commission found that this was fuelled by government stimulus measures intended to support confidence in the residential construction industry, which led to increased activity in the residential construction sector, and a change in consumption patterns towards spending on consumer goods including home improvement materials.[19]

    b. Ocean freight costs from Taiwan to Australia during the inquiry period had increased by 74% compared to the period examined in Review 538.[20] This aligned with global trends in shipping costs[21] and resulted in higher landed prices of imports.[22]

    c. There were significant supply chain disruptions[23] which prevented imports from being able to compete month-to-month with Australian-produced goods. Importers cited certain Taiwanese exporters not having enough volumes available for export in some months or only offering limited volumes due to disruptions and shortages of available shipping.[24]

    d. The commission found that the trend across the broader economy, of "*disruptions in international supply chains [leading] to a shift in favour of local manufacturing*"[25], applied equally to the HRC market during the inquiry period. The contraction in shipping availability combined with increasing costs of international shipping adversely impacted overseas exporters, opening up opportunities for domestic suppliers to capture additional sales volume[26] and reducing the price influence of imports in the market.

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[16] REP 596, pp. 57-59. CSC contends that "*little weight should be given to patchy instances of undercutting*" observed in the commission's price undercutting analysis, and that these are "*more likely to be the result of volatility in raw material costs, importation expenses and foreign exchange rates*". The commission clarifies that it did not rely on observed instances of price undercutting as key to its recurrence of material injury finding. To the contrary, and as explained, the partial and inconsistent undercutting led the commission to examine closely the continued existence of a causal link between dumping and injury.
[17] REP 594, p. 56, Confidential Attachment 19 – Will dumping continue.
[18] REP 594, Figure 3; Confidential Attachment – Australian HRC market.
[19] REP 594, pp. 21-22, 61-62.
[20] REP 594, p. 20. The commission compared the unit ocean freight charges paid in Review 528 with the average charges paid during the inquiry period using verified data submitted in response to importer questionnaires.
[21] REP 594, Figure 14, p. 62-63.
[22] REP 594, Figure 11.
[23] REP 594, pp. 19-20.
[24] See Confidential Attachment 1 (Verification Work Program) to Importer verification report - Macsteel International Australia.
[25] ACCC, Container stevedoring monitoring report 2020-21, October 2021, Australian Government, 2021, p. 19, referred to at REP 594, p. 20.
[26] REP 594, p. 68.

e. The above factors fuelled a substantial hike in HRC prices in the Australian market over the inquiry period.[27]

14. The commission found that the result of these anomalous supply and demand conditions was a disconnect between Taiwanese and BlueScope prices during the inquiry period. The price advantage that can be conferred by dumping did not materialise and BlueScope moved to a position of comparative price advantage vis-à-vis imports. Ultimately, BlueScope's prices moved away from the prices of Taiwanese exporters.[28] Yet the commission did not find this to be evidence of a severed causal link between dumping and injury. Rather, the commission found that these supply and demand conditions would not persist into the future;[29] and that changes to the conditions of competition in the Australia market for HRC because of these anomalous supply and demand conditions were temporary, rather than permanent.

15. The commission found that the increase in demand in the Australian market for HRC during the inquiry period would not be sustained in the following years, noting that the HomeBuilder incentive ceased in April 2021, building approvals have since decreased[30], and monetary policy settings are being tightened to curb inflationary pressures.[31] Evidence before the commission showed that HRC prices had already begun to decrease by the end of the commission's inquiry.[32] The commission found that freight costs would normalise in the medium to long-term, noting that container costs had already decreased significantly from their peak in late 2021[33], and that supply chains would stabilise as the rebalancing in demand addresses issues of port congestion and container movements.[34]

16. The commission identified that the fundamental features found by the commission in REP 188 and Continuation Inquiry 400 were still present in the market. With supply chain conditions normalising, the Australian market for HRC returns to a market driven by a high level of price competition, where price is the most significant factor in purchasing decisions.[35] Taiwan remains the largest exporter of HRC to Australia[36] and it maintained its level of market share throughout 2019 to 2021[37] in a growing market despite high freight costs and shipping delays.[38] HRC imported from Taiwan and HRC produced by the Australian industry is sold to common customers in the Australian HRC market. Sales to common customers between importers and the Australian industry accounted for 13% of the Australian industry's total sales volume during the inquiry period, and 78% of the importers' total HRC (of Taiwanese origin) sales volumes.[39] The commission found that BlueScope's import parity pricing (IPP) benchmark continued to include offers from Taiwan. Particularly before the anomalous period during the inquiry period, the lowest import offers were mostly from Taiwan.[40]

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[27] REP 594, pp. 49-50, 53.
[28] REP 594, p. 64.
[29] REP 594, pp. 62-64.
[30] REP 594, p. 68.
[31] REP 594, p. 53.
[32] REP 594, p. 74; Confidential Attachment 23 – Export prices post inquiry period; EPR 594, document no 22. Submission by BlueScope dated 11 September 2022.
[33] REP 594, Figure 14.
[34] REP 594, p. 53, 62.
[35] REP 594, p. 55.
[36] REP 592, pp. 47-48.
[37] REP 592, Confidential Attachment 2 – Australian HRC market.
[38] The commission considered that had supply chains not been disrupted during the inquiry period, export volumes from Taiwan and other countries would likely have been even higher; REP 594, p. 61.
[39] REP 594, pp. 57-59, 66.
[40] REP 594, pp. 66-67; Confidential Attachment 20 – BlueScope's IPP and market intelligence.

17. As the anomalous supply and demand conditions associated with the pandemic recede, and the conditions of competition in the market normalise, the commission found that the close price competition between the Australian industry and dumped Taiwanese exports would likely result in the Australian industry either having to reduce its prices to compete, or face losing market share.[41] As explained in REP 594, *"each 1% of market share represents approximately A$8 million in revenue*" and thus "*even small movements in market share can be materially injurious"*.[42]

18. CSC has not challenged these other intermediary findings on which the Commissioner's overall conclusion regarding the likelihood of recurrence of material injury was based.

Section 2: Comparative analysis using 'NIP estimate' during inquiry period not a meaningful indicator of likelihood of recurrence of material injury

19. CSC contends that the Commissioner failed to calculate a reasonable estimate of the non-injurious price (NIP) during the inquiry period, in order to conduct a comparative analysis of export prices during the inquiry period relative to the NIP as part of the commission's likelihood of recurrence of material injury assessment.

20. CSC's application does not appear to challenge the correctness of the NIP ascertained as a variable factor under section 269TACA for the purpose of determining whether to apply the lesser duty rule. Rather, CSC's argument is that the commission's "*inability to calculate a meaningful USP and NIP due to data limitations as highlighted in REP 594 should not prevent the calculation of a reasonable 'NIP estimate' for [the] material injury assessment, even though those same limitations may prevent the imposition of a lesser duty*".[43]

21. In support of its argument, CSC relies on various passages from the commission's Dumping and Subsidy Manual which reference the use of the NIP in assessing injury and causation.[44]

22. The commission rejects CSC's argument. The commission considers that the limitations affecting the commission's ability to calculate a USP with a "fair degree of precision"[45] on which to base a NIP for the purpose of applying the lesser duty rule, would also affect the reliability and usefulness of any "NIP estimate" used to assess the likelihood of a recurrence of material injury. Further, given the anomalous market conditions explained in section 1 above that the commission found to prevail during the inquiry period, the commission considers that a comparative analysis of the NIP, export prices and industry selling prices during this period would not have been a reliable indicator of whether the expiration of measures would likely lead to a recurrence of material injury.

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[41] REP 594, p. 64. We note in this regard that there is no requirement for the commission in a continuation inquiry to "*specify the time-frame within which the 'simultaneous presence' of subject imports and the corresponding likely injury would occur*": see Appellate Body Reports, *US – Anti-Dumping Measures on Oil Country Tubular Goods*, para. 166; *US – Oil Country Tubular Goods Sunset Reviews*, para. 364.
[42] REP 594, p. 64.
[43] CSC's application, Attachment B, p. 9. According to CSC, *"the level of dumping duties to be imposed are intended to prevent recurrence of material injury, and as such, it is important for the calculated NIP to include a fair degree of precision. However, the NIP used for assessing material injury need only be a 'reasonable estimate' as it is used in the [c]ommission's comparative assessment as a notional measure of price at which point injury to the industry may not be caused by dumping. This is simply an indicator of whether injury caused by dumping is occurring."*
[44] CSC's application, Attachment B, p. 7-8; Dumping and Subsidy Manual, December 2021, pp. 108-109.
[45] CSC's application, Attachment B, p. 9.

23. Under section 269TACA, the NIP of the goods exported to Australia is defined, relevantly, as the minimum price necessary to prevent the injury, or a recurrence of the injury, to the Australian industry caused by the dumped goods the subject of a dumping duty notice. The legislation does not prescribe a method of calculating a NIP, but there are several methods outlined in the Manual. The commission generally calculates a NIP based on a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price or USP.[46] But in this case, the commission considered that it was unable to calculate an accurate USP for the reasons explained in REP 594.[47]

24. We recall that CSC does not appear to challenge the existence of these limitations preventing the calculation of a USP with a "fair degree of precision". Instead CSC submits that it was nonetheless "*incumbent on the [c]omission to undertake a proper comparison of CSC's export prices, with estimates of the NIP and the Australian industry's estimate USP, as recommended by the ADRP*" and that "*at the very least, the [c]omission ought to have utilised threshold analysis to understand the likelihood of Australian industry achieving price ranges proportional to the margin between CSC's [ascertained export price] and NIP found in SEF 594*".

25. CSC's application cites no authority for this proposition.[48] We recall that section 269ZHF(2) does not prescribe any particular methodology for assessing whether the expiration would lead or likely lead to a continuation or recurrence of dumping and material injury. The Manual outlines that the commission *may* gather information about the prices of exports as compared with the NIP and USP where relevant as a part of a continuation inquiry.[49] We note section 35.3 of the Manual sets out an extensive, and expressly non-exhaustive, list of the kinds of factors the Commissioner may consider in a continuation inquiry.[50] But the guidance in the Manual does not detract from the Commissioner's discretion to determine a suitable methodology for assessing the likelihood of continued or recurring dumping and material injury according to the facts and circumstances of a given case. We recall that the Commissioner is required to have a sufficient factual basis for the overall conclusion; there is no requirement under section 269ZHF(2) to conduct a comparative analysis using the NIP as part of a continuation inquiry.

26. The commission considers that the limitations preventing the calculation of an accurate USP demonstrate the lack of utility any comparative analysis involving a "NIP estimate" could have had to the task at hand. Moreover, the commission considers that in the present case a comparison between a NIP and export prices during the inquiry period would have provided no meaningful assistance to the future-oriented task of assessing the likelihood of recurrence of injury. This is because, as explained above, the inquiry period was marked by anomalous market conditions which the commission does not consider are a reliable indicator of future market conditions.

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[46] Dumping and Subsidy Manual, December 2021, Chapter 24.

[47] REP 594, pp. 70-72. We also note that HRC prices and cost to make and sell rose significantly over the inquiry period, which detracts from the usefulness of any weighted average NIP either in applying the lesser duty rule or as part of an injury assessment; see REP 594, Figure 6.

[48] We note the ADRP case referred to in CSC's application is a reinvestigation request, and not a decision. The statement by the Member in the request constituted a suggestion as to factors the commission may wish to consider in its reinvestigation, in circumstances where the reinvestigation had been requested as a result of a distinct and unrelated calculation error in the commission's price undercutting analysis. See EPR for ADRP Review No. 2022/155.

[49] Dumping and Subsidy Manual, December 2021, pp. 136-138.

[50] Dumping and Subsidy Manual, December 2021, pp. 136-138.

27. The commission rejects CSC's submission that "*by comparing CSC's AEPs during the inquiry period with this maximum benchmark NIP, it may have revealed that even at this unlikely level, CSC's exports were non-injurious*". This focus on the inquiry period is misconceived; as noted at paragraph 16.b above, the commission did not make a finding that dumped imports from Taiwan caused injury during the inquiry period. Similarly, CSC's contention that *"[t]his type of analysis would have also been useful for understanding the degree to which CSC's export prices could have been reduced, and still remained non-injurious"* is misconceived because, as we have explained, the commission found that what occurred during the inquiry period was not a reliable indicator of what would likely happen in the future as the supply and demand effects of the pandemic receded.

28. Even if the Member considers the commission could or should have taken a different approach to calculating the NIP in this case, we note that a review ground can only succeed if it constitutes grounds for finding that the overall decision was not correct or preferable. Given there is no requirement under section 269ZHF(2) to conduct the kind of analysis contended for by CSC, as well as the reasons explained above for why a NIP-based comparative analysis would have been of no utility in the present case, and the preponderance of other factors relied upon by the Commissioner to support the finding that recurrence of material injury was likely, this argument cannot succeed as a basis for finding that the Minister's decision to secure the continuation of the measures was not correct or preferable.

Section 3: Evidence of exports below ascertained NIP in previous periods not a reliable indicator of future injury

29. CSC also contends that evidence showing that its weighted average ascertained export price was above the ascertained NIP and floor price in previous inquiry periods demonstrates that CSC's exports were not injurious during those periods and, relatedly, is "positive evidence" that future exports from Taiwan would similarly not be injurious.[51] The commission disagrees with this argument.

30. As the commission noted in REP 594, in Continuation Inquiry 400 and Review 528, the commission found that CSC's exports were not dumped.[52] Accordingly, the relevance of those exports being priced above the NIP to the likelihood of future dumped exports causing injury is limited. In addition, contrary to CSC's claim that it consistently exported above the floor price, the commission found that the prices of some goods exported by CSC during the December quarter of 2020 and the March quarter of 2021 were in fact lower than the floor price, resulting in the payment of IDD on those goods.[53]

31. It was not the task of the Commissioner in this continuation inquiry to reassess the accuracy of the NIP ascertained in previous inquiries and reviews. However, the commission notes that there is an innate lag in establishing a NIP based on the USP, which is usually relevant to the market 12 to 18 months before it becomes operative. In the context of a rising market, this means the NIP (and the floor price, if set by reference to the NIP) can readily become outdated.

32. When examining prices in the market compared to the NIP in previous inquiry periods, the commission observed that not only was there a disconnect between export prices and the NIP,

[51] CSC's application, Attachment B, pp. 9-11.
[52] REP 594, p. 66.
[53] REP 594, p.66. The commission also found that the price of some goods exported by Shang Chen Steel Co., Ltd was lower than the floor price in effect during the first quarter of the inquiry period, resulting in the payment of IDD. We note in this regard that the Commissioner's finding regarding the likelihood of recurrence of dumping and material injury applies to exports from Taiwan as a whole, and not just CSC.

but there was also a disconnect between the NIP and Australian industry selling prices. This is also suggestive that the NIP during those periods may have been understated.

33. The commission considered that the prevailing NIP during previous periods may not have been an accurate indicator of a price at which exports were non-injurious at all times during those periods. Thus, the fact of export prices being observed to be above the NIP and floor price in previous periods may not be dispositive of whether or not they caused injury.

34. For the reasons above, the commission considered that evidence of CSC's export price being above the NIP in previous periods was not a reliable indicator of the likelihood of future dumping causing a recurrence of material injury.[54]

Conclusion

35. CSC contends that the "*positive evidence available to the commission ... would support a finding that HRC imports by CSC are non-injurious and the measures are not warranted*". We recall the remarks of the Appellate Body in relation to "positive evidence" in continuation inquiries:

> *The requirements of "positive evidence" must, however, be seen in the context that [continuation inquiry determinations] are prospective in nature and that they involve a "forward looking analysis". Such an analysis may inevitably entail assumptions about or projections into the future. Unavoidable, therefore, the inferences drawn from the evidence on record will be, to a certain extent, speculative. In our view, that some of the inferences drawn from the evidence are projects into the future does not necessarily suggest that such inferences are not based on "positive evidence".*[55]

36. The Commissioner's overall conclusion that the expiration of the measures would likely lead to a recurrence of dumping and material injury was based on a holistic assessment of the evidence before the commission, having regard to the character of the Australian market for HRC and the conditions of competition found to ordinarily prevail in that market. The commission conducted a rigorous examination of the evidence and drew inferences from that evidence to make projections about what would likely occur were the measures to expire. This included a consideration of any alternative explanations arising on the evidence, as explained in paragraphs 11 to 13 above.

37. As we have observed above, CSC's application does not substantiate the deficiencies it alleges with respect to individual aspects of the Commissioner's overall conclusion. Further, none of the isolated aspects of the Commissioner's overall finding that CSC has challenged would result in a different finding when that finding is understood in light of the totality of factors on which it was based. CSC has not challenged the other intermediary findings and inferences which led to the Commissioner's overall determination.

38. Accordingly, for the reasons outlined, the commission's view is that CSC has not demonstrated that the Minister's decision to secure the continuation of the anti-dumping measures was not the "correct or preferable" one.

[54] REP 594, p.66.
[55] Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para 341.