



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: 29 Morrow Road, O'SULLIVAN BEACH, SA, 5166
Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: [REDACTED]
Position: Manager – Trade Measures
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 Precision pipe & tube, and was the applicant company in relation to s.269TDA(2) 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 were the subject of the reviewable decision are:

Certain electric resistance welded pipe and tube made of carbon steel, whether or not including alloys, comprising circular, rectangular and square hollow sections in metallic coated and non-metallic coated finishes. Metallic finish types for the goods include galvanised and aluminised. Non-metallic finishes include hot-rolled and cold-rolled.

Sizes of the goods are, for circular products, those equal to or less than 21 millimetre ("mm") in outside diameter. Also included are air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter. For rectangular and square products, those with a thickness of less than 1.6 mm (being a perimeter up to and including 260 mm).

Included within the goods are end-configurations such as plain, square-faced and other (e.g. threaded, swaged and shouldered).

The goods include all electric resistance welded pipe and tube made of steel meeting the above description of the goods (and inclusions), including whether the pipe or tube meets a specific structural standard or is used in structural applications.

7. Provide the tariff classifications/statistical codes of the imported goods:

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Act 1995*:

- 7306.30.00 (statistical code 30);
- 7306.50.00 (statistical code 45);
- 7306.61.00 (statistical codes 21); and
- 7306.69.00.10.

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number:

2021/110

Date AND was published:

27 September 2021

****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 2021/110 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 a Chinese exporter countervailable subsidy under *Program 20 – Hot rolled steel provided by government at less than fair market value* (“Program 20”) using the Chinese domestic steel market as the prevailing market benchmark was not the correct or preferable decision. The Minister did not have sufficient regard to the

prevailing market conditions for Hot Rolled Coil (“HRC”) steel in China, and did not consider that the extent and degree of the Government of China’s (“GOC’s”) involvement in the Chinese HRC market significantly distorted all Chinese HRC prices, not just the prices for HRC supplied by State Invested/State Owned Enterprises.

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, the determination of a Program 20 countervailable subsidy using a non-Chinese HRC benchmark, and the consequent assessment of above de-minimis subsidy margins under this program for cooperative and non-cooperative Chinese exporters.

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 correct or preferable decision would result in the Minister publishing ADN 2021/110 detailing that Program 20 was determined as a countervailable subsidy program, and assigning revised above de-minimis subsidy to margins to cooperative and non-cooperative entities.

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.

Non-Confidential Attachment 1: Report 550 – Appendix A

Non-Confidential Attachment 2: Report 177 (HSS) – Part II Excerpt

Non-Confidential Attachment 3: Report 419 (HSS) – Appendix D Excerpt

Non-Confidential Attachment 4: Report 529 (HSS) – Appendix B Excerpt

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*.

Signature:

Name: [REDACTED]

Position: [Manager – Trade Measures](#)

Organisation: [Orrcon Manufacturing Pty Ltd](#)

Date: [27 / 10 / 2021](#)

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:
Organisation:
Address:
Email address:
Telephone number:

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:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /



Customs Act 1901 – Part XVB

Precision pipe and tube steel

Exported to Australia from the People’s Republic of China and the Socialist Republic of Vietnam

Findings in Relation to a Subsidisation Investigation

Public notice under section 269TJ(1) and (2) of the Customs Act 1901¹

Anti-Dumping Notice (ADN) No. 2021/110

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged subsidisation of precision pipe and tube steel exported to Australia from the People’s Republic of China (China) and the Socialist Republic of Vietnam (Vietnam).

Precision pipe and tube steel, the subject of the investigation (the goods) is described as follows:

Certain electric resistance welded pipe and tube made of carbon steel, whether or not including alloys, comprising circular, rectangular and square hollow sections in metallic coated and non-metallic coated finishes. Metallic finish types for the goods include galvanised and aluminised. Non-metallic finishes include hot-rolled and cold-rolled.

Sizes of the goods are, for circular products, those equal to or less than 21 millimetres (“mm”) in outside diameter. Also included are air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter. For rectangular and square products, those with a nominal thickness of less than 1.6 mm (being a perimeter up to and including 260 mm).

Included within the goods are end-configurations such as plain, square-faced and other (e.g. threaded, swaged and shouldered).

The goods include all electric resistance welded pipe and tube made of steel meeting the above description of the goods (and inclusions), including whether the pipe or tube meets a specific structural standard or is used in structural applications.

Oval and other shaped hollow sections which are not circular, rectangular or square, are excluded from the goods.

¹ All legislative references are to the *Customs Act 1901* (the Act), unless otherwise specified.

The goods are generally, but not exclusively, classified to the following tariff classifications in Schedule 3 of the *Customs Tariff Act 1995*:

Tariff Subheading	Statistical Code	Description
7306		OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL:
7306.30.00		Other, welded, of circular cross-section, of iron or non-alloy steel:
	30	Not exceeding 21 mm external diameter
7306.50.00		
	45	<i>Other, welded, of circular cross-section, of other alloy steel</i>
7306.6		Other, welded, of non-circular cross-section
7306.61.00		<i>Of square or rectangular cross-section, of iron or non-alloy steel, not exceeding 279.4 mm perimeter:</i>
	21	Wall thickness not exceeding 2 mm

Table 1 Summary of tariff subheadings

These tariff classifications and statistical codes may include goods that are both subject and not subject to this investigation. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description.

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No. 550* (REP 550). In REP 550, the Commissioner sets out the investigation findings and recommends the publication of a countervailing duty notice in respect of the goods. I have considered REP 550 and accepted the Commissioner's recommendations and reasons, including all material findings of fact and law on which the recommendations were based and particulars of the evidence relied on to support the findings. The report is available at: www.adcommission.gov.au

On 11 August 2021, the Commissioner terminated the subsidy investigation into the goods exported from Vietnam.² *Termination Report No. 550* (TER 550) sets out the reasons for this termination. This report is also available at: www.adcommission.gov.au

On 27 August 2021, the Commissioner terminated the subsidy investigation into the goods exported from China by Dalian Steelforce Hi-Tech Co., Ltd and Yantai Aoxin International Trade Co., Ltd. REP 550 sets out the reasons for these terminations.

Particulars of the subsidy programs and level of subsidisation established are set out in Table 2.

Country	Exporter	Countervailable subsidy program*	Subsidy Margin (%)
China	Non-cooperative entities	550-2, 1, 2, 5-8, 10, 14-19, 21, 29, 32, 35-39, 41, 42, 44, 45, 48-52	42.7%

Table 2 Summary of countervailable subsidies and subsidy margins

* The names and details of each of the above countervailable subsidy programs are contained within REP 550.

² ADN No. 2021/100.

I, ANGUS TAYLOR, the Acting Minister for Industry, Science and Technology have considered and accepted the Commissioner's recommendations in REP 550. I have considered the reasons for the recommendations, the material findings of fact on which the recommendations are based, and the evidence relied on to support those findings in REP 550.

I am satisfied, as to the goods that have been exported to Australia, that countervailable subsidies have been received in respect of the goods. Consequently, I am satisfied that material injury to the Australian industry producing like goods might have been caused, if security had not been taken. Therefore, under section 269TJ(1) of the *Customs Act 1901* (the Act), I DECLARE that section 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

- (i) the goods, and
- (ii) like goods that were exported to Australia from China and entered for home consumption on, or after, 2 June 2021.³

I am also satisfied that a countervailable subsidy has been received in respect of the goods that have already been exported to Australia, and that a countervailable subsidy may be received in respect of like goods that may be exported to Australia in the future. Consequently, I am satisfied that material injury to the Australian industry producing like goods has been caused or is being caused. Therefore, under section 269TJ(2) of the Act, I DECLARE that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exports of the goods and like goods from China, excluding exports by Dalian Steelforce Hi-Tech Co., Ltd and Yantai Aoxin International Trade Co., Ltd.

The considerations relevant to my determination of material injury to the Australian industry caused by subsidisation are the economic indicators of the Australian industry set out below:

- reduced sales volume
- price depression
- price suppression
- reduced profit
- reduced profitability
- reduced revenue
- reduced employment numbers
- reduced return on investment, and
- reduced inventory turnover.

³ The Commonwealth took securities following the Commissioner's Preliminary Affirmative Determination published on 1 June 2021. Section 45 and section 269TN(2) of the Act enable securities to be taken for goods entered for home consumption prior to the publication of this notice.

I have also had regard for the size of the subsidy margins, the volumes and prices of exports from China, the importance of price in the industry, and evidence of import prices impacting upon pricing negotiations in the market.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of subsidised goods, and have not attributed injury caused by other factors to the exportation of those subsidised goods.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel. This can be done in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the non-injurious prices of the goods (as ascertained in the confidential tables to this notice) will not be published, as they may reveal confidential information.

Clarification about how measures and securities are applied to 'goods on the water' is available in ACDN 2012/34, published at: www.adcommission.gov.au

REP 550 and other documents included in the public record may be examined at the Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at: www.adcommission.gov.au

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2527 or by email at: investigations3@adcommission.gov.au

Dated this twenty-seventh day of September, 2021

A handwritten signature in black ink that reads "Angus Taylor". The signature is written in a cursive, flowing style.

ANGUS TAYLOR
Acting Minister for Industry, Science and Technology

APPENDIX B
Elaboration of the grounds raised in question 10

I. Introduction

On 16 March 2020, Orrcon Manufacturing Pty Ltd (“Orrcon”) lodged an application with the Commissioner in accordance with subsection 269TB(1) of the *Customs Act 1901* (“the Act”) seeking the publication of a dumping duty notice in respect of Precision Pipe and Tube (hereafter referred to as “the goods”) exported to Australia from China, Korea, Taiwan and Vietnam, and a countervailing notice in respect of the goods exported from China and Vietnam.

Having considered the application, the Commissioner decided not to reject the application and initiated Investigation 550 on 31 March 2020. Public notification of the initiation was also made on 31 March 2020 (refer ADN No. 2020/030).

Consideration Report No. 550 confirmed that, in respect of the investigation:

- the period for the purpose of assessing dumping and subsidisation was 1 January 2019 to 31 December 2019; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry had been caused by exports of dumped and subsidised goods was from 1 January 2016.

The Statement of Essential Facts (“SEF 550”) was published on 1 June 2020, detailing the Commission’s preliminary findings and conclusions. On 16 July 2021, the Commission published ADN 2021/094¹ advising of the fifth extension of time to issue the Final Report. The Final Report was due to be furnished to the Minister on or before 27 August 2021.

On 1 June 2021, the Commission imposed a Preliminary Affirmative Determination (PAD 550) via ADN 2021/074 against certain exporters for the rates specified in the Notice.² Securities became payable on or after 2 June 2021.

Following SEF 550 and PAD 550, the Commission published two Termination Notices:

- ADN 2021/100, dated 10 August 2021³ (accompanied by Termination Report 550⁴); and
- ADN 2021/111, dated 27 August 2021⁵.

On 27 September 2021, the Commission published the Final Report (“Report 550”), accompanied by ADN 2021/109 (findings in relation to a Dumping investigation) and ADN 2021/110 (findings in relation to a Subsidisation investigation).

As outlined in this application, Orrcon requests that the Anti-Dumping Review Panel (“ADRP”) review the Minister’s subsidisation decision relating to ADN 2021/110. Orrcon has detailed its grounds for review of the Minister’s decision below.

¹ EPR Folio No. 66.

² ADN 2021/074

³ EPR Folio No. 68.

⁴ EPR Folio No. 67

⁵ EPR Folio No. 69.

II. Ground:

The decision by the Minister to accept the Commissioner's recommendation that the determination of a Chinese exporter countervailable subsidy under *Program 20 – Hot rolled steel provided by government at less than fair market value* using the Chinese domestic steel market as the prevailing market benchmark was not the correct or preferable decision. The Minister did not have sufficient regard to the prevailing market conditions for Hot Rolled Coil ("HRC") steel in China, and did not consider that the extent and degree of the Government of China's involvement in the Chinese HRC market significantly distorted all Chinese HRC prices, not just the prices for HRC supplied by State Invested/State Owned Enterprises.

A. Introduction

B. Relevant Information – Investigation 553 (Painted Steel Strapping) – Reliance Flawed

C. Relevant Information – Review 529 (Hollow Structural Sections) and Trade Remedy Precedent – Correct Considerations

A. Introduction

In Report 550, the Commissioner assessed whether HRC⁶ had been provided by the Government of China ("GOC") to Chinese exporters of the goods at less than fair market value under Program 20 during the investigation period.⁷ In determining whether a benefit had been provided, the Commissioner held that:

In determining whether there has been a benefit provided under this program, the amount of benefit received where there has been a provision of goods or services by the government has been determined as the difference between:

- *the price paid by enterprises for the government provided goods or service, and*
- *adequate remuneration for the product or service in relation to prevailing market conditions.*

The Commission considers that the prevailing market conditions for HRC (and other coil types such as CRC and pre-galvanised coil derived from HRC) is the Chinese domestic market for HRC, notwithstanding that the Commission has found that there is a market situation in respect of HRC within the domestic Chinese market.⁸

To determine the adequacy of remuneration, the Commission compared Chinese HRC purchase price data by private companies (this being, according to the Commission, the benchmark for adequate remuneration under prevailing market conditions) against purchases from State Owned Enterprises ("SOE's"). For the cooperating exporter Dalian Steelforce Hi-Tech Co., Ltd ("Dalian"), the Commission found that HRC prices offered to it by Chinese SOE's were higher than prices offered by private Chinese companies, and therefore no countervailable benefit was conferred. For non-cooperative exporters, the Commission applied the same methodology as that of Dalian, and similarly found no benefit.

Orrcon respectfully disputes the Commission's reference to the in-country Chinese, and supposedly private, HRC price as the benchmark in the subsidy assessment. Orrcon will evidence below that the correct and preferable decision was for the Commissioner to recommend, and the Minister to accept, that the Program 20 benchmark against which SOE prices were compared ought to have been an external non-Chinese benchmark.

⁶ In this context HRC refers to either bare, cold-rolled, coated, or galvanized, and is the major raw material input for Precision pipe & tube.

⁷ The investigation period for Investigation 550 was calendar year 2019 ("CY2019").

⁸ Report 550, p. 148.

B. Relevant Information – Investigation 553 (Painted Steel Strapping) – Reliance Flawed

Report 550

Section 269TACC of the Act⁹ governs the assessment of whether a financial contribution, or income, or price support, confers a benefit. Section 269TACC(3) provides that:

(3) *In determining whether a financial contribution confers a benefit, the Minister must have regard to the following guidelines:*

...

(d) *the provision of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the goods or services are provided for less than adequate remuneration.*

269TACC(4) then relevantly provides:

(4) *For the purposes of paragraphs (3)(d) and (e), the adequacy of remuneration in relation to the goods or services is to be determined **having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.** (emphasis added).*

In Report 550, the Commission:¹⁰

...considers that the prevailing market conditions for HRC is the Chinese domestic market for HRC, notwithstanding that the Commission has found that there is a particular market situation in respect of HRC within the domestic Chinese market.

In the Commission's examination of the conditions of competition in the Chinese steel market for the HRC raw material, and in its consideration and reliance on all relevant information before it in making the above Chinese prevailing market conclusions, it elected to place sole reliance on *Investigation 553 – Painted Steel Strapping*. Investigation 553's inquiry period covered the twelve months ending March 2020 (an overlap of nine months with Precision pipe & tube), and its Statement of Essential Facts ("SEF 553") was published on 23 April, 2021. The Commission's reliance was such that:¹¹

Due to the similarities in the particular market situation allegations and the raw material inputs in the 2 cases, the Commission has had regard to the response by the GOC in Investigation 553 in its consideration of this investigation, pursuant to section 269TDAA(2)(b).

...

While the Commission has found that a particular market situation in respect of the Chinese market for [Precision] like goods, the Commission is satisfied, based on the findings of Investigation 553, that there is a large volume of participants who engage in commercial negotiations in the sale and purchase of HRC, which is indicative of competition, albeit impacted by government distortions.

Orrcon asserts that commercial negotiations for the sale and purchase of HRC in the Chinese market does not occur **by virtue of** the Particular Market Situation ("PMS"). In other words, because of the PMS, there are no prevailing commercial/private market conditions in China for HRC to which a benchmark can be accurately

⁹ All legislative references are to the *Customs Act 1901*, unless otherwise stated.

¹⁰ Report 550, p. 84.

¹¹ Report 550, p. 50-51.

established. This is supported by a lengthy body of Australian trade remedy precedent, specific to steel pipe & tube (and related steel products), which is discussed further below.

For the moment, Orrcon submits that the Commission's above finding contradicts its PMS findings elsewhere in Report 550.

Appendix A to Report 550¹² detailed the Commission's lengthy assessment of whether a Chinese PMS existed for the goods during the investigation period. The Commission assessed:

- GOC policies affecting the steel industry;
- Initiatives influencing Chinese steel markets;
- Industry planning guidelines and directives;
- Role and operation of SOE's;
- The role of the GOC in private firms;
- Direct and indirect financial support;
- Taxation arrangements;
- Competition in Chinese steel markets;
- The GOC's influence on the Chinese market for the goods; and
- Comparison of raw material prices.

The Commission concluded, considering a detailed assessment of the above, that a PMS for the goods existed on the domestic market in China.¹³

Relevant to Orrcon's HRC Program 20 benchmark objection, Report 550 identified that the GOC's exertion of significant influence over the Chinese steel market had an obvious and quantifiable effect on the comparability of steel (i.e. HRC) raw material prices vis-à-vis competitive markets:¹⁴

*...the Commission considers that **normal competitive market conditions** prevail in the Korean and Taiwanese domestic markets for steel coil and that purchases of steel coil in these markets are not influenced by prices in China. The Commission therefore considers that steel coil purchases in these markets are suitable for comparison with steel coil purchases in China to quantify the effect of GOC influence on Chinese steel coil prices during the investigation period. (emphasis added).*

leading the Commission to conclude that:¹⁵

...Chinese exporters clearly benefit from lower prices for raw materials compared to producers, because of a market situation affecting steel prices in the country.

The Commission considers that the difference between prices represents the degree to which GOC influence has distorted steel coil prices in the Chinese domestic market.

Orrcon had earlier provided relevant information in support of an affirmative China PMS finding. In Orrcon's August 2020 public file submission,¹⁶ multiple steel feed price comparisons were made which highlighted material differences and demonstrated that Chinese prices are artificially low. These were:

- i. a [commercial-in-confidence data source] price comparison of Chinese HRC, CRC (as the key and substantially cost-proportional input into the manufacture of the subject goods), and Hot Dipped Zinc Coated (galvanised) steel ("HDG") with prices in other comparable domestic markets. On an \$AU/tonne

¹² Non-Confidential Attachment 1. Report 550, Appendix A: Assessment of Particular Market Situation – China.

¹³ Report 550, p. 45.

¹⁴ Report 550, p. 142.

¹⁵ Final Report, p. 145.

¹⁶ EPR Folio No. 39.

basis, Orrcon demonstrated that Chinese domestic prices were consistently (and materially, in the case of HRC by up to [XX]%) lower than the comparable markets of South Korea, Taiwan, and Japan:

Confidential Charts 1-3: Home Market Price Analysis; HRC / CRC / HDG

- ii. a comparison of [*commercial-in-confidence data source*] prices from the above comparable markets with other Chinese benchmarks from [*commercial-in-confidence data source*]. This yielded a similar result to the above. The price types quoted were as follows, and were represented in Tables 4-6 of the submission (the yellow line depicting the Chinese price in all instances):
 - a. [*commercial-in-confidence data source*];
 - b. [*commercial-in-confidence data source*]; and
 - c. [*commercial-in-confidence data source*].

Confidential Chart 4: China [*confidential data source*] HRC v's [*confidential data source*] Asia HRC

Confidential Chart 5: China [*confidential data source*] CRC v's [*confidential data source*] Asia CRC

Confidential Chart 6: China [*confidential data source*] HDG v's [*confidential data source*] Asia HDG

For each of the Chinese index prices, a systematic and material difference existed between in-China, and the higher comparable market prices.

- iii. a long-term [*commercial-in-confidence data source*] global HRC and CRC price comparison (China being the red line):

Confidential Chart 7: World Steel Price Index: Hot Rolled Band

Confidential Chart 8: World Steel Price Index: Cold Rolled Coil

China's domestic prices are consistently the lowest of the chartered prices. All charts above supported the conclusion that steel feed prices of a hot-rolled base in China are suppressed due to the influence of the GOC's policies, and the consequent price impact this has in a sector predominately comprised of SOE participants. This was confirmed by the Commission in Report 550, yet the overwhelming evidence that Chinese HRC prices are not market-based has not dissuaded the Commission from concluding that there exists a sub-set of trade in HRC goods in China that makes it suitable for a market-based comparison in determining a countervailable benefit under Program 20.

The acceptance of Chinese domestic HRC/CRC prices was not the correct or preferable decision for the Commission to make, or the Minister to accept.

Investigation 553

Report 550's only basis for establishing that *....there is a large volume of participants who engage in commercial negotiations in the sale and purchase of HRC, which is indicative of competition, albeit impacted by government*

*distortions*¹⁷ was the Commission's preliminary conclusions in SEF 553.¹⁸ In the absence of any other economic rationale in Report 550, SEF 553 therefore needs to be considered by the Panel Member in assessing what ought to have been the correct and preferable Ministerial decision.

SEF 553 examined the Chinese conditions of competition for the raw material HRC used in the manufacture of painted steel strapping. It preliminarily determined:¹⁹

The GOC submitted that Chinese producers of the goods used raw materials sourced from both local and foreign suppliers. However, from the data provided to the Commission during verification, the major raw material used in the production of the goods in China is CRC, purchased from Chinese suppliers.

The GOC submitted prices for HRC (and accordingly CRC) are unregulated. Prices are set in the market through commercial transactions between buyers and sellers and result in competitive prices.

While the Commission has found a particular market situation in respect of the Chinese market for the goods, as set out in chapter 6.3.5, the Commission is satisfied that, like the market for painted steel strapping, there is a large volume of participants who engage in commercial negotiations in the sale and purchase of HRC and CRC, which is indicative of competition, albeit impacted by government distortions.

...

Based on the information available to the Commission, the Commission agrees with the GOC that the Chinese domestic market for CRC and HRC is competitive. However, the Commission disagrees that prices are not "artificially low" and is satisfied the evidence from the verification of the cooperative exporter's raw material costs and MEPS data indicates Chinese manufacturers have access to cheaper raw material inputs. The Commission considers the Chinese domestic market conditions lead to lower prices for HRC and CRC due to the distortions in the Chinese market.

These statements are critical, as they are the Commission's only indication of its fundamental change of view of the HRC market in China. In SEF 553, the Commission does not provide any other detailed economic analysis to rationalise this. Orrcon submits that the Commission's conclusions in SEF 553 were unsatisfactory and inconsistent with earlier findings concerning HRC on the Chinese domestic market, and therefore relevantly, that the Commission's reliance on this in establishing the Program 20 benchmark for Investigation 550, and the Minister's consequent acceptance of this, was also unsatisfactory.

Whilst SEF 553 provides the less-than-detailed conclusions above (to which a significant finding is then drawn for the Program 20 benchmark), Report 550 provides even less support for the same significant conclusion, and simply references the Painted Steel Strapping inquiry (i.e. SEF 553). The lack of detail (and single-source precedent reliance) was inadequate for the intended purpose and is in conflict with earlier steel industry findings.

It was incumbent on the Commission to consider all relevant information before it in Investigation 550. The Commission clearly considered SEF 553 as one such (and the only) source. With no cooperative engagement provided by the GOC in Investigation 550, the Commission ought to have also examined the lengthy body of Chinese Program 20 (and related) trade remedies precedent it itself has made in earlier investigations. In doing so, the Commission would have then had sufficient regard to the prevailing market conditions in China (in accordance with s269TACC(4)), and would have then correctly and preferably determined that the basis for the Program 20 HRC benchmark must lie outside the Chinese market (i.e. the use of Korean and Taiwanese domestic markets as precedent in past steel industry cases involving China).

¹⁷ Report 550, p. 51.

¹⁸ The Final recommendation for Investigation 553 is currently due no later than 26 October 2021.

¹⁹ SEF 553, p. 38-39.

C. Relevant Information – Review 529 and Trade Remedy Precedent – Correct Considerations

Orrcon emphasises that the position on the use of a non-Chinese HRC benchmark in calculating a Program 20 Less than Fair Market Value/Less Than Adequate Remuneration (“LTAR”) benefit for steel pipe & tube has been officially affirmed time again by the decision-making hierarchy of the Australian anti-dumping system. Specifically, precedent is established for Hollow Structural Sections (“HSS”) in this regard (steel pipe & tube, whether HSS or Precision, are both made from substrate HRC). The following table therefore provides a useful summary of relevant key precedent, from earliest to most recent:

Inquiry No.	Goods	Inquiry Period	PMS	LTAR	Non-Chinese Benchmark	Benchmark
177	Hollow Structural Sections (investigation) ²⁰	Jul. 2010 – Jun. 2011	✓	✓	✓	Verified HRC costs of cooperating exporters from Korea, Malaysia, and Taiwan.
379	Hollow Structural Sections (continuation)	Jul. 2015 – Jun. 2016	✓	✓	✓	Verified HRC costs of cooperating exporters from Korea, Malaysia, and Taiwan.
419	Hollow Structural Sections (variable factors review)	Jul. 2016 – Jun. 2017	✓	✓	✓	Verified HRC costs of cooperating exporters from Korea and Taiwan.
529	Hollow Structural Sections (variable factors review)	Oct. 2018 – Sep. 2019	✓	✓	✓	Verified HRC costs of cooperating exporters from Korea, Taiwan, and Thailand.

Non-Confidential Table 1: Relevant Precedent Findings

In all instances above, a China PMS was found, HRC was provided by public bodies at LTAR, and the Commission had regard to the prevailing market conditions in China in accordance with the Act. The benchmark prices used for HRC were external selling prices to the Chinese market.

In the more recent variable factors review 419 (“Review 419”) tabled above, the Commission:²¹

...considers that, absent distortions in the Chinese HRC market, that market would be the most relevant market in which to assess the adequacy of remuneration. In that case the Commission would assess adequacy of remuneration for HRC by comparing prices paid by HSS producers for HRC supplied by SIEs with a benchmark using Chinese HRC prices.

*However, the Commission has had regard to prevailing market conditions for HRC in China and considers that **the extent and degree of GOC involvement in the Chinese HRC market has significantly distorted all Chinese HRC prices, not just the prices for HRC supplied by SIEs.** The Commission considers therefore that any benchmark that uses Chinese HRC prices would be an unreliable comparator in assessing adequacy of remuneration under s269TACC(3)(d).*

*The Commission considers that the distortions in the Chinese HRC market are such that **an external benchmark for HRC prices must be used in assessing the adequacy of remuneration.** The Commission considers that the benchmark of verified actual HRC costs for HSS exporters within the region for which it has reliable, contemporary, verified information (namely from Korea and Taiwan) is suitable for determining the adequacy of remuneration having regard to the prevailing market conditions in the Chinese HRC market. (emphasis added).*

In its assessment of the relevant information before it in Investigation 550, the Commission should have considered that Review 419 determined that all Chinese HRC prices were unreliable for the Program 20 benchmark. The recency of this decision (as only 18 months prior to Investigation 550) should have also been a key consideration

²⁰ Report 177 (refer Non-Confidential Attachment 2).

²¹ Report 419, p. 87 (refer Non-Confidential Attachment 3).

– the Chinese HRC steel industry has not transformed to such an extent over this intervening period to permit a completely in-country non-price-distorted benchmark assessment.

Of even more and key relevance to the Commission should have been the findings in HSS variable factors review 529 (“Review 529”). Review 529’s investigation period overlapped Investigation 550 by a nine-month period. During this 9- month period, the Commission was assessing on two fronts whether the same HRC prices from the same country for conversion into similar pipe & tube steel products could be reliably used for the Program 20 benchmark. Review 529 concluded:²²

The Commission considers that the GOC, as a shareholder in a steel mill, has direct influence over the operations of that mill. As steel mills in China, regardless of ownership, are already subject to the directives, plans and guidelines of the central government, the Commission considers that the role of the GOC as shareholder serves to strengthen compliance with, and serve the direction of, the central government.

In the absence of relevant information held but not provided by the GOC and in light of all available information, the Commission concludes that Chinese steel mills, whether wholly or partially owned by the GOC, possess, exercise and are vested with governmental authority and are therefore public bodies.

For the purposes of determining whether Program 20 conferred a benefit to Tianjin Ruitong and Tianjin Youfa, the Commission has found that

- *in relation to the goods exported to Australia from China, HRC was provided for LTAR (section 269TACC(3)(d)); and*
- *the **benchmark of verified actual HRC costs for HSS exporters from Korea, Taiwan and Thailand was suitable for determining the adequacy of remuneration having regard to the prevailing market conditions in the Chinese HRC market (section 269TACC(4)).** (emphasis added).*

In Review 529, the Commission correctly referenced verified HRC costs for subject goods exporters from Korea, Taiwan, and Thailand due to the GOC’s ongoing across-the-board influence and impact on Chinese HRC prices. Yet at the same time for almost the same time period (and again, for the same HRC, for the same end-use, and for the same Australian export market) Report 550 incorrectly concluded that a sub-set of supposedly private HRC prices were available in the Chinese market as a suitable benchmark.

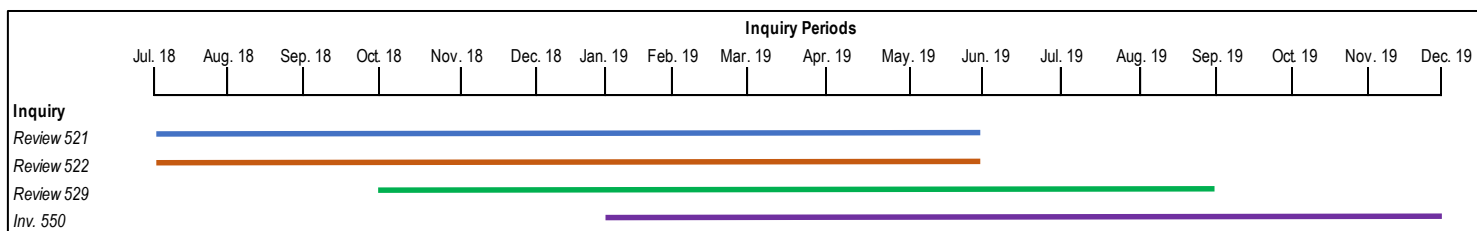
A third and fourth point of relevant information for the Commission were the variable factor reviews conducted for the fiscal year 2019 period for zinc coated (galvanised) steel (“Review 521”) and aluminium zinc coated steel (“Review 522”) where Chinese HRC at LTAR was assessed.²³ In both reviews, the Commission concluded that HRC purchases in Korea, Taiwan and Vietnam could be utilised to quantify the effect of the GOC’s influence on Chinese HRC prices,²⁴ and that certain Chinese exporters were in receipt of a countervailable HRC at LTAR subsidy.

The concurrent inquiry periods for Investigation 550, and Review’s 529, 522 and 521 can be expressed as follows:

²² Report 529, p. 154 (refer Non-Confidential Attachment 4).

²³ In these reviews, the LTAR program was titled ‘Program 1 – Hot rolled steel provided by government at fair market value’ in accordance with the program nomenclature established in original trade remedies investigation No. 193.

²⁴ Report 521/522, p. 117.



Non-Confidential Table 2: Concurrent Inquiry Periods

For the 6-month period January – June 2019, the Commission was considering/investigating four instances of Chinese HRC at LTAR and the appropriate benchmark to use. In three of these four, the Commission rightly concluded to use an external non-Chinese benchmark in calculating the subsidy. The Commission’s benchmark approach in Investigation 550, in contrast, did not and was clearly an outlier.

The precedent established by the Commission against Report 550’s Program 20 benchmark conclusions in this regard is stark and overwhelming. Whilst it is acknowledged that the level of GOC engagement and cooperation in trade remedy inquiries will be a consideration for the Commission in terms of the relevant information before it,²⁵ reliance on one cooperative GOC response, indirectly via a separate trade remedies inquiry (i.e. the SEF 553 findings), does in no way detract from the substantial body of evidence confirming the ongoing existence of a PMS in China for HRC, and the consequent implication of there being no reliable Chinese HRC market prices for assessing HRC less than fair market value countervailing.

Therefore, the correct and preferable decision in Report 550 was for the Commissioner to recommend, and the Minister accept, the calculation of countervailable subsidy margins for cooperative and uncooperative Chinese exporters under Program 20 using an external HRC benchmark from available HRC domestic prices in Korea, and Taiwan (and potentially Thailand).

²⁵ The GOC cooperated in Investigation 553, but did not do so in Review 419, or Review 529.



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT NO. 550

**ALLEGED DUMPING OF
PRECISION PIPE AND TUBE STEEL**

**EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA,
THE REPUBLIC OF KOREA, TAIWAN AND
THE SOCIALIST REPUBLIC OF VIETNAM**

AND

**ALLEGED SUBSIDISATION OF
PRECISION PIPE AND TUBE STEEL**

**EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA AND
THE SOCIALIST REPUBLIC OF VIETNAM**

27 August 2021

APPENDIX A ASSESSMENT OF PARTICULAR MARKET SITUATION – CHINA

This appendix sets out the Commission's assessment of whether a particular market situation existed in the Chinese market for the goods during the investigation period.¹³³

A1 The GOC role in the Chinese steel market

A1.1 Overview

The Chinese economy in general has undergone significant economic structural reforms to transition towards greater liberalisation of trade and foreign direct investment inflows and outflows. However, the role of government at all levels in the Chinese economy, controlling trade and foreign direct investment liberalisation for social and economic purposes, has created a hybrid system in China where decisions of the market are heavily influenced by government, as opposed to conditions of competition. Simply put, Chinese firms selling and purchasing in China's steel markets set prices and make purchasing decisions that are influenced by the directives and policies of the GOC, competition with SOEs that reflect the economic, social and fiscal goals of the GOC, as well as private firm competition on price, product and market share.

A1.2 GOC policies affecting the steel industry

The Chinese steel industry is of significant importance to China's national, economic and social security. Growth in this industry has been dependent on structured investment in, and funding of, fixed assets in SOE steel mills, steel production output for massive infrastructure and urbanisation projects supported by the GOC and export oriented trade.

A1.3 Initiatives influencing Chinese steel markets

In order to achieve such significant steel manufacturing output to achieve supply-side economic growth and reform, the GOC manages an array of subsidy programs, soft lending and credit facilities, preferential loans, land grants and capacity controls to drive domestic output and consumption of steel. In recent years, China's steel industry has played an important role in its economic structural reform and as such, changes in response to global issues and concerns are slow and incremental. The Commission understands that the GOC prefers incremental reform, so as not to induce "shock" changes and sudden reforms in its steel industry, which has the potential to risk the livelihoods of directly employed workers and workers employed in related industries.

Specific initiatives, implemented to address imbalances in the Chinese steel market broadly, include the Central Government's supply-side reform initiatives, *Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry* (GOC Advice) and *The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry* (GOC Opinions).

¹³³ The Commission's assessment of proper comparison is set out in respect of each exporter in 6.4.

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The GOC Advice proposed that SOEs reduce their capacity by 100 to 150 million tonnes by 2020, via the banning of new capacity building and elimination of what are colloquially known as “zombie mills”.¹³⁴ The Central Government had also pledged a RMB 100 billion fund for employee compensation, social security payments and plant closure incentives in the coal and steel sectors.¹³⁵

The GOC Opinions forbid the registration of new production capacity in any form and requires that any production that does not meet environmental, energy consumption, quality, safety or technical standards be taken offline.¹³⁶

The Commission recognises the GOC’s attempts to restructure and reorganise the industry to manage excess capacity, oversupply and environmental concerns. Examples of these capacity management measures announced include tightening bank lending to smaller mills, industry consolidation through mergers and acquisitions and use of stricter environmental requirements to forcibly shut down capacity.¹³⁷ While noting these efforts are targeted at correcting current imbalances and resulting distortions, the Commission considers them to be evidence of the extent of the GOC’s involvement within and influence over the broader steel industry during the investigation period.

The key concern with zombie mills is that they reflect capacity that is idle rather than capacity that has been removed from the market permanently. This means that, while the temporary removal of this capacity has helped support competitive market conditions, those same plants have potential to return to production when higher steel prices prevail, leading to further distortions.¹³⁸ The extent of this issue is reflected in the concern that a significant amount of the capacity removed in 2016 was already idle, and that the real capacity permanently removed is estimated to be in the range of 12 million to 20 million tonnes per year, compared to the reported 65 million tonnes.¹³⁹ As at April 2017, it was reported that China had an estimated 650 million tonnes of overcapacity, and favourable market conditions would likely extend the lifespan of zombie companies, delaying the GOC’s steel industry reforms.¹⁴⁰

In addition, local governments have not fully implemented the central directives on capacity reduction, with reports that steel mills engage in “capacity swapping” by moving capacity to more favourable regions, thereby maintaining or increasing the mill’s capacity.¹⁴¹

¹³⁴ Liu. H & Song. L, 2016, pp338-339. AME Group, Steel 2016: June Quarter, Strategic Market Study. 2016, Q2. p.9. These mills would be shut down under normal competitive market conditions, due to either poor profitability or insolvency.

¹³⁵ Duke Centre on Globalisation, Governance & Competitiveness (Duke Centre), 2016. *Overcapacity in Steel: China’s role in a global problem*, September 2016, p.38.

¹³⁶ KPMG, 2016. The 13th 5 Year Plan: China’s Transformation and Integration with the World Economy, p.29. Sourced from GOC Opinions, State Council, 4 February 2016.

¹³⁷ Platts, 2016. Global Market Outlook, Steel Business Briefing. January 2016, p.14.

¹³⁸ Platts, 2017. Global Market Outlook, Steel Business Briefing. January 2017, p.10.

¹³⁹ Ibid.

¹⁴⁰ DBS Asian Insights, China’s steel sector supply reform, April 2017, p.5.

¹⁴¹ Steel Guru, [China to further tighten steel capacity swapping rules - NDRC](#) (10 May 2019) and [China to Halt Capacity Swaps Project Approvals in Steel Industry](#) (24 January 2020).

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The effectiveness of the GOC's attempts to address overcapacity through mergers and acquisitions have been constrained by:

- the replacement of older mills with new larger and more efficient mills
- closing smaller mills to offset the commissioning of new larger mills.

While this is likely to improve the industry's structure over the longer term, its impact to date has been to increase production and exacerbate the existing structural imbalances. For example, the announcement of the creation of the BAOWU Steel Group indicated that it would decommission 2.5 million tonnes of capacity to address overcapacity, however, it also commissioned 9 million tonnes of new capacity at its Zhanjiang facility.¹⁴² In 2019, BAOWU Steel Group expected to increase its annual steel production capacity by twenty million tonnes after an agreement to merge with Magang (Group) Holding Co Ltd.¹⁴³

In citing the GOC's ongoing interventions within the domestic steel industry, it is the Commission's view that these attempts to address existing structural imbalances have had limited success to date. Constraints in the effectiveness of these initiatives not only relate to the extent of the existing imbalances in the industry, but also difficulties in coordinating activities between central, provincial and local levels of government. The resistance of provincial and local governments to closing down mills relates to their role as major employers, sources of tax revenue and providers of social services within their respective regions.¹⁴⁴ Specific examples of these issues include the reliance of their tax systems on business revenue (including production based VAT) and gross domestic product (GDP) oriented performance measures which encourage over-investment.¹⁴⁵

A1.4 Industry planning guidelines and directives

The central body responsible for developing and administering planning directives, and providing overarching approval of large-scale investment projects within China is the National Development and Reform Commission¹⁴⁶ (NDRC). It is the Commission's view that directives from the NDRC, as the GOC's central planning authority, would thus be central to both industry specific 'five-year plans' and the planning decisions of all levels of government more generally. More explicit enforcement mechanisms are reflected in the *Notice of the State Council on Further Strengthening the Elimination of Backward Production Capabilities and Guidelines* (the GOC Guidelines).¹⁴⁷ Mechanisms to address non-compliance include:

- revoking of pollutant discharge permits
- restrictions on financial institutions providing new credit support
- restrictions on examination and approval of new investment projects
- restrictions on approval of new land for use by the enterprise

¹⁴² Platts, 2016. Global Market Outlook, Steel Business Briefing. June 2016, p.11.

¹⁴³ Reuters, 2019, '[China Baowu Steel to take majority stake in rival Magang](#)'.

¹⁴⁴ Platts, 2016. Global Market Outlook, Steel Business Briefing. April 2016 p.16.

¹⁴⁵ Duke Centre, *op cit* (172), p.29.

¹⁴⁶ [National Development and Reform Commission](#).

¹⁴⁷ [*Notice of the State Council on Further Strengthening the Elimination of Backward Production Capabilities*] State Council (China), Notice no. 7, 6 April 2010 ('GOC Guidelines').

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- restrictions on issuing of new, and cancelling of existing, production licenses.

According to reports, the GOC Guidelines state that enterprises that do not conform to the industrial policy shall not be provided financial support by financial departments. More implicit enforcement mechanisms are reflected by the regulatory powers of bodies, such as the Ministry of Industry and Information Technology. It is the Commission's understanding that such bodies maintain lists of companies that are deemed to be either compliant or non-compliant with national standards on production, environmental protection, energy efficiency and safety. Those deemed non-compliant are to be closed.¹⁴⁸

It is the Commission's view that the effectiveness of the above mentioned mechanisms are reflected in the responsiveness of industry groups and major companies to the GOC's various directives.

China adopted its 13th *Five-Year Plan for National Economic and Social Development* (the Plan) on 15 March 2016. The Plan outlines China's goals, principles and targets for infrastructure, the environment, financial services, health and social and economic development for the 5 years to 2020. The Plan has a strong emphasis on supply-side structural reform that promotes the upgrade of industrial structures, strengthening market oriented reforms, reducing industrial capacity, inventory, financial leverage and costs, and correcting structural shortcomings.¹⁴⁹ The Plan remained current in the investigation period.

To support the Chinese steel industry's development in line with the Plan, the *Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)* (the Upgrade Plan) was developed. The Upgrade Plan proposed to raise the average annual growth rate of industrial added value from 5.4% in 2015 to 6% by 2020, raise the capacity utilisation rate from 70% in 2015 to 80% by 2020, and raise the industrial concentration in top 10 producers from 34.2% in 2015 to 60% by 2020.¹⁵⁰ Examples of the Chinese steel industry's response to these directives was reflected in the restructuring of the BAOWU Steel Group. In 2019, BAOWU Steel Group was the largest producer of crude steel in China and the second largest worldwide.¹⁵¹

There have been a number of GOC policies, plans and initiatives relevant to the China steel industry published over many years, including the *National Steel Industry Development Policy* (2005), the *Blueprint for the Adjustment and Revitalisation of the Steel Industry* (2009) and the *2011-2015 Development Plan for the Steel Industry*

¹⁴⁸ Office of the Chief Economist, Department of Industry, Innovation and Science, Resources and Energy Quarterly (December 2015), p. 47.

¹⁴⁹ KPMG, 2016. The 13th 5 Year Plan: China's Transformation and Integration with the World Economy, p.3. Sourced from GOC Opinions, State Council, 4 February 2016.

¹⁵⁰ King & Spalding, China Issues 13th Five Year Plan for the Steel Industry, Yan, Linga, November 22, 2016.

¹⁵¹ [2020 World Steel in Figures](#), World Steel Association, May 2020.

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(2011).¹⁵² As these plans have ended, the Commission's view is that these have been largely superseded by further policies and plans.

Some of the key themes and objectives of major GOC planning guidance and directives used to influence the structure of the Chinese steel industry include:

1. Steel Industry Adjustment Policy (2015 Revision)
 - upgrading product mix
 - rationalising steel production capacity
 - adjustments to improving organisational structures
 - energy conservation, emission reductions, environmental protection
 - production distribution
 - supervision and administration
 - guiding market exit
 - methods of orientation and oversight of mergers and reorganisations
 - consolidate number of steel companies
 - lift capacity utilisation rates to 80% by 2017.

2. Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy
 - promoting of economic restructuring to prevent inefficient expansion of industries that have resulted from blind expansion
 - intensify the implementation of industrial policies related to the iron and steel sector to strengthen the examination thereof and to improve them in practice.

3. State Council Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation¹⁵³
 - SOEs restructuring and reorganisation should serve national strategies, respect market rules, combine with reforms, follow laws and regulations, and stick to a coordinated approach
 - state-owned capital should support SOEs, whose core businesses are involved in national and economic security and major national programmes, to strengthen their operations, and allow non state-owned capital to play a role, while ensuring the state-owned capital's leading position
 - related departments and industries requested to steadily promote restructuring of enterprises in fields such as equipment manufacturing, construction engineering, electric power, steel and iron, non-ferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.

4. The Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)

¹⁵² In noting that some of the listed documents are now dated, the Commission considers that this further demonstrates long term involvement of the GOC within the Chinese steel industry.

¹⁵³ *General Office of the State Council on Promoting Central Enterprises: Guidance on Structural Adjustment and Restructuring*] State Council on Promoting Central Enterprises (China), Notice no. 56, 26 July 2016 http://www.gov.cn/zhengce/content/2016-07/26/content_5095050.htm.

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- removal of 100 to 150 million tonnes of capacity between 2016 and 2020
 - raising of capacity utilisation rates to 80% by 2020
 - further industry consolidation leading to 10 largest producers accounting for 60% of production by 2020.
5. Guiding Opinions on Accelerating the Merger and Acquisition and Reorganisation in Key Industries (2013)¹⁵⁴
 6. Three-Year Action Plan to Win the Blue Sky War (2018–2020, published 2018).¹⁵⁵

In addition, broader industrial restructuring and reorganising directives of the GOC have an impact on the Chinese steel industry.¹⁵⁶

In assessing the relevance of these planning guidelines and directives, the Commission notes the importance of the GOC's national 5-year plans which provide the overarching framework for the industry and local government plans. Regarding industry specific planning guidelines and directives, the Commission notes, but does not agree with, the GOC's previously expressed view that they are for guidance and are not enforceable.¹⁵⁷ Mechanisms through which the Commission considers the GOC is able to enforce these guidelines and directives include the presence and role of SOEs within the broader steel industry, the role of the NDRC and explicit enforcement mechanisms. The GOC, where it is also the majority owner of an SOE, can exert its influence through the appointment of board directors and chief executives.¹⁵⁸

SOEs' significant share of total Chinese steel production, and propensity to follow government guidance and directives, ensures that the GOC is able to influence broader trends in industry capacity and steel production. Similarly, the NDRC, through its dual role of developing planning guidelines and directives and approving large scale investment projects, has the capacity to ensure that the broader objectives of the central government are implemented. Explicit enforcement mechanisms detailed within directives, such as the State Council notice on *Further Strengthening the Elimination of Backward Production Capabilities and Guidelines*, includes a range of sanctions, such as revocation of pollutant discharge permits, restrictions on the provision of new credit support, restrictions on the approval of new investment projects, and restrictions on the issuing of new and cancelling of existing production licenses.¹⁵⁹

¹⁵⁴ *Guiding Opinions on Accelerating the Merger and Acquisition and Reorganisation in Key Industries*] Ministry of Industry and Information Technology (China), Notice no. 16, 22 January 2013 http://www.gov.cn/zwqk/2013-01/22/content_2317600.htm.

¹⁵⁵ *Three-Year Action Plan to Win the Blue Sky War*] State Council (China), Notice no. 22, 27 June 2018 http://www.gov.cn/zhengce/content/2018-07/03/content_5303158.htm.

¹⁵⁶ For example, Notice of Several Opinions on Curbing Overcapacities and Redundant Constructions in Certain Industries and Guiding the Healthy Development of Industries (2009), Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013), Guiding Opinions on Resolving Serious Excess Capacity Contradictions (2013) and Directory Catalogue on Readjustment of Industrial Structure (2013 Amendment).

¹⁵⁷ *International Trade Remedies Branch Report No. 177* (REP 177), p.123 refers.

¹⁵⁸ Dong Zhang and Owen Freestone, *China's Unfinished State-Owned Enterprise Reforms* (2013), [Economic Roundup](#), The Treasury, Australian Government, issue 2, pp. 79-102.

¹⁵⁹ REP 177, p.128 refers.

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A further example of the GOC's use of planning guidelines and policy directives to achieve its objective can be seen in the GOC's *Standard Conditions of Production and Operation of the Iron and Steel Industry*. It is the Commission's understanding that this document sets out the minimum requirements for production and operation in the Chinese steel industry. Firms are incentivised to comply with the standard conditions, as doing so provides the basis for policy support. In contrast, firms that do not conform are required to reform, and if they still fail to conform, must gradually exit the market.¹⁶⁰

A1.5 Role and operation of SOEs

It has been observed that:

[SOEs] are an organic component of China's political and economic governance, although their contribution to the national output has shrunk to 40%. They are still considered to be substantial building blocks of the economy and act as a buffer against internal shocks and external threats.¹⁶¹

The Chinese economy is commonly described as a 'socialist market economy' as it features dominant SOEs co-existing with market capitalism and private enterprise.¹⁶² Commentary provided with the 2019 Fortune 500 list indicates that of the 129 Chinese companies listed that year, SOEs accounted for 80% of the revenue earned, an increase of 4% on the previous year.¹⁶³

Between 2010 and 2015, SOEs accounted for 44% of total Chinese steel production.¹⁶⁴ However, this may have been as high as 60%.¹⁶⁵

The World Bank has found that "state enterprises have close connections with the Chinese government. SOEs are more likely to enjoy preferential access to bank finance and other important inputs, privileged access to business opportunities, and even protection against competition."¹⁶⁶

While the Commission does not consider that the presence of these entities alone causes markets to be distorted, it does consider that the presence of these entities is likely to result in the GOC's plans and directives being adhered to. The Commission also considers that the support provided to these entities by the GOC has enabled many of them to be operated on non-commercial terms for extended periods, significantly impacting supply and pricing conditions within the domestic Chinese market.¹⁶⁷

¹⁶⁰ Announcement on the *Standard Conditions of Production and Operation of the Iron and Steel Industry*. Included in the context of REP 177 on the [EPR for that case](#).

¹⁶¹ Amir Guluzade, published on the World Economic Forum website, [How reforms have made China's state owned enterprises stronger](#) (21 May 2020).

¹⁶² Asialink Business, [Overview of China's economy](#), accessed 21 July 2020.

¹⁶³ <https://fortune.com/2019/07/27/ceo-daily-july-27-sino-saturday/>.

¹⁶⁴ Liu. H & Song. L, 2016, p.349.

¹⁶⁵ Platts Steel Business Briefing (Platts), *Global Market Outlook*, January 2016, p.14.

¹⁶⁶ World Bank, China 2030: Building a Modern, Harmonious, and Creative Society, Report No. 96299 (March 2013), p.25.

¹⁶⁷ Anti-Dumping Commission, Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016 (Commissioner's Steel Report), p.47.

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Examples of these support mechanisms include government subsidies, support from associated enterprises (through direct subsidy, interest-free loans or provision of loan guarantees) and loans from state-owned banks.¹⁶⁸

The Commission considers these mechanisms have supported the rapid expansion of steel production capacity in the SOE segment, in spite of repeated attempts by the Central Government to reduce the scale of steel production. It is also the Commission's view that these support mechanisms have created rigidities in the way recipient firms respond to price and profit signals and hence have significantly contributed to the excessive investment in capacity, excess steel production and distorted prices.

The significance of SOEs to the broader Chinese economy, including the steel industry, is also reflected in the State Council of China's *Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation* (the *Guidance*).¹⁶⁹ In introducing the *Guidance*, the State Council notes the important role of SOEs in actively promoting structural adjustment, optimisation of structural layout and quality improvement within the Chinese economy. The *Guidance* also indicates that the State Council will deepen reform of SOE policies and arrangements to optimise state owned capacity allocation, promote transformation and upgrading. Details concerning the promotion of central enterprises restructuring and reorganisation include the 'safeguard measures' theme, the strengthening of the organisation and leadership of SOEs, strengthening of industry guidance, increased policy support and improved support measures more generally.

In 2019, the GOC announced its intention to introduce a 3-year action plan on SOE reform, which reflects the continuation of the significance of SOEs to the Chinese economy.¹⁷⁰ The plan is designed to target mixed-ownership reform and strategic restructuring in sectors including coal and electricity, steel and non-ferrous metal. In recent years SOE reform has focussed on consolidation through mergers and acquisitions, which has (arguably) increased the state's presence in the market.¹⁷¹

The Commission considers that in combination with slow, incremental policy reform and the GOC's economic and fiscal stimulus packages, the role of SOEs in general, involved in "...capital intensive sectors that produce intermediate but highly tradable goods with important linkages to other upstream and downstream economic activities, such as the mining, chemicals or even electronics sectors..."¹⁷² provides a buffer to the Chinese steel industry from external market forces. Those SOEs "...operating in upstream sectors... provide inputs to steel companies at below-market prices and in preferable terms. The same applies to downstream [SOE] companies buying steel products at above-market rates, thus providing support to steel companies. In addition, several concerns relate to the functioning of the financial sector in the presence of [SOEs]."¹⁷³

¹⁶⁸ Liu. H & Song. L, 2016, p.348.

¹⁶⁹ The State Council, notice advising the issuing of the [guideline on reorganization of SOEs](#) (July 2016).

¹⁷⁰ The State Council, notice [urging SOEs to increase profitability and deepen reform](#) (July 2020).

¹⁷¹ Hong, Y (2019), 'Reform of State-owned Enterprises in China: The Chinese Communist Party Strikes Back', *Asian Studies Review*, pp.332-351.

¹⁷² OECD Steel Committee, [State Enterprises in the Steel Sector](#) (20 December 2018), p.5.

¹⁷³ OECD Steel Committee, [State Enterprises in the Steel Sector](#) (20 December 2018), p.8.

A1.6 The role of the GOC in private firms

In addition, the Commission understands that whilst not expressly compulsory under law, private firms engage with the policies and objectives of the GOC by aligning their commercial interests with industry directives and where relevant, appointing party members on supervisory boards.

A1.7 Direct and indirect financial support

Examples of specific support programs provided to Chinese steel producers by the GOC, as identified by the American Iron and Steel Institute and the Steel Manufacturers Association, include preferential loans and directed credit, equity infusions and/or debt-to-equity swaps, access to land at little or no cost, government mandated mergers (permitting acquisition at little or no cost) and direct cash grants for specific steel construction projects.¹⁷⁴ Similar programs have been previously identified by the Commission in respect of the Chinese steel industry. It is the Commission's view that these programs have directly contributed to conditions within the Chinese steel industry during the investigation period by providing direct financial support to recipient steel producers.

The Commission notes that countervailable subsidies have been received by exporters from China (see chapter 7 of this Report). These subsidies and tax concessions reduce the operating costs of Chinese steel enterprises, confer a competitive advantage through the ability to offer steel products at lower prices, and increase the profitability of steel production.¹⁷⁵ It supports unprofitable producers, delaying or preventing their timely exit from the industry.

A1.8 Taxation arrangements

The Commission has previously identified evidence of export taxes and export quotas on a number of key inputs in the steel making process including coking coal, coke, iron ore and scrap steel in *Anti-Dumping Commission Report No. 198*.¹⁷⁶ The Commission found that these measures would keep input prices artificially low and create significant incentives for exporters to redirect these products into the domestic market, increasing domestic supply and reducing domestic prices to a level below what would have prevailed under normal competitive market conditions.

The GOC has traditionally operated, amongst other taxation arrangements, a VAT and a VAT rebate system for certain exported goods which has undergone incremental change. In 2018 and 2019, the GOC implemented a further series of VAT reforms, which included lowering the VAT rates paid, as described in the table below.

¹⁷⁴ Duke Centre, *op cit* (172), p.25.

¹⁷⁵ Commissioner's Steel Report, at www.adcommission.gov.au p.45.

¹⁷⁶ Concerning hot rolled plate steel exported from China, the Republic of Indonesia, Japan, the Republic of Korea and Taiwan; pp. 41-43.

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	Tier 1 VAT rate payable	Tier 2 VAT rate payable	Tier 3 VAT rate payable	Tier 4 VAT rate payable
Pre-1 July 2017	17%	13%	11%	6%
1 July 2017	17%	11%	6%	<i>Tier 4 revoked</i>
1 May 2018	16%	10%	6%	
1 April 2019	13%	9%		

Table 20 – VAT rate reform in China 2017 to 2019¹⁷⁷

The relevant VAT rate for the goods during the investigation period was 16% from 1 January to 31 March 2019, and then 13% from 1 April 2019 onwards.

Under the Chinese VAT system, VAT is paid on consumption of goods, including the inputs used in the production of steel. For goods produced and sold within China, the tax is ultimately paid by the final consumers of the particular good "...and successive tax payers are allowed to deduct the VAT they pay on their purchases while they account for VAT they collect on the 'value added'".¹⁷⁸ Because it is difficult for exporters to pass on the input VAT tax to export customers, eligible steel exporters have traditionally been compensated for input VAT paid during the production process via the payment of VAT rebates.

Through altering the VAT rebates and taxes applied to steel exports, the GOC is able to alter the relative profitability of different types of steel exports compared to domestic sales. For example, by either reducing VAT rebates or increasing export taxes on steel exports, the GOC is able to reduce the relative profitability of exports to domestic sales and hence provide significant incentives for traditional exporters to redirect their product into the domestic Chinese market. By using these mechanisms to alter the relative supply of particular steel products in the domestic market, the GOC is also able to influence the domestic price for those products.

During the investigation period, the applicable VAT rebate rates for exports of the goods was 10%.

These changes, along with changes to the domestic VAT rate, resulted in applied VAT rates for exports of the goods until 31 March 2019 of 6% and 3% for the remainder of the investigation period. No export tariffs were payable on the goods, which when combined with the reduction in actual VAT paid on exporters of the goods, would create a further incentive for export.¹⁷⁹

¹⁷⁷ <https://www.oecd.org/tax/consumption/status-of-the-vat-reform-in-the-peoples-republic-of-china-2018.pdf> - 2019 rates verified for the goods in the investigation period.

¹⁷⁸ <https://www.oecd.org/tax/consumption/status-of-the-vat-reform-in-the-peoples-republic-of-china-2018.pdf>.

¹⁷⁹ GOC RGQ, Attachment D6 – Schedule of rates, EPR item 10

A2 Competition in Chinese steel markets

One of the important features of the Chinese steel market is the lack of import competition such that price setting and competition in the domestic market is predominantly, if not solely, influenced by domestic firms.

The May 2020 US International Trade Administration (USITA) Global Steel Trade Monitor Report highlights that steel production in China is driven by its domestic demand and consumption, such that import penetration (as a function of consumption) in steel has remained low, at 1.6% in 2018 and 2019. The figure below shows the USITA analysis.

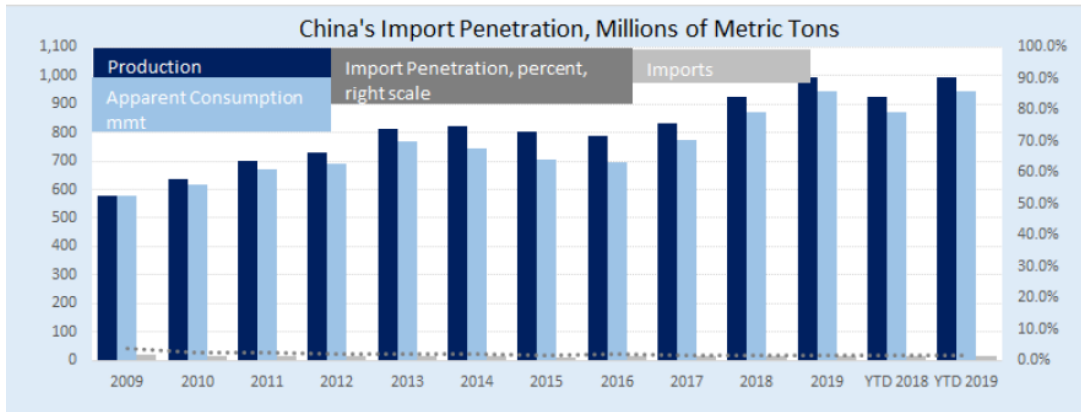


Figure 24 – Steel imports in China¹⁸⁰

Conversely, China's exports of steel represent approximately 62 million tonnes in 2019 or about 6% of its production.¹⁸¹

The Commission considers the GOC's involvement and influence over the steel industry to be a cause of the prevailing structural imbalances within both the broader steel industry and the HRC and precision pipe and tube steel markets. The issuance of planning guidelines and directives along with provisions of direct and indirect financial support¹⁸²,¹⁸³ creates a domestic market that benefits domestic producers and supports inefficient enterprises, but does not support access and therefore competition from foreign producers.

The Commission acknowledges that China's supply side structural reform targets the structure of production, to make it more efficient and to balance the supply side of China's economy with the demand side.¹⁸⁴ It is a "...suite of policies focus[ing] on reducing

¹⁸⁰ United States International Trade Administration, [Global Steel Trade Monitor, Steel Imports Report: China](#), May 2020.

¹⁸¹ United States International Trade Administration, [Global Steel Trade Monitor, Steel Exports Report: China](#), May 2020.

¹⁸² Support measures include stimulus programs, land and energy subsidies and soft lending policies.

¹⁸³ Duke Centre, *op cit* (172), p.24.

¹⁸⁴ <https://www.rba.gov.au/publications/bulletin/2018/dec/chinas-supply-side-structural-reform.html>

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distortions in the supply side of the [Chinese] economy and upgrading the industrial sector.”¹⁸⁵ China’s steel industry has been a key focus of these policy reforms.

In short, the Chinese steel market is constructed such that preferential treatments, whether focussed at SOEs or not, creates a situation of “...competition for factors of production...”¹⁸⁶ rather than market driven competition based on price, service and value.

The Commission therefore considers that the GOC’s historic and continued involvement in the Chinese steel industry, through its policies, planning guidelines, plans and directives, materially contributed to its steel industry’s overcapacity, oversupply and distorted structure during the investigation period.

It is the Commission’s view that these features have the effect of limiting foreign competition and that the price of HRC (and therefore precision pipe and tube) would be substantially different in a market not characterised by GOC influence.

A3 GOC influence on the Chinese market for the goods

The Commission has found in the preceding section that the GOC exerts significant influence over the Chinese steel market. This section identifies the degree of that influence on HRC prices in China and therefore the cost of the primary steel input feed in the manufacture of the goods by Chinese producers.

A3.1 Comparison of raw material prices

As a result of previous cases and after considering the evidence before it for this investigation, the Commission considers that normal competitive market conditions prevail in the Korean and Taiwanese domestic markets for steel coil and that purchases of steel coil in these markets are not influenced by prices in China.¹⁸⁷ The Commission therefore considers that steel coil purchases in these markets are suitable for comparison with steel coil purchases in China to quantify the effect of GOC influence on Chinese steel coil prices during the investigation period.¹⁸⁸

The Commission notes that Dalian Steelforce, the sole cooperating Chinese exporter, sourced steel coil solely from Chinese steel mills.

In its analysis, the Commission has compared, on a monthly basis:

- the CRC price paid by Dalian Steelforce and the CRC MEPS prices for China, Korea and Taiwan

¹⁸⁵ <https://www.rba.gov.au/publications/bulletin/2018/dec/chinas-supply-side-structural-reform.html>

¹⁸⁶ Dong Zhang and Owen Freestone, *China’s Unfinished State-Owned Enterprise Reforms* (2013), [Economic Roundup](#), The Treasury, Australian Government, issue 2, pages 79-102, December; at p.91

¹⁸⁷ See SEF 529 available on the Commission’s website.

¹⁸⁸ The Vietnamese HRC market has previously been considered by the Commission to be subject to normal competitive market conditions, but due to the allegation in this investigation that there is a particular market situation in respect of Vietnamese exports of the goods, HRC purchases by Vietnamese producers have been excluded from this assessment.

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- the pre-galvanised coil price paid by Dalian Steelforce and the pre-galvanised coil MEPS prices for China, Korea and Taiwan
- the Chinese HRC MEPS price and the HRC MEPS benchmark for Taiwan and Korea.

As all pricing data used by the Commission in its analysis was reported in the relevant local currency, the Commission has converted and compared prices in USD. The Commission performed a currency fluctuation analysis as part of this process to examine whether any such fluctuations may have distorted its price comparisons.

As the currency conversion has been made on an average monthly exchange rate, the Commission has not undertaken an assessment for short-term (i.e. on a daily basis) currency fluctuations. However, the Commission has assessed whether there has been a sustained currency fluctuation experienced between the USD and any of the local currencies used. Figure 25 below depicts monthly movements in the exchange rate for each of the relevant currencies to the USD.

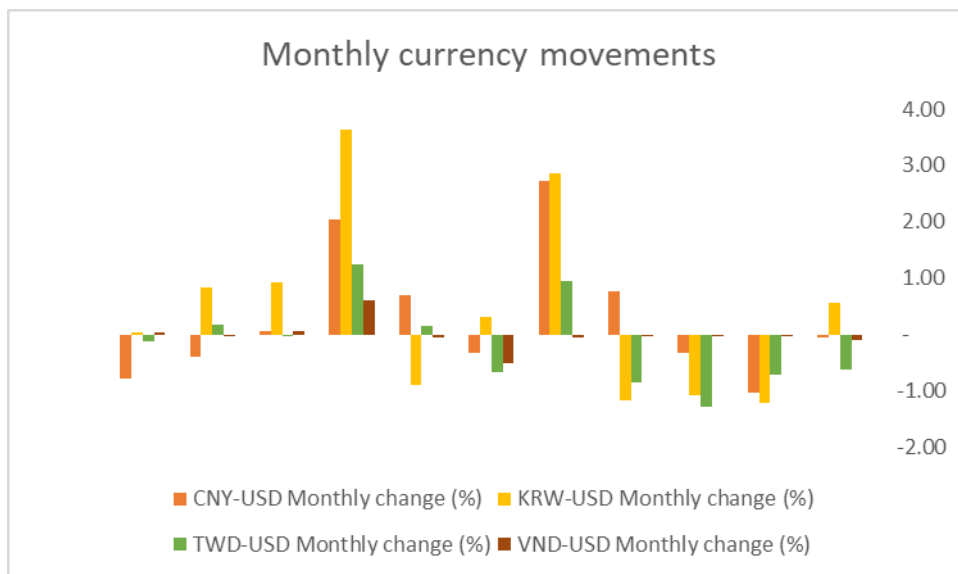


Figure 25 – Monthly currency movements to the USD

The currency with the greatest monthly movement against the USD is the Korean won (KRW). However, the largest monthly movement in the KRW-USD exchange rate is less than 4%, with no cumulative movement of greater than 5% over any 2 consecutive months. The Commission considers a fluctuation equal to or greater than 5% over an 8-week period to constitute a sustained currency movement. Accordingly, as there appears to have been no sustained currency fluctuation over the investigation period, the Commission is satisfied that a USD comparison between prices will provide a result undistorted by currency movements.

Figure 1 and Figure 2 in chapter 6.4.4 examined the CRC and pre-galvanised coil prices paid by Dalian Steelforce and the CRC MEPS prices for China, Korea and Taiwan. The figures show that prices for these coil types in China, whether purchased by the cooperating Chinese producers or reported in the MEPS data, are substantially lower than equivalent average prices for Korea and Taiwan, with differences of between 5% and 16% for pre-galvanised coil and 17% and 25% for CRC.

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The Commission has also examined HRC prices over the investigation period as it forms the base for CRC and pre-galvanised coil (see chapter 6.3.2).

Figure 26 below depicts the monthly price of HRC over the investigation period as reported by MEPS for China, Korea and Taiwan, including the average for Korea and Taiwan, which has been taken as the competitive benchmark for HRC.¹⁸⁹

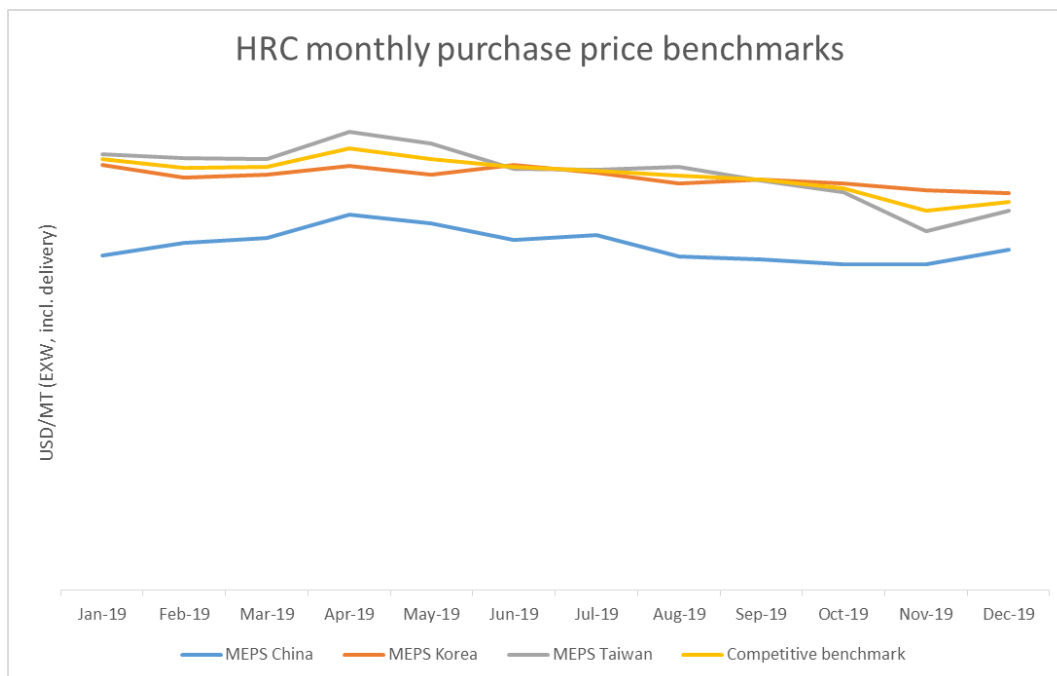


Figure 26 - HRC prices – EXW, plus delivery in USD/MT

Figure 26 shows similar prices paid during the investigation period in Korea and Taiwan between the competitive benchmark and Chinese prices, with differences of between 12% and 22% in any given month.

¹⁸⁹ Adjusted to be at EXW including any delivery costs where necessary.

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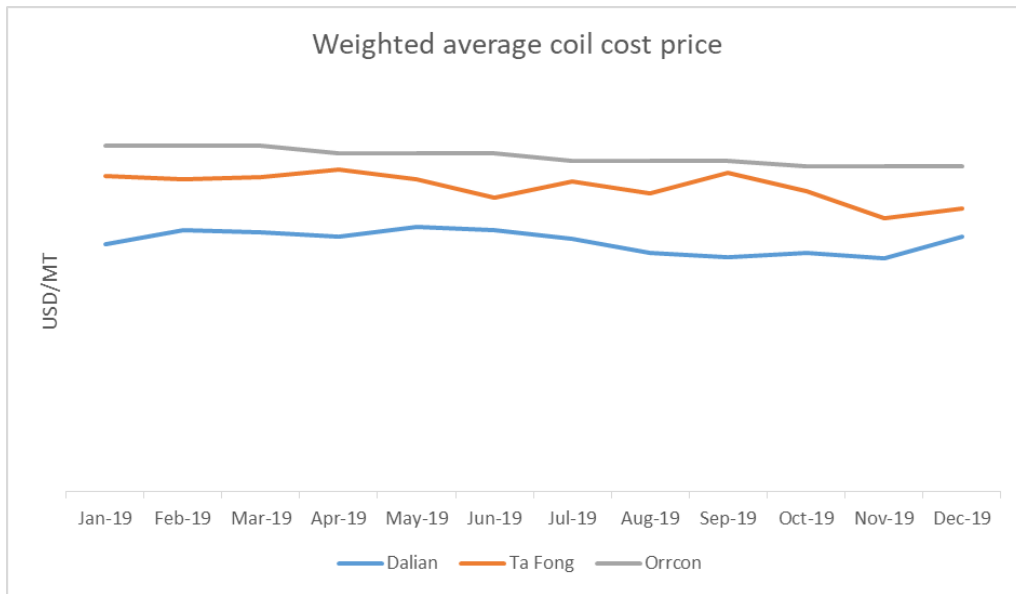


Figure 27 – Weighted average HRC cost price

Figure 27 above shows that domestic steel coil prices, regardless of coil type, paid by Dalian Steelforce are considerably lower than the verified prices paid by producers in Taiwan and Australia, being at least 10% lower in any given month, and as much as 29% lower at other times. Korean exporters did not provide any steel coil purchasing data during the investigation.

The Commission therefore considers that Chinese exporters clearly benefit from lower prices for raw materials compared to producers, because of a market situation affecting steel prices in the country.

The Commission considers that the difference between prices represents the degree to which GOC influence has distorted steel coil prices in the Chinese domestic market.

Confidential Attachment 5 provides the Commission’s raw material input analysis.



Australian Government
**Australian Customs and
Border Protection Service**

CUSTOMS ACT 1901 - PART XVB

REPORT TO THE MINISTER NO.177

**CERTAIN HOLLOW STRUCTURAL SECTIONS
EXPORTED FROM THE PEOPLE'S REPUBLIC OF
CHINA, THE REPUBLIC OF KOREA, MALAYSIA,
TAIWAN AND THE KINGDOM OF THAILAND**

7 JUNE 2012

PART II LEGAL AND POLICY CONSIDERATIONS

II(i) Determining adequate remuneration (subsidy Program 20)

In arriving at a benchmark for assessing adequacy of remuneration under a subsidy program, Customs and Border Protection had regard to the following:

- in s.269TACC(4)(d) and (5) of the Act;
- in Article 14(d) of the SCM Agreement; and
- by the WTO Appellate Body in the WTO dispute *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada* (DS257).

The Act and SCM Agreement

In relation to establishing a benchmark to determine adequacy of remuneration, s.269TACC(5) of the Act provides:

For the purposes of paragraphs (4)(d) and (e), the adequacy of remuneration in relation to goods or services to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.

[Emphasis added]

Article 14(d) of the SCM Agreement provides:

the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

[Emphasis added]

Appellate Body in DS257 (use of external benchmarks)

In the DS257 dispute, the issue of the use of benchmarks for determining whether goods were provided at less than adequate remuneration in terms of Article 14(d) of the SCM Agreement was examined in detail by the WTO Appellate Body.

In particular, the Appellate Body examined the circumstances under which an 'external benchmark' (i.e. a benchmark established outside of the domestic market of like goods) can be used.

GOC submissions

In relation to setting an appropriate benchmark for HRC in China, the GOC, in its pre-SEF submission of 8 March 2012 (*Submission concerning Chinese domestic HRC costs and comparisons with other markets*), has highlighted the following statement by the Appellate Body at paragraph 103 of its report in the DS257 dispute:

...an investigating authority may use a benchmark other than private prices of the goods in question in the country of provision, when it has been established that those private prices are distorted, because of the predominant role of the government in the market as a provider of the same or similar goods. When an investigating authority resorts in such a situation, to a benchmark other than private prices in the country of provision, the benchmark chosen must, nevertheless, relate or refer to, or be connected with, the prevailing market conditions in that country, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale as required by Article 14(d).

The GOC then submitted that, according to the Appellate Body in DS257:

...an external benchmark can not be used in situations where the 'predominant role of the government in the market [is] as a provider of the same or similar goods' and where the government distorts the prices of those goods in the market by reason of its predominance. Even then, a benchmark may only be used which relates or refers to, or is connected with the prevailing market conditions in that country and which reflects price, quality, availability, marketability, transportation and other conditions of purchase or sale as required by Article 14(d).

The GOC has also expressed in relation to the Appellate Body's findings, that it:

...is not to be taken to be in agreement with the Appellate Body's formulation of an exception to the use of prices in the country of provision as stipulated by Article 14(d).²²¹

In response to SEF177, the GOC has reiterated its position in relation to the Appellate Body's findings of DS257, and submitted that 'there is no legal right to use an external benchmark under WTO or Australian law, either at all or in the circumstances of this case'.²²²

²²¹ GOC submission of 8 March 2012, page 7 (footnote 3)

²²² GOC submission of 16 May 2012, page 6.

Customs and Border Protection's assessment

Customs and Border Protection has examined the findings of the Appellate Body in DS257, and notes the interpretation offered by the GOC that:

- the DS257 findings indicate that the Appellate Body considers that an external benchmark can 'only' be used in the situation where the predominance of government as a provider of goods in the market distorts market prices; and
- the GOC's disagreement with the Appellate Body's findings and opinion that there is no recourse for the use of an external benchmark in determining adequate remuneration in any case.

However, Customs and Border Protection disagrees with the GOC's interpretation of DS257, and considers that the Appellate Body's findings do not limit the circumstances in which an external benchmark can be used to those where the predominance of government supply of goods has distorted market prices.

Customs and Border Protection notes the Appellate Body's position that an internal benchmark (i.e. private prices for sellers of like goods) is the 'starting point' or 'primary benchmark' for establishing an appropriate benchmark to determine the adequacy of remuneration.²²³

Customs and Border Protection also notes the Appellate Body's position that an external benchmark may be used if:

...it is first established that private prices in that country are distorted because of the government's predominant role in providing those goods.

However, it is considered that the Appellate Body in DS257 does not limit the use of external benchmarks to these circumstances. Although DS257 specifically considers a situation where private prices are distorted due to the predominant role of the government as a supplier in the market, it is considered that it does not limit the use of external benchmarks only to circumstances where this is the cause of the distortion.

Further, Customs and Border Protection considers that the circumstances examined in DS257 are an example of where market distortion can lead to the use of external benchmarks. It is Customs and Border Protection's view that the material point is that private prices are unsuitable due to market distortion, not the reasons for this distortion.

²²³ At paragraph 90.

II(ii) Determining competitive market costs (for constructed normal value)

Regulation 180(2) requires that if:

1. an exporter keeps records relating to like goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
2. those records reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the cost of production or manufacture using information set out in the exporter's records.

Neither the Act, Regulations or ADA prescribe the method that must be used to determine cost of production when these conditions are not fulfilled.

In any case, as Customs and Border Protection considers that the benchmark established for the purposes of Program 20 and competitive market costs for HRC and narrow strip in China should be one and the same, the benchmark has been determined in accordance with the requirements of arriving at a benchmark for adequate remuneration (as constrained by the Act and SCM Agreement requirements).

II(iii) Aim of HRC and narrow strip benchmark

In light of the above, Customs and Border Protection considers that its aim in establishing a benchmark for HRC and narrow strip in China should be to arrive at a reasonable price for HRC and narrow strip that is representative of adequate remuneration (and competitive market costs) in China for those goods used in the manufacture of HSS by Chinese manufacturers during the investigation period, without any GOC distortion on these prices/costs.

As required by s 691, Cb(4)(d) of the Act and Article 14(d) of the SCM Agreement, this should be determined having regard to the prevailing market conditions for HRC and narrow strip in China.

PART III BENCHMARK USED

III(i) Starting point – internal benchmarks

As outlined above in PART II of this appendix, the findings of the WTO Appellate Body in DS257 establish a preference for determining a benchmark for adequate remuneration with reference to internal prices in the investigated country as a starting point.

Consequently, the reasonableness of internal Chinese prices for HRC and narrow strip were examined first as a possible source of the benchmark.

Option one: private domestic prices

Customs and Border Protection has first considered whether domestic prices from private enterprises in China were an appropriate basis for establishing its HRC and narrow strip benchmark.

However, as detailed in Appendix A and Section 6.4 of this report, Customs and Border Protection has undertaken a detailed assessment of the Chinese HRC and narrow strip markets and has found them to be distorted by significant influence from the GOC during (and prior to) the investigation period.

Indeed, Appendix A concludes

...the GOC has exerted numerous influences on the Chinese iron and steel industry, which are likely to have materially distorted competitive conditions within that industry and affected the supply of HSS, HRC, narrow strip, and upstream products and materials.²²⁴

Note: although the analysis and conclusions in Appendix A to this report are focused on assessing whether a particular market situation existed in the Chinese HSS market during the investigation period that rendered domestic HSS selling prices unsuitable for normal value, it is considered that this GOC influence and distortion equally applies to a determination of whether the cost of HRC and narrow strip incurred by HSS manufacturers during the investigation period was a reasonably market cost, or made at adequate remuneration.

It is noted that this distortion is considered to have affected the entire Chinese HRC and narrow strip markets, and has therefore distorted all prices of those goods, regardless of whether the goods are manufactured/supplied by SIEs or private enterprises in China.

It is considered that the distortions observed in the Chinese HRC and/or narrow strip markets as a result of GOC influence is another example (further to that examined in DS257) of where market distortion makes private

²²⁴ At page 55.

domestic prices unsuitable for determining adequate remuneration.

Customs and Border Protection therefore considers that all domestic prices of HRC and/or narrow strip in China (regardless of whether the material was manufactured by an SIE or not) to not be suitable in determining a benchmark for HRC or narrow strip in China.

In its response to SEF177,²²⁵ the GOC submits Customs and Border Protection's rejection of domestic HRC and narrow strip prices in China based on the finding that the entire domestic market is distorted is not justified, as it considers that Customs and Border Protection has not demonstrated that the Chinese HRC and narrow strip markets are in fact distorted at all.

However, Customs and Border Protection considers that its detailed analysis of the Chinese iron and steel industry (inclusive of the HRC and narrow strip markets) in Appendix A sufficiently establishes the existence of this distortion.

Option two: import prices

Having established that domestic prices from private sellers in China are not a suitable basis for determining a benchmark for HRC and narrow strip, Customs and Border Protection has considered whether it would be suitable to use imported HRC prices into China as an appropriate in-country (internal) benchmark.

Note: any such imports into China would be of HRC and not narrow strip. Customs and Border Protection understands that narrow strip is an input for HSS unique to the Chinese market, which is manufactured domestically in China (predominantly from steel billets) and is generally not traded internationally.

As observed in SEF177, Customs and Border Protection considers that any import prices for HRC in China in the investigation period are not reasonable for establishing a benchmark as these prices are likely to be distorted themselves (these prices would logically need to be at levels that are comparable to the GOC-distorted domestic HRC price in order to be a viable alternative source).

In its response to SEF177, the GOC has challenged this reasoning for rejecting import prices.²²⁶ The GOC contends that import prices into China would have to have been at a level of adequate remuneration, and therefore a suitable benchmark, noting that foreign producers would not export HRC to China at a price that is less than adequate remuneration (as there would be 'no incentive' to do so).²²⁷

²²⁵ GOC submission of 16 May 2012.

²²⁶ Which would logically be for HRC and not narrow strip, as narrow strip is not known to be imported into China and is a unique raw material in the Chinese HSS market that is produced domestically.

²²⁷ GOC submission of 16 May, at page 6.

However, Customs and Border Protection observes that the volume of HRC imported to China for use in HSS during the investigation period²²⁸ was comparatively very low, and that China's supply of HRC is predominantly manufactured domestically. This has been confirmed during investigations with selected cooperating exporters of HSS from China, whose verified HRC purchase data identified the country of origin of their purchased HRC.

Conversely, investigations with exporters from the four other investigated countries/region showed that these HSS manufacturers commonly use a combination of domestic and imported HRC. It is therefore evident that imported HRC is able to reach a reasonable level of market penetration within these markets, but this is not mirrored in China.

This lack of import penetration in China indicates that the import of HRC to China may have been hindered by the domestic prices of HRC in China, which Customs and Border Protection has demonstrated in Appendix A were likely to be artificially low as a result of GOC influence causing market distortions.

Indeed, a comparison between the verified domestic HRC purchase prices of exporters of HSS in Thailand, Malaysia, Korea and Taiwan, as well as several other publicly available HRC prices including the published Steel Business Briefing (SBB) East Asia cost and freight (CFR) import price and Japanese domestic free-on-truck (FOT) price displays that the verified Chinese domestic HRC price of selected cooperating Chinese HSS exporters was almost always lower than these other prices.²²⁹

It is therefore considered that, whatever little HRC was imported into China during the investigation period would logically have been:

- sold at a price that is low enough to compete with the distorted Chinese domestic prices; or
- imported under extraordinary/unusual circumstance in some other capacity (e.g. supply of specialist HRC).

Customs and Border Protection therefore finds that imported HRC prices into China are not a suitable basis for establishing its HRC and narrow strip benchmark.

Conclusion – Internal benchmarks

Customs and Border Protection determines that both Chinese domestic and import prices of HRC during the investigation period are likely to have been distorted by the GOC influence in the Chinese iron and steel industry.

In light of the above, Customs and Border Protection considers that an internal basis for establishing a benchmark price for HRC and narrow strip in

²²⁸ As well as before and since the investigation period.

²²⁹ Except on one occasion, where the verified price of one Chinese exporter was 0.7% higher than the East Asian CFR price).

China is not suitable or reasonable in the circumstances.

III(ii) Chosen benchmark – weighted average 'basket'

Final approach

Once it was established that internal prices (import and domestic) in China are not suitable for determining a benchmark for HRC and narrow strip, Customs and Border Protection turned its attention to assessing a reasonable external benchmark.

After considering those matters raised in response to SEF177, as well as all other relevant information and further analysis, Customs and Border Protection has determined its final black HRC benchmark to be the weighted average of verified domestic black HRC costs incurred by verified selected cooperating HSS exporters cooperating with the investigation into HSS from Korea, Malaysia and Taiwan,²³⁰ at comparable terms of trade and conditions of purchase to those observed in China.

This has been referred to as a 'basket' benchmark approach.

This benchmark has undergone data cleansing to ensure as far as possible that only grades of HRC used by exporters in the manufacture of HSS itself have been included in the benchmark (see PART III of this appendix for further discussion).

Customs and Border Protection has adjusted this benchmark (as outlined below) to take account of:

- the increased purchase price of pre-galvanised HRC over black HRC, with reference to the quarterly average purchase price difference between the SBB China domestic Shanghai HRC price and the China domestic Shanghai pre-galvanised HRC price;²³¹
- differences in delivery terms observed in China (ex-works, delivered); and
- the reduced cost of narrow strip in China.

Customs and Border Protection does not consider that any adjustments/alterations needed to be made to the benchmark to account for:

- differences in quality, availability, or marketability; or
- comparative advantage.

These matters are discussed in more detail at PART III of this appendix.

SEF177 approach

²³⁰ Kukje, Alpine and Shin Yang

²³¹ Reported by SBB as VAT-inclusive, but VAT removed for the purposes of establishing the benchmark.

The final benchmark approach discussed above is similar to that of SEF177, which used:

- the weighted average of verified domestic black HRC costs incurred by exporters cooperating with the investigation into HSS from Korea, Malaysia and Taiwan to arrive at a black HRC price; and
- the weighted average of verified data of domestic pre-galvanised HRC costs incurred by cooperating exporters from Korea and Taiwan to arrive at a pre-galvanised HRC price.²³²

The main difference in this final approach to that within SEF177, is that the pre-galvanised HRC benchmark has been arrived at by using the black benchmark (three countries/region) that is adjusted for the SBB difference between black and pre-galvanized coil in China, rather than consisting of the cost of pre-galvanized HRC incurred by exporters in Korea and Taiwan.

Following SEF177, multiple submissions were received that examined the reasonableness, calculation and application of the SEF177 weighted average benchmark. These matters have been considered throughout this appendix, and have resulted in certain changes made to the final benchmark approach.

Adjustments to the benchmark

Pre-galvanised adjustment

As discussed above, in SEF177 Customs and Border Protection determined the pre-galvanised benchmark for HRC as being a weighted average of the pre-galvanised HRC costs of verified Korean and Taiwanese exporters.

Following a submission made by Halian Steelforce in response to SEF177, the accuracy of the relative between the SEF177 black and pre-galvanised HRC was examined and the approach to arriving at a pre-galvanised benchmark revised. This submission is discussed in detail in Section V(ii) of this appendix below).

For the purposes of the final benchmark, Customs and Border Protection has established its pre-galvanised benchmark as:

- the weighted average 'basket' black benchmark (based on verified Korean, Malaysian and Taiwanese data);
- plus the quarterly difference between SBB data for domestic, Shanghai HRC and galvanised HRC (which was reported including VAT, though this was removed from the data used).

The reasonableness of this approach, and the methodology of calculation, is discussed further in Section V(ii) of this appendix.

²³² As pre-galvanised HRC was readily identifiable in these exporters' records, and considered to have been purchased in quantities that represented a valid sample of galvanised HRC costs.

It is noted that this adjustment has been made with reference to internal prices of pre-galvanised HRC in China and is reflective of the prevailing market conditions for the price difference between these materials in China.

Narrow strip adjustment

In its investigations with cooperating Chinese exporters of HSS, Customs and Border Protection has observed that the cost of narrow strip incurred by these exporters was lower than the cost of HRC. This was observed consistently throughout the investigation period, and seen in particular where exporters purchased both narrow strip and HRC.

This is reflective of Customs and Border Protection's understanding that narrow strip is generally less expensive to purchase than HRC in China.²³³

Consequently, Customs and Border Protection considers it reasonable to adjust the HRC benchmark average downwards where appropriate to account for this price differential for narrow strip.

In arriving at this adjustment, it is noted that the use of narrow strip is unique to the Chinese market amongst the countries/regions investigated, and thus no reliable external data was available to Customs and Border Protection to arrive at a 'narrow strip adjustment'. Consequently, Customs and Border Protection has calculated this adjustment as the quarterly verified average difference between HRC and/or narrow strip purchase prices in China by the cooperating Chinese exporters.

It is noted that this adjustment has been made with reference to internal prices of narrow strip in China and is reflective of the prevailing market conditions for the price difference between HRC and narrow strip in China.

Delivery

The verified prices of HRC from Korea, Malaysia and Taiwan are all for HRC delivered to the HSS manufacturer's premises. However, Customs and Border Protection notes that purchase of HRC and narrow strip by the cooperating Chinese exporters were made at delivered and undelivered (ex-works) terms.

To arrive at an ex-works benchmark price, Customs and Border Protection has used the verified quarterly average delivery cost of HRC and narrow strip from one cooperating Chinese exporter (being the only exporter whose data allowed for this isolation and comparison) to arrive at a per tonne HRC and narrow strip delivery cost in China.

²³³ Customs and Border Protection notes that ATM has provided some information that suggests that narrow strip and HRC in China during the investigation period were at comparable prices (as observed in CON177 at Page 27). However, data verified with Chinese exporters of HSS contradicts this and is considered to be more reliable.

This delivery cost has been deducted from the adjusted benchmark prices to arrive at an ex-works benchmark price.

It is considered that this delivery cost to be reasonable as it reflects verified, actual delivery costs for HRC and narrow strip incurred in China.

Use of Thai data in benchmark

At the time of publishing SEF177, Customs and Border Protection deliberately omitted the verified HRC purchase prices of Thai HSS exporters from the benchmark averages. This was due to:

- the ongoing uncertainty at the time of publishing SEF177 that existed over the reasonableness of the price of domestic HRC in Thailand (investigations were continuing into allegations of a particular market situation in Thailand resulting from alleged GOT price measures on HRC in that market);
- the fact that the exclusion of verified Thai exporters' HRC purchase cost data from the benchmark averages does not significantly alter the benchmark average;²³⁴ and
- Customs and Border Protection's position that limiting its benchmarks to verified data from Korean, Malaysian and Taiwanese exports remains a sufficiently broad, large and reliable data set to base this benchmark on.

Since SEF177, Customs and Border Protection has finalised its analysis of allegations of a particular market situation in Thailand (relating to GOT influence on the domestic selling prices of HRC). Customs and Border Protection has determined that this influence has not affected the cost of HRC in Thailand and has not created a particular market situation in that market.²³⁵ Customs and Border Protection considers that it may therefore be reasonable to include Thai HRC data in the 'basket' benchmark.

However, noting that this could present issues with protecting the confidentiality of Thai data,²³⁶ and that:

- the inclusion of this data would still not significantly alter the benchmark;
- the benchmark without Thai data is still considered to be a sufficiently broad and reliable data base

Customs and Border Protection does not consider that the Thai data should be included in the final weighted average benchmark.

²³⁴ And subsequently does not significantly alter the resulting calculations of benefit under Program 20 (see PART 3 of this appendix) or normal value in China (see Section 6.3.1), which the benchmarks have been used to calculate.

²³⁵ See TER177, which discusses the assessment of allegations of a particular market situation in Thailand in detail.

²³⁶ The SEF177 benchmark has been released to Chinese exporters and the late inclusion of Thai data at this stage would reasonably be considered to disclose this data.

Use of Taiwan data In benchmark

In its submission of 14 May 2012, ATM questioned the reasonableness of the inclusion of the verified Taiwanese exporter's data in a basket benchmark, as ATM queries whether this purchase price is in fact a market price as ATM believes some of Shin Yang's HRC supply is purchased from a related entity.

ATM's understanding of the Taiwanese exporters' HRC purchasing arrangements is incorrect. While some black HRC was in fact galvanised for Shin Yang by the related Yieh Phui Enterprise Co Ltd. (Yieh Phui) in the investigation period (to make pre-galvanised HRC), Shin Yang's black HRC was at all times purchased from unrelated parties.

Consequently, Customs and Border Protection does not have any concern over whether the cost of black HRC incurred by Shin Yang represents market prices, and considers this suitable for use in the weighted average benchmark.

In any case, it is noted that for the purposes of this report and final recommendations, only the cost of Shin Yang's black HRC has been included in the benchmark calculations.

PART IV REASONS FOR CHOSEN BENCHMARK

In arriving at the weighted average 'basket' benchmark, Customs and Border Protection considers the benchmark, as adjusted:

- represents verified domestic prices actually paid for HRC by HSS manufacturers and has been cleansed to isolate grades and specifications of HRC that are known to be used to manufacture HSS (as opposed to other available data like SBB prices, which are arrived at by market research of quoted prices rather than prices actually paid);²³⁷
- represents domestic prices at similar terms of trade to those observed in China;
- is considered to be reliable and reasonable data to reflect the cost of HRC in various Asian markets;
- is a sufficiently broad sample of data, consisting of data from major producers and exporters from the benchmark countries that collectively represent a significant proportion of the goods exported to Australia during the investigation period;
- is an average of three competitive markets in Asia, thereby collectively representing an average of what competitive market costs/adequate remuneration in Asia is likely to be absent government influence;²³⁸ and

²³⁷ It is noted that the SBB differential between the price of black and galvanised HRC has been applied in arriving at a pre-galvanised coil benchmark. This is considered reasonable in the circumstances, and is discussed further at PART III of this appendix.

²³⁸ Which is further supported by the fact that the HRC domestic cost data verified with Thai exporters

- has been reasonably adjusted to arrive at benchmarks that accurately represent the costs of delivery in China, as well as the differences between HRC and pre-galvanised raw material, and HRC and narrow strip in China, with reference to in-country data.

Consequently, Customs and Border Protection considers that its weighted average benchmark achieves the aim to arrive at a reasonable benchmark for HRC and narrow strip in China for those goods used to manufacture HSS, absent of GOC market distortions.

Furthermore, the benchmark is considered to be the most reasonable in the circumstances, noting the nature of available data and the aim of the benchmark itself.

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is also similar to the quantum of the benchmark (another competitive market in Asia).

PART V SUBMISSIONS IN RESPONSE TO SEF177

V(i) Reasonableness of 'basket' (weighted average) approach

In response to SEF177, various parties have made submissions in relation to the overall reasonableness of the 'basket' benchmark used.²³⁹ These are considered below.

Summary of submissions

ATM

In response to SEF177, ATM has submitted that the Japanese FOT HRC prices published by SBB should be used as the basis for the benchmark rather than a 'basket' approach.²⁴⁰ These prices were used by ATM as the basis of constructed normal value calculations within its application for this investigation, and were submitted by ATM throughout the investigation as a reasonable basis for a benchmark.

ATM submits that the Japanese FOT price is a reasonable benchmark, as Japan is recognised as an efficient producer of HRC, is a major exporter of HRC in the region, and the domestic prices of HRC in Japan are determined in a competitive market.

ATM further submits that the basket approach is 'not an actual price' for HRC, and that an actual price (the Japanese FOT price) is more appropriate than a basket weighted average approach.

The ASA

The ASA has submitted that Customs and Border Protection has used a benchmark that 'does) little or no link to international, competitive market prices undertaken in the ordinary course of trade in the region'.

The ASA further submits that, for the purposes of constructing HRC cost (or benchmark), Customs and Border Protection should use the lesser of:

- ATM's own HRC purchases from BlueScope Steel (net of all rebates);
- ATM's own purchases of imported HRC net of all rebates and other discounts;
- BlueScope Steel's own HRC export prices;
- 'Far East Asian (FOB) Index' prices from 'CRU Monitor';
- the lowest, undumped HRC cost available.

The ASA has not signified a preference for one of these options over another

Further submissions in relation to the reasonableness, calculation and application of the benchmark have been discussed earlier in this appendix, as well as in the body of the report.

²³⁹ Submission of 14 May 2012, page 10.

²⁴⁰ Submission of 14 May 2012, page 4.

(except requesting the lowest of the selection be used), or why each or any is considered to better represent 'international, competitive market prices', which the ASA appears to consider should be the aim or the established benchmark.

Dalian Steelforce

In its submission of 1 May 2012, Dalian Steelforce submitted that a weighted average approach to calculating a benchmark (i.e. the basket approach) is 'flawed' and may constitute unfavorable treatment for cooperating exporters.

Dalian Steelforce considers that the Chinese HRC costs, which it presumes are the lowest encountered amongst the countries/region under investigation, should be substituted with the next lowest available HRC costs.²⁴² Dalian Steelforce submits that, as China is a low cost market, with a lower per capita GDP than the 'basket' countries, this should be recognised in the approach to calculating a benchmark.

Dalian Steelforce further submits that the weighted average benchmark is not in fact a cost which exists in any market, and is not the closest comparator to the Chinese HRC market in terms of price.

Huludao, Kingland and TFQ

Huludao and Kingland have each submitted²⁴³ that:

- as China is regarded as a market economy by Australia for the purposes of anti-dumping and countervailing investigations, Customs and Border Protection is required to construct costs for Chinese exporters that reflect what the cost should have been without GOC influence;
- this approach is different to that of a non-market economy, where a surrogate approach can be taken; and
- HRC prices in the basket are derived from surrogate countries and should not be considered representative of the reasonable costs for Chinese HSS exporters reflective of normal market competition (uninfluenced by the GOC).

Huludao and Kingland have submitted that the international (i.e. export) price from Taiwan should be used as a substitute, as they are reflective of reasonable market costs without government influence, were available to Chinese HSS manufacturers, and were the lowest import prices available (which Chinese exporters of HSS would logically have opted for).

²⁴² Noting that Dalian Steelforce does not agree with the substitution of costs or the countervailability of Program 20 generally.

²⁴³ Huludao submission of May 14 and Kingland submission of May 14.

Additionally, Huludao and Kingland have submitted:

- there is no way for a Chinese HSS manufacturer to purchase HRC in another country's domestic market (noting the basket data was based on domestic prices in the investigated countries/region);
- the benchmark data used was selective, rather than countrywide and therefore not representative; and
- the different market conditions between China and the benchmark countries/region should be adjusted for (e.g. availability and marketability).

Aspects of these points raised by Huludao and Kingland were also submitted by TFQ.²⁴⁴

The GOC

In response to SEF177, the GOC has reiterated its position in relation to the Appellate Body's findings of DS257, and submitted that 'there is no legal right to use an external benchmark under WTO or Australian law, either at all or in the circumstances of this case'.²⁴⁵

The GOC has also submitted its objection to the reasoning applied by Customs and Border Protection in rejecting imported HRC prices as a basis for the benchmark.

Both of these points have been addressed earlier in this appendix.

Customs and Border Protection's assessment

Comparative advantage/'low cost' market

In response to SEF177, various interested parties had submitted that the benchmark:

- needs to be adjusted to account for the comparative advantages that the Chinese HRC and narrow strip markets have; and/or
- should be based on the next lowest available competitive market price and should be used to reflect the fact that China is a 'low cost' market.

Customs and Border Protection notes the Appellate Body's comments in DS257 at Paragraph 109 that:

It is clear, in the abstract, that different factors can result in one country having a comparative advantage over another with respect to the production of certain goods. In any event, any comparative advantage would be reflected in the market conditions prevailing in the country of provision and, therefore, would have to be taken into account and

²⁴⁴ TFQ submission of 11 May 2012.

²⁴⁵ GOC submission of 16 May 2012, page 6.

reflected in the adjustments made to any method used for the determination of adequacy of remuneration, if it is to relate or refer to, or be connected with, prevailing market conditions in the market of provision.

[Emphasis added]

This notion is also reflected in the GOC's pre-SEF *Submission concerning Chinese domestic HRC costs and comparisons with other markets*²⁴⁶ at p21, which concludes

...a price from some other market cannot simply be used as a benchmark without first attempting to determine its basic suitability for the task, in a comparative sense, and then adjusting it to accord with the prevailing conditions in China.

Customs and Border Protection observes the Appellate Body's statements in DS257 that display the need to adjust for comparative advantage when using an external benchmark for adequate remuneration.

Customs and Border Protection considers such an adjustment is neither practicable, reasonable, or warranted in this case.

Customs and Border Protection notes that, by the GOC's own admission, China does not have an unfettered comparative advantage in producing HRC, narrow strip and the upstream raw materials of these products. Multiple identified GOC policies, plans and measures identify that China's iron and steel industry (including HRC and/or narrow strip) experiences several disadvantages.

For example, the State Council's 2009 *Blueprint for Steel Industry Adjustment and Revitalization* (the Revitalization Plan) highlights many downfalls of the Chinese iron and steel industry:

the problems of the steel industry, which have been accumulated during the extensive development in the past, have been more prominent than ever. (1) Blind investment based on misperception of market demands and overexpansion of aggregate capacity. Until the end of 2008, the production capacity of crude steel exceeds the actual demands for about 100 million metric tons. (2) Weak in innovation. The research and development and application of advanced production technology and high-end products are mainly relied on importation and imitation. Some of the superior quality and key steel products still request numerous import while the structure of consumption maintains at a low level. (3) Poor geographical location of production capacities. Most production facilities and steel enterprises are located in large and medium-sized inland cities, where production are poorly conditioned and seriously restricted in the terms of environmental absorbing

²⁴⁶ 8 March 2012

capacity, water resource, transportation and energy supplies; (4) Low concentration rate. The average production capacity of crude steel is less than 1 million metric tons. Top 5 producers account only 28% of total production nationwide; (5) Weak in resource reserve. Domestic endowment of iron ore resource is low and the degree of self-sufficiency is less than 50%. (6) Disorder in circulation markets. More than 150,000 vendors are in the steel market. There is serious tendency to speculate on the markets.

It is considered this provides evidence to suggest that, if anything, China may have a comparative disadvantage in certain areas when it comes to producing HRC, narrow strip and upstream inputs.

Moreover, Customs and Border Protection considers that in certain areas where China has developed (or is developing) a comparative advantage in producing HRC and/or narrow strip:

- this has been heavily distorted (and even 'manufactured') by the GOC influences in the Chinese iron and steel markets (in ways of policies, plans and implementing measures); and
- therefore the extent to which this comparative advantage is in fact due to normal market comparative advantages, or due to advantages created/influenced by the GOC, is unclear.

This is not to say that it is considered that China has no genuine (i.e. not attributable to GOC influence but rather determined by competitive market forces) comparative advantages over the Korean, Malaysian and Taiwanese HRC markets.

As outlined in Section III(i) of this appendix, Customs and Border Protection notes that its analysis confirms that the verified Chinese prices of HRC during the investigation period were consistently lower than the purchase prices for HRC observed in the other investigated countries/region, as well as below other publicly available data. It is considered that this reduced price is due, at least in part to genuine competitive advantages of the Chinese HRC market.

However, the detailed analysis of the Chinese HRC and narrow strip markets in Appendix A of this report has concluded that prices of these goods in China are not substantially the same (likely to be artificially low), as they would have been without GOC influence. Consequently, the observation that Chinese HRC prices are below those of other competitive markets in the region, including the East Asian SBB average, is attributed, at least in part, to this GOC influence.

Customs and Border Protection therefore considers that any 'adjustment' to the benchmark to take account of comparative advantages in China would need to accurately:

- determine and quantify what the true, uninfluenced comparative advantages of the Chinese market are, and those which are a result of GOC influence and only adjust for 'true' comparative advantages; and

- identify, quantify and take into account the comparative disadvantages of the Chinese iron and steel industry (noting that GOC influence is likely to have lessened certain comparative disadvantages).

This would necessarily need to arrive at a 'net' figure for comparative advantage.

Noting the complexity and extent of the GOC influence in the domestic iron and steel industry, Customs and Border Protection determines that it is not possible to accurately isolate and quantify what amount of any comparative advantage enjoyed by the Chinese HRC and narrow strip markets has been derived from comparative advantages that are not attributable to Government distortions, or is a result of GOC influence, in order to accurately undertake any adjustment for comparative advantage.

Customs and Border Protection therefore considers that

- it is not reasonable to adjust the benchmark to account for a comparative advantage in China, as it is uncertain what this advantage would have been (if any), in the absence of GOC influence in the Chinese iron and steel industry; and
- it is also not reasonable to assume that the next lowest available competitive market price (which various interested parties have suggested should be Taiwanese HRC prices) should be used to establish a benchmark, as it cannot be assumed that, had the Chinese market been allowed to operate without distorting GOC influences, this would have resulted in HRC prices in China that are as low as the next lowest available price.

Consequently, Customs and Border Protection determines it is more reasonable to arrive at a benchmark price that reflects an average price of HRC (adjusted for narrow strip) in the region in the manner undertaken for the purposes of this report.

Other benchmark options proposed

Customs and Border Protection notes that multiple other benchmark options have been proposed by interested parties including the SBB-published Japanese FOT price, Taiwanese export prices, ATM's own HRC purchases from BlueScope Steel, and 'Far East Asian (FOB) Index' prices from 'CRU Monitor'.

Customs and Border Protection has reviewed each of these proposed options, bearing in mind the requirements of the Act and SCM Agreement outlined in PART II of this appendix, the availability/reliability of the available data, and the abovementioned aim at arriving at a benchmark for HRC and narrow strip in China absent GOC influence.

Customs and Border Protection considers that all of the proposed alternatives each have certain merits and disadvantages, and does not consider it necessary to outline these in detail within this report.

In any case, noting the available information, Customs and Border Protection considers that the basket weighted average approach of establishing a benchmark to be the most reasonable in the circumstances, and based on the best available information, which has been verified and cleansed.

The merits of this approach are discussed earlier in this section, and throughout this appendix.

Benchmark not representative of a specific reasonable market, or price available to Chinese HSS exporters

In relation to the concerns raised by interested parties that the weighted average benchmark:

- does not represent an actual cost in a existing competitive market and/or
- was not actually available to Chinese HSS producers during the investigation period;

Customs and Border Protection considers there is no requirement, either within the Act, the SCM Agreement, or the ADA for a benchmark of this nature to be reflective of an actually-existing price for HRC or narrow strip, or a price that was physically available to Chinese HSS exporters during the investigation period (such as the Taiwanese export price).

On the contrary, while Customs and Border Protection notes that there may be cases where such a price is considered to be suitable for establishing a benchmark, these prices may not necessarily be reflective of what a competitive market cost in the investigated country (i.e. HRC and narrow strip in China) would have been in the absence of government influence.

Customs and Border Protection remains satisfied that the weighted average benchmark approach can be reasonably considered to represent a competitive market cost for HRC and narrow strip in China.

VI) Accuracy and calculation of benchmark

Imports and pre-galvanised HRC

Following SEF177, Dalian Steelforce has submitted (in its submission of 1 May 2012 and in a meeting with Customs and Border Protection on 30 April 2012)²⁴⁷ that the difference between the SEF177 benchmark for black and galvanised HRC appears to be understated.

Dalian Steelforce submitted it considers this to be because the black HRC 'basket' benchmark is too high, suggesting this could be because of the product mix of those exporters whose verified data had been used, and in

²⁴⁷ The record this discussion is available on the Public Record.

particular the thickness gauges of the products manufactured by these exporters (as Dalian Steelforce explained that thicker HRC and narrow strip is generally more expensive, and the basket exporters may be using a disproportionate amount of thicker gauged HRC to that used in China).

Dalian Steelforce submitted information as to what it considers the difference between purchase prices for black and pre-galvanised HRC should be during the investigation period.

Customs and Border Protection has reviewed the benchmark to determine whether this issue could be driven by differences in gauges (thicknesses) of HRC used as suggested by Dalian Steelforce.

It is noted that the available data is limited in terms of conducting a comparison between the prices of various gauges of HRC used by the basket exporters and by Chinese HSS manufacturers. However, Customs and Border Protection's analysis has not definitively shown that gauge uniformly affects the purchase price of HRC on a per tonne basis in any case.

It is therefore considered reasonable to compare the HRC costs incurred by the basket exporters with those of the Chinese HSS manufacturers, regardless of the gauges of HRC used by these exporters.

As a result of its analysis, Customs and Border Protection has determined that it is not the differences in HRC gauges that is driving the difference between the SEF177 black and pre-galvanised benchmark, but rather the weighting of these benchmarks (noting that for SEF177 the black benchmark included Malaysian data, though this was not included in the pre-galvanised HRC benchmark).

In light of this, Customs and Border Protection sought to establish a different method of arriving at a pre-galvanised benchmark by:

- starting with the black benchmark (based on verified Korean, Malaysian and Taiwanese data); then
- adding a physical adjustment to this black benchmark for galvanising that represents the actual price difference between black and galvanised HRC prices in China.

This is different to the original approach of calculating a galvanised benchmark by reference only to Korean and Taiwanese data.

To arrive at this 'physical adjustment', Customs and Border Protection examined the difference between SBB data for domestic, Shanghai HRC and galvanised HRC (which was reported including VAT, though this was removed from the data used) and arrived a quarterly average difference in purchase price between the two.

This difference was compared with:

- the verified quarterly average differences in purchase price for HDG

- and pre-galvanised coil for selected cooperating Chinese exporters;
and
- an estimate for this difference submitted by Dalian Steelforce in response to SEF177

and was found to be reasonably similar to these price differences.

Customs and Border Protection therefore considers this SBB Shanghai domestic price to be reasonably representative of the actual difference between black and galvanised HRC purchase prices in China during the investigation period, and therefore suitable for use in its benchmark calculations.²⁴⁸

Grade and standards of HRC and narrow strip

Orrcon considered in its response to SEF177²⁴⁹ that the benchmark cost of HRC used by Customs and Border Protection did not account for differences in raw material grades used in manufacture of HSS for the Australian market when compared to the raw material grades used to manufacture HSS sold in the Chinese market.

In particular, Orrcon asserted that the hot-dipped galvanised HSS exported from China usually complies with AS1163 or BS1387 standards, and would be manufactured from Chinese HRC grades Q195 and Q235, whereas HSS exported to Australia from the countries used as the basis for the benchmark is mainly HSS complying with AS/NZS 1163 C350. Orrcon claimed that the raw material grades required for the AS/NZS 1163 C350 HSS attract 'extras' in price.

Customs and Border Protection has reviewed the data obtained in verification visits to Chinese exporters of HSS. To the extent possible, it has compared unit costs of HRC that apply to different HSS grades, although this required comparison of such costs among different exporters. The analysis does not support the argument that raw materials for AS1163 grade HSS are consistently higher than raw materials used for BS1387 grades and equivalents.

Furthermore, Customs and Border Protection highlights that Orrcon is not correct in its understanding that the benchmark data used was only for HRC used to manufacture HSS for export to Australia (and therefore predominantly HRC that met the requirements of the AS1163 standard). In arriving at its benchmark, Customs and Border Protection used all HRC data for the benchmark exporters that related to their manufacture of HSS, whether it be destined for the Australian market, domestic market or other export destinations.

It is therefore considered that the benchmark data represents HRC used to

²⁴⁸To be used as an upwards adjustment to the black HRC basket price to arrive at a reasonable pre-galvanised HRC and narrow strip benchmark.

²⁴⁹Orrcon submission of 14 May 2012

manufacture HSS to a variety of specifications, including the (generally) less stringent²⁵⁰ domestic standards of Malaysia and Taiwan.

Customs and Border Protection considers the benchmark it has used is reasonable.

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²⁵⁰ In comparison to As1163.

PART VI CONCLUSION

After considering those matters raised in response to SEF177, as well as all other relevant information and further analysis, Customs and Border Protection has determined its final black HRC benchmark to be the weighted average of verified domestic black HRC costs incurred by verified selected cooperating HSS exporters cooperating with the investigation into HSS from Korea, Malaysia and Taiwan, at comparable terms of trade and conditions of purchase to those observed in China, adjusted to account for:

- the increased purchase price of pre-galvanised HRC over black HRC, with reference to the quarterly average purchase price difference between the SBB China domestic Shanghai HRC price and the China domestic Shanghai pre-galvanised HRC price;²⁵¹
- differences in delivery terms observed in China (ex-works, delivered); and
- the reduced cost of narrow strip in China.

This results in the following 8 categories of benchmark, to be used as appropriate in determining the adequacy of remuneration for HRC and/or narrow strip paid by HSS exporters:

Benchmark	Basis of calculation
Black HRC delivered	Weighted average of verified domestic black HRC cost used in HSS manufacture of Korean, Malaysian and Taiwanese exporters, delivery included.
Black HRC ex-works	Black HRC delivered benchmark above, minus verified quarterly average delivery costs from one cooperating Chinese exporter
Black narrow strip delivered	Black HRC delivered benchmark above, minus the quarterly verified average difference between HRC and narrow strip purchase prices by the cooperating Chinese exporters.
Black narrow strip ex-works	Black narrow strip delivered benchmark above, minus verified quarterly average delivery costs from one cooperating Chinese exporter.
Pre-galvanised HRC delivered	Black HRC delivered benchmark above, plus purchase price for galvanising differential (based on SBB Shanghai data).

²⁵¹ Reported by SBB as VAT-inclusive, but VAT removed for the purposes of establishing the benchmark.

Benchmark	Basis of calculation
Pre-galvanised HRC ex-works	Pre-galvanised HRC delivered benchmark above, minus verified quarterly average delivery cost from one cooperating Chinese exporter.
Pre-galvanised narrow strip delivered	Pre-galvanised HRC delivered benchmark above, minus the quarterly verified average difference between HRC and narrow strip purchase prices by the cooperating Chinese exporters.
pre-galvanised narrow strip ex-works	Pre-galvanised narrow strip delivered benchmark above, minus verified quarterly average delivery cost from one cooperating Chinese exporter.

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Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

ANTI-DUMPING COMMISSION REPORT NO. 419

**REVIEW OF ANTI-DUMPING MEASURES
HOLLOW STRUCTURAL SECTIONS EXPORTED TO
AUSTRALIA**

**FROM THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC
OF KOREA, MALAYSIA AND TAIWAN.**

3 May 2018

NON-CONFIDENTIAL APPENDIX D – BENEFIT UNDER PROGRAM 20 – LESS THAN ADEQUATE REMUNERATION

In the original investigation it was alleged that Chinese exporters of HSS benefited from the provision of goods by the GOC at less than adequate remuneration. In particular it was claimed that HRC, the main input used in the manufacture of HSS, was being produced and supplied by state owned or state invested enterprises at less than adequate remuneration.

Under this program, a benefit to the exporter of HSS is conferred by HRC being provided by the GOC at an amount reflecting less than adequate remuneration, having regard to prevailing market conditions in China.

Consistent with the original investigation and subsequent HSS cases, the Commission sought information from exporters to establish the quantity and cost of HRC, the identity of the supplier (trader or original manufacture) and if the supplier was an SIE.

In determining whether the provision of goods conferred a benefit, the Commission has had regard to the provisions set out in subsection 269TACC(3). The Commission established a benchmark price in order to assess whether the goods were provided for less than adequate remuneration.

The Commission considers that, absent distortions in the Chinese HRC market, that market would be the most relevant market in which to assess the adequacy of remuneration. In that case the Commission would assess adequacy of remuneration for HRC by comparing prices paid by HSS producers for HRC supplied by SIEs with a benchmark using Chinese HRC prices.

However, the Commission has had regard to prevailing market conditions for HRC in China and considers that the extent and degree of GOC involvement in the Chinese HRC market has significantly distorted all Chinese HRC prices, not just the prices for HRC supplied by SIEs. The Commission considers therefore that any benchmark that uses Chinese HRC prices would be an unreliable comparator in assessing adequacy of remuneration under s269TACC(3)(d).⁹³

The Commission considers that the distortions in the Chinese HRC market are such that an external benchmark for HRC prices must be used in assessing the adequacy of remuneration. The Commission considers that the benchmark of verified actual HRC costs for HSS exporters within the region for which it has reliable, contemporary, verified information (namely from Korea and Taiwan) is suitable for determining the adequacy of remuneration having regard to the prevailing market conditions in the Chinese HRC market.

The Commission considered adjusting the external benchmark, specifically for Tianjin Youfa and, more generally, for Chinese comparative advantage in producing HRC. The

⁹³ Prices for HRC imported to China would be also affected by distortionary GOC policies and hence would be unsuitable for use in assessing adequacy of remuneration, see REP 177 at Part III(i) of Appendix C.

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Commission's consideration of adjustments to the external benchmark is set out below. The Commission found that:

- an adjustment should be made to the benchmark to recognise that Tianjin Youfa uses narrow strip and not HRC to produce some of the HSS exported to Australia in the review period; and
- it would not be possible to determine any net comparative advantage for purposes of this review, particularly given the significant involvement of the GOC in relevant markets.

D1 Prevailing market conditions for HRC in China

D1.1 Findings on prevailing market conditions for HRC in China

Based on the following, the Commission considers that the GOC materially affected prevailing market conditions for HRC in China during the review period. The GOC was able to exert this influence through its directives and oversight, subsidy programs, taxation arrangements and the significant number of SIEs (described in further detail below).

The Commission also concludes that this influence over the Chinese HRC market has significantly distorted all Chinese HRC prices, not just the prices for HRC supplied by SIEs. The Commission considers therefore that any benchmark that uses Chinese HRC prices would be an unreliable comparator in assessing adequacy of remuneration under s269TACC(3)(d).⁹⁴

D1.2 Prevailing HRC market conditions

The prevailing market conditions to which the Commission must have regard under s269TACC(4) concern the market for the goods that are alleged to be provided for less than adequate remuneration, in this case HRC. In having regard to the prevailing market conditions for HRC the Commission observes that HRC is a key input to HSS production (accounting for over 90 per cent of the cost to make HSS).

The Commission has also considered conditions in the broader Chinese steel industry because of a paucity of information concerning aspects of the Chinese HRC market. This paucity of information is in part due to the GOC's decision not to provide the Commission with a response to its government questionnaire. The Commission considers this approach reasonable as HRC accounts for a significant share of total steel production in China and is a key input in producing a number of different steel products.

D1.3 Conditions in the Chinese HRC market

As set out in Appendix A, the Commission found that Chinese HRC production increased by around 40 per cent during 2010 to 2015 notwithstanding that Chinese HRC prices fell by around 48 per cent in the same period. In addition, Chinese HRC prices were below comparable benchmarks within the Asian region on a sustained basis.

The Commission found that significant declines in prices between 2010 and 2015 and price differences between China and other Asian steel producing nations reflect structural

⁹⁴ Prices for HRC imported to China would be also affected by distortionary GOC policies and hence would be unsuitable for use in assessing adequacy of remuneration, see REP 177 at Part III(i) of Appendix C.

imbalances between capacity, production and consumption in Chinese steel markets. In particular, HRC production is unresponsive to changes in price and the broader steel industry's low level of capacity utilisation and profitability. There are persistently high levels of HRC production and productive capacity despite low profitability and substantial losses.

The Commission's findings in the Chinese HRC market reflect prevailing market conditions to which the Commission must have regard under s269TACC(4). Details of the Commission's findings concerning conditions in the Chinese HRC market are contained in section A3 of Appendix A.

D1.4 Imbalances in Chinese steel markets

The Commission found that the GOC's involvement in and influence over the steel industry is a primary cause of the prevailing structural imbalances both in the broader steel industry and the HRC market. The Commission recognised the GOC's attempts to restructure and reorganise the industry to manage excess capacity and oversupply concerns however the Commission considered that those attempts confirm the extent both of distortions and of the GOC's involvement in and influence over the Chinese steel industry. The Commission considers that the structural imbalances for Chinese steel generally and HRC in particular are prevailing market conditions to which the Commission must have regard.

Details of the Commission's findings, including specific initiatives by and examples of the GOC reshaping the steel industry, are contained in section A4 of Appendix A.

D1.5 GOC influence in Chinese steel markets

The Commission identified a number of key mechanisms through which the GOC distorted conditions in the Chinese steel industry, including in the HRC market. These same key mechanisms distort prevailing HRC market conditions. These key mechanisms include:

- the role and operation of SIEs: the Commission found, among other things, that steel producing SIEs have received and continue to receive significant indirect and direct financial support from a number of levels of government in China (see section A5.1 of Appendix A for details);
- industry planning guidelines and directives: the Commission found, among other things, that the GOC's involvement in the Chinese steel industry through numerous planning guidelines and directives materially contributed to the industry's overcapacity, oversupply and distorted structure (see section A5.2 of Appendix A for details);
- provision of direct and indirect financial support: the Commission found, among other things, that programs providing direct and indirect financial support directly contributed to conditions in the Chinese steel industry including those for HRC (see section A5.3 of Appendix A for details); and
- taxation arrangements: the Commission found among other things that the GOC selectively altered VAT rebates and taxes applied to steel exports to alter the relative profitability of different types of steel exports and of exports compared to domestic sales and used the same mechanisms to alter the relative supply of particular steel products in the domestic market (see section A5.4 of Appendix A for details).

D2 Consideration of adjustment of the external benchmark

Subsection 269TACC(4) requires that the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.

D2.1 Adjustment for Tianjin Youfa's use of narrow strip

Tianjin Youfa uses an alternative to HRC known as narrow strip as the raw material to produce some of its HSS. Narrow strip is a marginally lower cost raw material that can be used to make certain specifications of HSS. Tianjin Youfa submitted that the benchmark should be adjusted to reflect the lower cost of narrow strip compared to HRC. The Commission agrees that such an adjustment is appropriate and has adjusted the benchmark to compare with Tianjin Youfa's purchases of narrow strip. The adjustment is based on the difference between Tianjin's purchase price of HRC and narrow strip.

D2.2 Adjustment for comparative advantage

The Commission considers that it would not be possible to determine any net comparative advantage for purposes of this review, particularly given the significant involvement of the GOC in relevant markets.

In *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885*, Nicholas J considered the treatment in REP 177 of a more general adjustment to benchmark prices, namely for a claimed Chinese comparative advantage in production of HRC. Nicholas J accepted the view of the Australian Customs and Border Protection Service that such an adjustment was not practical, reasonable or warranted in that case and that the more reasonable approach was to use a benchmark that reflected an average price of HRC that did not include any adjustment for competitive advantage.

The Commission considered whether the HRC benchmark should be adjusted for comparative advantage for purposes of this review. The Commission observes that no information or evidence on the subject was provided.

The Australian Customs and Border Protection Service found in REP 177 that China had both comparative advantages and disadvantages in producing HRC. That would require calculating a net figure for comparative advantage;⁹⁵ that task would be difficult enough. In addition, to calculate a net comparative advantage with any degree of accuracy would require the Commission to isolate and subtract the effect of GOC's significant involvement in the Chinese steel market generally, and the Chinese HRC market in particular. Similarly for this review, the Commission considers that it would not be possible to isolate and quantify to effect of GOC involvement in the relevant markets and to determine a net comparative advantage.

In keeping with the position outlined in Continuation 379, the Commission considers that the verified price of HRC obtained from HSS manufacturers in Korea and Taiwan (adjusted where appropriate for differences in prices between HRC and narrow strip) is the most suitable benchmark for determining whether HRC was provided at less than adequate remuneration and conferred a benefit in relation to the HRC used in the goods exported.

⁹⁵ REP 177 at pages 166 to 167.

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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

REPORT NO. 529

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
HOLLOW STRUCTURAL SECTIONS
EXPORTED TO AUSTRALIA FROM
THE PEOPLE'S REPUBLIC OF CHINA,
THE REPUBLIC OF KOREA, MALAYSIA, TAIWAN
AND THE KINGDOM OF THAILAND**

8 February 2021

APPENDIX B – SUBSIDY PROGRAMS

B.1 Finding

After assessing all relevant information available, the Commission has found that financial benefits²⁹³ were conferred to HSS producers from China in respect of the goods via countervailable subsidy programs.

B.2 Relevant legislation

Section 269T(1) of the Act defines a ‘subsidy’ as follows:

subsidy, in respect of goods exported to Australia, means:

- (a) a financial contribution:
 - (i) by a government of the country of export or country of origin of the goods; or
 - (ii) by a public body of that country or a public body of which that government is a member; or
 - (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

- (iv) a direct transfer of funds from that government or body; or
- (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
- (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
- (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
- (viii) the purchase by that government or body of goods or services; or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

Section 269TAAC defines a countervailable subsidy as follows:

- (1) For the purposes of this Part, a subsidy is a **countervailable subsidy** if it is specific.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
 - (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
 - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
 - (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

²⁹³ Sections 269TACC(2)(a) and (b) refer.

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- (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if:
 - (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
 - (b) eligibility for the subsidy is automatic; and
 - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
 - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) The Minister may, having regard to:
 - (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
 - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
 - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
 - (d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

- (5) In making a determination under subsection (4), the Minister must take account of:
 - (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
 - (b) the length of time during which the subsidy program has been in operation.

Section 269TACC directs how the Minister determines whether a financial contribution or income or price support confers a benefit, and is therefore a countervailable subsidy. Section 269TACD sets out how the amount of this benefit is determined.

B.3 Definition of Government, Public and Private Bodies

In its assessment of each program, the Commission has had regard to the entity responsible for providing the financial contribution (if any) under the relevant program, as part of the test under section 269T(1) for determining whether a financial contribution is a subsidy. Under section 269T(1), for a contribution to be a subsidy, the contribution must have been made by:

- a government of the country of export or country of origin of the goods; or
- a public body of that country, or a public body of which that government is a member; or
- a private body entrusted or directed by that government or public body to carry out a governmental function.

B.3.1 Government

As described in section 16.2 of the Manual, the Commission considers that the term “government” is taken to include government at all different levels, including at a national and sub-national level.

B.3.2 Public Bodies

The term “public body” is not defined in the Act. Determining whether an entity is a “public body” requires evaluation of all available evidence of the entity’s features and its relationship with government, including the following:

- (1) The objectives and functions performed by the body and whether the entity in question is pursuing public policy objectives. In this regard relevant factors include:
 - legislation and other legal instruments,
 - the degree of separation and independence of the entity from a government, including the appointment of directors, and
 - the contribution that an entity makes to the pursuit of government policies or interests, such as taking into account national or regional economic interests and the promotion of social objectives.
- (2) The body’s ownership and management structure, such as whether the body is wholly- or part-owned by the government, or has a majority of shares in the body. A finding that a body is a public body may be supported through:
 - the government’s ability to make appointments,
 - the right of government to review results and determine the body’s objectives, and
 - the government’s involvement in investment or business decisions.

The Commission considers this approach is consistent with the WTO Appellate Body decision of *United States – Countervailing Measures (China)*.²⁹⁴ In that case the Appellate Body referred to the following three indicia which may assist in assessing whether an entity is a public body vested with or exercising government authority:

- where a statute or other legal instrument expressly vests government authority in the entity concerned;
- where there is evidence that an entity is, in fact, exercising governmental functions; and
- where there is evidence that a government exercises meaningful control over an entity and exercises governmental authority in the performance of government functions.

These principles have also previously been considered in the Federal Court of Australia.²⁹⁵

²⁹⁴ DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

²⁹⁵ See; *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27]-[70]; *Dalian Steelforce Hi Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885, [50] to [73].

B.3.3 Private Bodies

Where an entity is neither a government nor public body, the Commission will consider it a private body, in which case, a government direction to make a financial contribution in respect of the goods must be established in order for the contribution to be considered a subsidy, as defined by section 269T(1).

Pursuant to section 16.3 of the Manual, in determining the character of an entity which may have provided a financial contribution, the Commission will consider whether a private body has been:

- “entrusted” to carry out a government function, which occurs when a government gives responsibility to a private body; or
- “directed” to carry out a government function, which occurs in situations where the government exercises its authority over a private body.

Accordingly, not all government acts will be considered as entrusting or directing a private body. Encouragement or mere policy announcements by government, in and of themselves, are not sufficient to satisfy this test. However, threats and inducements may be evidence of government intervention. In situations where the private body is considered to be a proxy by government to give effect to particular financial contributions, this test will usually be satisfied.

B.4 Information considered by the Commission

In assessing the alleged subsidy programs, the Commission has considered information provided in the REQs, verifications and submissions. This includes information provided by Tianjin Youfa and Tianjin Ruitong regarding whether they were in receipt of any previously investigated or new countervailable subsidies and, if so, the value of any benefits received.

In relation to Program 20 – LTAR, the Commission also undertook desktop research to identify whether state owned organisations either wholly (SOE) or partially (SIE) owned the HRS manufacturing entities listed by Tianjin Youfa and Tianjin Ruitong as suppliers of HRC. Where the Commission could not find information in respect of a particular manufacturer, and in the absence of a response from the GOC to the relevant questionnaire, the Commission has relied on the information provided by Tianjin Youfa and Tianjin Ruitong.

B.4.1 The Commission’s consideration of public bodies for Program 20 - LTAR

The Commission considers that its analysis in **Appendix A** describes how SOEs operate in the Chinese steel market and industry. In particular, the analysis shows that;

- the Chinese steel industry is an industry of national strategic importance, which is influenced by the GOC; and
- the Chinese steel industry is a vehicle to promulgate the government’s directives, objectives, reforms and mission.

Whilst the Commission notes that mixed-ownership (SIE) reform is an ongoing feature of the Chinese steel industry, the information before the Commission does not suggest that mixed-ownership results in a greater degree of market orientation, which offsets or diminishes the influence of the GOC when it is a shareholder.

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The Commission considers that the GOC, as a shareholder in a steel mill, has direct influence over the operations of that mill. As steel mills in China, regardless of ownership, are already subject to the directives, plans and guidelines of the central government, the Commission considers that the role of the GOC as shareholder serves to strengthen compliance with, and serve the direction of, the central government.

In the absence of relevant information held but not provided by the GOC and in light of all available information, the Commission concludes that Chinese steel mills, whether wholly or partially owned by the GOC, possess, exercise and are vested with governmental authority and are therefore public bodies.

For the purposes of determining whether Program 20 conferred a benefit to Tianjin Ruitong and Tianjin Youfa, the Commission has found that

- in relation to the goods exported to Australia from China, HRC was provided for LTAR (section 269TACC(3)(d)); and
- the benchmark of verified actual HRC costs for HSS exporters from Korea, Taiwan and Thailand was suitable for determining the adequacy of remuneration having regard to the prevailing market conditions in the Chinese HRC market (section 269TACC(4)).

B.5 Subsidy programs considered

The Commission examined 66 subsidy programs as part of this review, comprising:

- 52 existing programs covered by the countervailing duty notice deemed to be countervailable subsidies received by exporters in respect of HSS during previous inquiries; and
- 14 additional subsidy programs that the Commission examined as part of this review.

The Commission provided the GOC with a government questionnaire to gather evidence for the purposes of determining whether the 52 existing programs are still countervailable in relation to HSS exported to Australia from China. The GOC did not provide a response to the government questionnaire.

In accordance with section 269TAACA(1) of the Act, because the GOC has not given the Commission information considered to be relevant to the review, in determining whether a countervailable subsidy has been received in respect of the goods, the Commission has relied on the available evidence.

The Commission's consideration of the facts available in relation to the existing and additional programs is outlined in Table 47 below.

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No.	Program name	Evidence that program is still countervailable	Countervailable?
1	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Notified during the review period by the GOC to the WTO in WTO document G/SCM/N/220/CHN (Program 8). ²⁹⁶	Yes
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 7). ²⁹⁷	Yes
5	Matching Funds for International Market Development for Small and Medium Enterprises	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 8). Appears to have been notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 36).	Yes
6	Superstar Enterprise Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 3).	Yes
7	Research & Development (R&D) Assistance Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 10).	Yes
8	Patent Award of Guangdong Province	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 34).	Yes
10	Preferential Tax Policies for Foreign Invested Enterprises– Reduced Tax Rate for Productive Foreign Invested Enterprises scheduled to operate for a period of not less than 10 years	Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 1).	Yes
11	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 7).	Yes
12	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 9).	Yes
13	Preferential Tax Policies in the Western Regions	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 3). Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 11).	Yes

²⁹⁶ See WTO document number [G/SCM/N/220/CHN](#) dated 30 October 2015.

²⁹⁷ *Anti-Dumping Commission Report No. 316 (REP 316)*

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No.	Program name	Evidence that program is still countervailable	Countervailable?
14	Tariff and VAT Exemptions on Imported Materials and Equipment	Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 61).	Yes
15	Innovative Experimental Enterprise Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 11).	Yes
16	Special Support Fund for Non State-Owned Enterprises	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 12).	Yes
17	Venture Investment Fund of Hi-Tech Industry	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 13).	Yes
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 14).	Yes
19	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 15).	Yes
20	Hot rolled steel provided by government at less than fair market value	<p>The Commission has found that the GOC materially influenced conditions within the Chinese hot rolled steel (HRC) market during the review period (Appendix A refers). The Commission also found that hot rolled steel provided by Chinese SIEs was less than the competitive market benchmark and therefore conferred a benefit on HSS produced in China.</p> <p>A similar program in respect of steel billet raw material was countervailed by the Commission in 2016 in relation to steel grinding balls (Program 1). In that case the Commission also found that SIEs producing steel raw materials continue to be considered as ‘public bodies’ for the purposes of the definition of <i>subsidy</i> in section 269(T) of the Act.²⁹⁸</p> <p>See above for the Commission’s assessment of whether SIEs are public bodies.</p>	Yes
21	Water Conservancy Fund Deduction	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 16).	Yes
22	Wuxing District Freight Assistance	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 35).	Yes
23	Huzhou City Public Listing Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 36).	Yes

²⁹⁸ Anti-Dumping Commission Report No. 316 at A3.3.1 and Appendix 5

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No.	Program name	Evidence that program is still countervailable	Countervailable?
27	Huzhou City Quality Award	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 37).	Yes
28	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 38).	Yes
29	Land Use Tax Deduction	Cooperating exporter declared receipt of a benefit under this program during the review period.	Yes
30	Wuxing District Public Listing Grant	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 39).	Yes
31	Anti-dumping Respondent Assistance	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 17).	Yes
32	Technology Project Assistance	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 18).	Yes
34	Balidian Town Public Listing Award	The exporter that benefitted from this program during the original investigation (Kingland) is still exporting to Australia and did not make a submission in relation to this program.	Yes
35	Preferential Tax Policies for High and New Technology Enterprises	Countervailed by the Commission in 2016 in relation to steel grinding balls (Program 5). Notified during the review period by the GOC to the WTO in G/SCM/N/220/CHN (Program 6).	Yes
36	Local Tax Bureau Refund	<u>Financial contribution</u> – a refund of government revenue to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local tax bureau.	Yes
37	Return of Farmland Use Tax	<u>Financial contribution</u> – a refund of government revenue to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.	Yes

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No.	Program name	Evidence that program is still countervailable	Countervailable?
38	Return of Land Transfer Fee	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.</p>	Yes
39	Return of Land Transfer Fee From Shiyou	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.</p>	Yes
40	Dining lampblack governance subsidy of Jinghai County Environmental Protection Bureau	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Environment Protection Bureau.</p>	Yes
41	Discount interest fund for technological innovation	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Handan City Industry Bureau.</p>	Yes
42	Energy conservation and emission reduction special fund project in 2015	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Daquizhuang Town Financial Bureau.</p>	Yes
43	Enterprise famous brand reward of Fengnan Finance Bureau	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Fengnan District Science and Technology Bureau.</p>	Yes

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No.	Program name	Evidence that program is still countervailable	Countervailable?
44	Government subsidy for construction	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Handan City Local Tax Bureau.</p>	Yes
45	Infrastructure Construction Costs Of Road In Front Of No.5 Factory	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Local Tax Bureau.</p>	Yes
46	New Type Entrepreneur Cultivation Engineering Training Fee Of Jinghai County Science And Technology Commission	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Science and Technology Commission.</p>	Yes
47	Subsidy for Coal-Fired Boiler of Fengnan Subtreasury	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Fengnan District Environment Protection Bureau.</p>	Yes
48	Subsidy for Coal-Fired Boiler Rectification	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Handan City Environment Protection Bureau.</p>	Yes
49	Subsidy for District Level Technological Project	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Daqiu Zhuang Town Science and Technology Bureau.</p>	Yes

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No.	Program name	Evidence that program is still countervailable	Countervailable?
50	Subsidy For Pollution Control Of Fengnan Environmental Protection Bureau	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Fengnan District Environment Protection Bureau.</p>	Yes
51	Subsidy from Science and Technology Bureau of Jinghai County	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Science and Technology Bureau.</p>	Yes
52	Subsidy of Environment Bureau transferred from Shiyou	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai County Environment Protection Bureau.</p>	Yes
53*	Supporting fund for exhibition from Hongqiao District Commerce Commission	<p><u>Financial contribution</u> – a direct transfer of funds to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Hongqiao District Commerce Commission.</p>	Yes
54*	Government subsidy for job stability	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.</p>	Yes
55*	Commercial Committee Support Fund	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.</p>	Yes

PUBLIC RECORD

No.	Program name	Evidence that program is still countervailable	Countervailable?
56*	Tianjin Municipal Bureau of Commerce July 2018-December 2018	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Tianjin Municipal Bureau of Commerce.</p>	Yes
57*	Aiding fees for cases of technology information collection	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.</p>	Yes
58*	Patent supporting fund from Science and Technology Bureau of Jinghai District 2019	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Jinghai District Science and Technology Bureau.</p>	Yes
59*	Patent supporting fund for 2017 program	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.</p>	Yes
60*	Subsidy for patent from Science and Technology Bureau Fengnan District, Tangshan City	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Fengnan District Science and Technology Bureau.</p>	Yes
61*	Subsidy for Energy collection from the Tangshan Quality and Technology Supervision Bureau	<p><u>Financial contribution</u> – a refund of government revenue to the recipient enterprise.</p> <p><u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise.</p> <p><u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Tangshan Quality and Technology Supervision Bureau.</p>	Yes

PUBLIC RECORD

No.	Program name	Evidence that program is still countervailable	Countervailable?
62*	Award to the Patent Innovation from Science and Technology Bureau Fengnan District	<u>Financial contribution</u> – a refund of government revenue to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Fengnan District Science and Technology Bureau.	Yes
63*	Technical innovation subsidy for dedusting equipment and boiler	<u>Financial contribution</u> – a refund of government revenue to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.	Yes
64*	Awards to technology innovation from Bureau of Industry and Information Technology Fengnan District	<u>Financial contribution</u> – a refund of government revenue to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Fengnan District Bureau of Industry and Information Technology.	Yes
65*	Awards to "Well-Known Trademarks" from Hebei Province Market Supervision administration Bureau	<u>Financial contribution</u> – a refund of government revenue to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the Hebei Province Market Supervision administration Bureau.	Yes
66*	Grant for Technology ERP	<u>Financial contribution</u> – a refund of government revenue to the recipient enterprise. <u>Benefit conferred</u> – on all goods manufactured by the recipient enterprise. <u>Specificity</u> – access is limited to enterprises within the jurisdiction of the local authorities.	Yes

Table 47: Subsidy programs examined

**Additional programs examined during the present review*