Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 285

REVIEW OF ANTI-DUMPING MEASURES

HOLLOW STRUCTURAL SECTIONS

EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

BY

DALIAN STEELFORCE HI-TECH CO., LTD

28 July 2015

SEF 285 Hollow Structural Sections – China

CONTENTS

ABBREVIATIONS

ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
ATM	Australian Tube Mills Pty Ltd
China	The People's Republic of China
Dalian Steelforce	Dalian Steelforce Hi-Tech Co., LTD
GOC	Government of China
GOI	Government of India
HRC	Hot rolled coil
Minister	The Minister for Industry and Science
NMDC	National Minerals Development Corporation
Orrcon	Orrcon Operations Pty Ltd
the Regulations	*Customs (International Obligations) Regulations 2015*
SASAC	State-Owned Assets Supervision and Administration Commission
SBB	Steel Business Briefing
SCM agreement	Agreement on Subsidies and Countervailing Measures
SEF	Statement of Essential Facts
SG&A	Selling, general, and administrative expenses
The Act	*Customs Act 1901*
the applicant	Steelforce Australia Pty Ltd
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	Hollow Structural Sections as described in section 3.3
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science
TMRO	Trade Measures Review Officer
WTO	World Trade Organisation
ITRB	International Trade Remedies Branch
CTMS	Costs to make and sell

1 SUMMARY AND RECOMMENDATIONS

1.1 Summary

This review is in response to an application from Steelforce Australia Pty Ltd (Steelforce Australia) to review the anti-dumping measures (in the form of a dumping duty notice and countervailing duty notice) applying to certain hollow structural sections (HSS)[1] exported to Australia from the People's Republic of China (China) as they apply to Steelforce Australia's supplier Dalian Steelforce Hi-Tech Co., Ltd (Dalian Steelforce).

The application for review is based on a change in the variable factors relevant to the taking of the anti-dumping measures in relation to Dalian Steelforce. The variable factors relevant to the review are the normal value, export price, non-injurious price (NIP), and the amount of countervailable subsidy. The application states that the normal value, export price, and level of subsidy have changed.

Dalian Steelforce is covered by specific anti-dumping measures applying to its exports of HSS to Australia from China.

This Statement of Essential Facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary)[2] in relation to the review.

1.2 Proposed recommendation

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice and countervailing duty notice have effect in relation to Dalian Steelforce as if different variable factors had been ascertained.

In summary, the Commissioner proposes to recommend:

- the dumping duty be a combination of fixed and variable duties, with the fixed amount being zero and a variable amount payable if the actual export price is below the ascertained export price; and
- the countervailing duty be zero per cent.

1.3 Final report

The Commissioner's final report and recommendations must be provided to the Parliamentary Secretary by **11 September 2015** or within such longer period as the Parliamentary Secretary allows.[3]

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[1] Refer to the full description of the goods in section 3.3 of this report.

[2] The Minister for Industry and Science has delegated responsibility for anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision-maker for this review of anti-dumping measures.

[3] Subsection 269ZDA(1).

2 BACKGROUND

2.1 Application and initiation

On 10 March 2015, Steelforce Australia lodged an application requesting a review of the anti-dumping measures as they apply to Dalian Steelforce's exports of HSS to Australia under Division 5 of Part XVB of the *Customs Act 1901* (the Act)[4]. Steelforce Australia's application claimed that certain variable factors relevant to the taking of the anti-dumping measures have changed.

The Commission examined the application and decided not to reject the application. On 9 April 2015, the Commissioner initiated a review of the anti-dumping measures in respect of HSS as they apply to Dalian Steelforce.

Consideration Report 285 (CON 285) was published on the Commission's website detailing the reasons for not rejecting the application. Notification of the initiation of the review was made in *The Australian* newspaper on 9 April 2015 and in Anti-Dumping Notice (ADN) 2015/45.

The review period for the purpose of this review is 1 January 2014 to 31 December 2014. The review is limited to examining whether the variable factors, relevant to the taking of the anti-dumping measures as they affect Dalian Steelforce, have changed.

2.2 Previous case

On 19 September 2011, following an assessment of an application made by OneSteel Australian Tube Mills Pty Ltd (ATM), the then Australian Customs and Border Protection Service (ACBPS) initiated investigations into:

- the alleged dumping of certain HSS exported to Australia from China, the Republic of Korea (Korea), Malaysia, the Kingdom of Thailand (Thailand) and Taiwan; and
- the alleged subsidisation of certain HSS exported to Australia from China.

These investigations were collectively numbered 'Investigation 177'.

On 6 June 2012, the then Chief Executive Officer of the then ACBPS terminated part of Investigation 177 so far as it related to:

- the investigation into the alleged dumping of HSS exported to Australia from Thailand as no dumping was found; and
- the investigation into the alleged subsidisation of HSS exported to Australia from China by two Chinese exporters, Qingdao Xiangxing Steel Pipe Co Ltd and Huludao City Steel Pipe Industrial Co ltd as no subsidisation was found or the level of subsidisation was negligible.

[4] All legislative references in this report are references to the *Customs Act 1901*, unless otherwise stated.

Further details regarding these terminations are in International Trade Remedies Branch (ITRB) Termination Report 177.

On 7 June 2012, the then ACBPS provided its final report and recommendations to the then Minister for Home Affairs (Minister) in *Australian Customs and Border Protection Report to the Minister No.* 177 (REP 177) in relation to the remainder of Investigation 177.

In that report the then ACBPS concluded, among other things, that:

- HSS exported from China to Australia was dumped with margins between 10.1% and 57.1%;
- HSS exported from China to Australia was subsidised with margins between 2.2% and 54.8%;
- the dumped and subsidised exports caused material injury to the Australian industry producing like goods; and
- continued dumping and subsidisation may cause further material injury to the Australian industry.

In making its findings in relation to dumping, the then ACBPS determined that there was a market situation[5] in the Chinese domestic HSS market during the investigation period of 1 July 2010 to 30 June 2011, which rendered domestic sales of HSS in China unsuitable for use in determining normal values under subsection 269TAC(1) of the Act.

On 3 July 2012 the Minister published a dumping duty notice imposing dumping duties on the goods exported to Australia from China, Korea, Malaysia and Taiwan[6] and a countervailing duty notice imposing countervailing duties on the goods exported to Australia from China (excluding Huludao City Steel Pipe Industrial Co., Ltd and Qingdao Xiangxing Steel Pipe Co., Ltd)[7].

Dalian Steelforce was also named in those notices as it had exported the goods under consideration during the investigation period relevant to that investigation.

The decision by the then Minister to publish a dumping duty notice and a countervailing duty notice following Investigation 177 was the subject of review by the former Trade Measures Review Officer (TMRO)[8] and subsequently, reinvestigation by the then ACBPS (Report 203).

The reinvestigation resulted in the then ACBPS recommending to the then Minister that the dumping duty notice and countervailing duty notice remain in place with an alteration of the amount of combined IDD and ICD applicable to the exports of Dalian Steelforce. The then Minister accepted this recommendation, and the applicable rate for all finishes was amended from 13.4 per cent (Investigation 177) to 11.1 per cent.

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[5] Subsection 269TAC(2)(a)(ii).

[6] Subsections 269TG(1), 269TG(2).

[7] Subsection 269TJ(2).

[8] The TMRO was the former name of the review body, which is now known as the Anti-Dumping Review Panel.

2.3 Review of Measures

If anti-dumping measures have been taken in respect of certain goods, an affected party who considers it may be appropriate to review those measures as they affect a particular exporter of those goods or as they affect exporters of those goods generally, may apply for a review of those measures because one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters have changed.[9] The Parliamentary Secretary may also request that the Commissioner initiate a review at any time.[10]

A review application may not be lodged earlier than twelve months after publication of the notice implementing the original anti-dumping measures or the notice(s) declaring the outcome of the last review of the notice(s).[11]

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review of anti-dumping measures and report to the Parliamentary Secretary. [12] Within 110 days of the initiation, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record a SEF, on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures[13].

In making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:

- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.[14]

The Commissioner may also have regard to any other matters that the Commissioner considers relevant to the review.[15]

During the course of a review, the Commission will examine whether the variable factors have changed. Variable factors in this particular review are a reference to:

- the ascertained export price;
- the ascertained normal value;

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[9] Subsection 269ZA(1)(a)(i).
[10] Subsection 269ZA(3).
[11] Subsection 269ZA(2)(a).
[12] Subsection 269ZDA(1).
[13] Subsection 269ZD(1).
[14] Subsection 269ZDA(3)(a).
[15] Subsection 269ZDA(3)(b).

- the amount of the countervailable subsidy; and
- the NIP.[16]

At the conclusion of a review of anti-dumping measures, the Commissioner must provide a final report that makes a recommendation to the Parliamentary Secretary that the dumping duty notice and/or countervailing notice[17]:

- remain unaltered; or
- be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

Following the Parliamentary Secretary's decision, the Parliamentary Secretary must give notice advising interested parties of the decision[18].

2.4 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base final recommendations to the Parliamentary Secretary.

The SEF represents an important stage in the review. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner. The Commissioner must have regard to submissions received in relation to this SEF within 20 days of the SEF being placed on the public record in making his final report to the Parliamentary Secretary. The final report will recommend whether or not the dumping duty notice and countervailing duty notice should be varied, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **17 August 2015**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.[19]

The Commissioner must report to the Parliamentary Secretary by 11 September 2015.

Submissions should preferably be emailed to operations2@adcommission.gov.au.

Alternatively, they may be sent to fax number 03 8539 2499 or mailed to:

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[16] Subsection 269T(4E).
[17] Subsection 269ZDA(1)(a).
[18] Subsection 269ZDB(1)(a)
[19] Subsection 269ZDA(4).

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Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available on the Commission's web site www.adcommission.gov.au.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. The public record can be viewed online at www.adcommission.gov.au, or alternatively, physical copies of the Public Record can be viewed by request at the Commission's Melbourne office (phone 13 28 46 to make an appointment). Documents on the Public Record should be read in conjunction with this SEF.

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Australian industry produces HSS that has characteristics closely resembling those of the goods under consideration. The Commission considers that HSS manufactured by the Australian industry are like goods to the goods subject to measures (the goods – see below).[20]

3.2 Legislative framework

The Commissioner must be satisfied that the "like" goods to the goods subject to measures are produced in Australia.

Subsection 269T(2) of the Act specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with subsection 269T(3) of the Act, for goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of those goods must be carried out in Australia.

3.3 The goods subject to measures

The goods subject to the anti-dumping measures (the goods) are:

> *certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include in-line galvanised (ILG), pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS.*

Sizes of the goods are, for circular products, those exceeding 21mm up to and including 165.1mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3mm.

The following additional information is provided to clarify the goods covered by the measures.

Finishing

All HSS regardless of finish is included in the goods.

Non-galvanised HSS is typically of painted, black, lacquered or oiled finished coatings.

CHS with other than plain ends (such as threaded, swaged and shouldered) are also

[20] In accordance with the definition of 'like goods' under subsection 269T(1).

included in the application.

Standards

HSS is generally produced to either the British Standard BS 1387, the Australian Standard AS 1163 or international equivalent standards (including ASTM International, Japanese Industry Standards and Korean Industrial Standards).

HSS can also be categorised according to minimum yield strength. The most common classifications are 250 and 350 mega Pascals.

HSS may also be referred to as extra-light, light, medium or extra heavy according to its wall thickness.

Excluded goods

The following categories are excluded from the goods:

- conveyor tube (made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1 mm on outer surface and 0.25 mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6 mm in order to maintain vibration free rotation and minimum wind noise during operation);
- precision rectangular or square hollow sections with a nominal thickness of less than 1.6mm (is not used in structural applications); and
- air heater tubes made to Australian Standard 2556.

'Structural' sections

For clarification, the goods subject to the measures include all electric resistance welded pipe and tube made of carbon steel meeting the above description of the goods (and exclusions), regardless of whether or not the pipe or tube meets a specific structural standard or is used in structural applications.

3.4 Tariff classification

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

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37);
- 7306.61.00 (statistical codes 21, 22, and 25); and
- 7306.69.00 (statistical code 10).

The goods exported to Australia from China are subject to a 4% rate of duty.

3.5 Like goods produced by the Australian industry

During the original investigation, the then ACBPS found that:

- there was an Australian industry producing like goods;

- a substantial process of manufacture was carried out in Australia in producing the like goods;
- the like goods were wholly manufactured in Australia; and
- there was an Australian industry consisting of four Australian companies that produce like goods in Australia.

The Commission remains satisfied that there is an Australian industry producing like goods.

4 EXPORTER INFORMATION

4.1 Exporter questionnaire

The Commission provided Dalian Steelforce with an exporter questionnaire to complete. Dalian Steelforce's response included information concerning Dalian Steelforce's organisation, domestic sales, export sales, costs to make and sell (CTMS) and subsidies.

4.2 General

Dalian Steelforce provided information in its response to the exporter questionnaire detailing its ownership structure and related parties. The information provided confirmed no change to information previously provided to the Commission in respect of Dalian's ownership.

Dalian Steelforce's response stated it also produces other products not under review.

4.3 Reliability of data supplied by Dalian Steelforce

The Commission elected not to conduct an on-site verification of the information provided in Dalian Steelforce's exporter questionnaire response. Dalian Steelforce fully cooperated during the review and provided detailed financial data. Dalian Steelforce has also, on request, provided copies of financial documentation related to a number of sales transactions and costs.

Further, as Dalian Steelforce was included in the original investigation (case 177), its financial data was verified by the then ACBPS at a visit by officials in 2012. The non-confidential visit report is available on the public record for Investigation 177.

The Commission has used a variety of means to analyse and test the reliability and accuracy of information provided by Dalian Steelforce. Based on these testing methods, the Commission is satisfied as to the accuracy of the data supplied by Dalian Steelforce upon which the findings of this review are based. The key tests of relevance and reliability undertaken by the Commission in relation to the data submitted by Dalian Steelforce are outlined below.

Comparison to data verified in Investigation 177

The Commission has, where possible, compared the data provided by Dalian Steelforce in the review to data provided by exporters of HSS from China and verified by the ACBPS in the original investigation. The Commission followed the same methodologies to ensure a consistent approach to ascertaining the variable factors.

Australian Border Force (ABF) Database

The Commission compared Dalian Steelforce's export sales information to the data in the ABF import database. A number of discrepancies were identified and data corrections were provided by Dalian Steelforce.

Verification to source documents

The Commission obtained copies of the commercial invoices, bills of lading, marine freight and insurance, Australian importation documentation invoices, and other applicable documents including proof of payment for ten selected shipments during the review period. The information in the commercial documentation was consistent with the information presented in Dalian Steelforce's exporter questionnaire response.

These analyses supported the relevance and reliability of the data that Dalian Steelforce submitted for this review.

4.4 Like goods produced and sold in China by Dalian Steelforce

Dalian Steelforce advised that, during the review period, its domestic sales of HSS were dissimilar to its export sales, and consisted entirely of non-prime product or downgrade product. Non-prime or downgrade product is HSS that was initially intended for sale in the Australian market, but does not meet Australian standards.

In Investigation 177 the Commission found that although the non-prime and downgrade products were like goods to the good exported to Australia, they were not sold 'in the ordinary course of trade'. They are isolated sales of sub-standard product and it is more cost-effective to dispose of them locally than export to Australia.

5 VARIABLE FACTORS – DUMPING DUTY NOTICE

5.1 Finding

The Commissioner finds that the variable factors relevant to the taking of anti-dumping measures in relation to HSS exported to Australia by Dalian Steelforce have changed.

The Commission proposes to recommend to the Parliamentary Secretary that the variable factors of export price, normal value and NIP be altered.

5.2 Determination of exporter

The Act does not provide a definition of 'exporter'. The Commission will generally identify the exporter as:

- a principal in the transaction located in the country of export from where the goods were shipped who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.

After reviewing all data submitted, the Commission determined that Dalian Steelforce was the exporter of the goods subject to this review as it negotiates the sale of goods with the importers, arranges for the physical transportation of the goods to the port of exportation and arranges the export clearance of the goods. This accords with earlier findings that Dalian Steelforce was the exporter.

5.3 Determination of importer

Section 269T(1) defines the importer as the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed.

In their response to the exporter questionnaire, Dalian Steelforce identified a number of Australian customers that imported the goods during the review period.

5.3.1 Direct transactions between Dalian Steelforce and Steelforce Trading Pty Ltd

Based on the information available, it is observed that, for sales made directly to Steelforce Trading, Steelforce Trading:

- is named as the customer on supplier invoices;
- is named as the consignee on the bills of lading;
- declares itself as the owner of the goods for entry to what was the then ACBPS;
- pays the importation costs associated with the entry;
- negotiates with Dalian Steelforce for the purchase of HSS;
- is named as the owner on each import declaration;

- arranges shipping, insurance, customs clearance, logistics, and storage of the goods after they have been delivered to the Australian port; and
- pays all duties associated with the importation of the goods, including dumping duty and countervailing duty.

5.3.2 Sales via other entities

Sales to two other entities are made either directly or as part of a supply agreement.

Based on the information available, it is observed that, for sales made through these two entities, both:

- are named as the customer on supplier invoices;
- are named as the consignee on the bills of lading; and
- are named as the owner on each import declaration.

However, another entity in Australia:

- pays the importation costs associated with the entry;
- negotiates with Dalian Steelforce for the purchase of the HSS;
- arranges shipping, insurance, customs clearance, logistics, and storage of the goods after they have been delivered to the Australian port; and
- pays all duties associated with the importation of the goods, including dumping duty and countervailing duty.

The Commission is satisfied that the other entity in Australia is the beneficial owner of the goods at the time of their arrival within Australia and can be considered the importer for these consignments.

5.4 Export price

5.4.1 Sales to Steelforce Trading

During Investigation 177, the then ACBPS (and subsequently the then Minister) were satisfied that export transactions between Dalian Steelforce and Steelforce Trading were not arm's length because it was found that the relationship between the parties had influenced the price.

In the context of this review, the Commission again considers that the price between Dalian Steelforce and Steelforce Trading in sales where the goods were sold directly to Steelforce Trading is not at arm's length.

For the goods imported directly by Steelforce Trading:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter;
- the purchases of the goods by the importer were not arm's length transactions.

As the purchase of the goods was not arm's length, the export price cannot be ascertained under section 269TAB(1)(a) of the Act.

The Commission has then assessed whether a deductive export price under subsection 269TAB(1)(b) is appropriate. However, the Commission understands that, once imported by Steelforce Trading, the goods are subsequently sold to another member of the Steelforce group. Subsection 269TAB(1)(b) requires that the goods be subsequently sold by the importer, in the condition they were imported, to a person who is not an associate of the importer. Consequently, the export price of these transactions has been determined using the deductive method.

In Investigation 177, export prices were determined in accordance with subsection 269TAB(1)(c) of the Act, using Dalian Steelforce's monthly weighted average export invoice prices, by model, excluding any part of that price that relates to post exportation charges.[21] This determination was made because the investigation was satisfied about the suitability of those prices despite the non-arm's length nature of the sales.

In the current review, the Commission has used the same approach as Investigation 177 and export prices have been established under subsection 269TAB(1)(c) using the invoiced price between Dalian Steelforce and Steelforce Trading.

The invoiced prices between Steelforce Trading and Dalian Steelforce did not include any charges for transport after exportation, therefore no deduction was made for customs duty, ocean freight or marine insurance.

5.4.2 Sales to other entities

For goods sold to the importer via other entities, because the goods were not purchased by the importer from the exporter, subsections 269TAB(1)(a) and (b) are not applicable. The Commission considers that, for the purposes of this review, export prices should be established under subsection 269TAB(1)(c) as the price between Dalian Steelforce and the other entities. As the invoiced prices did not include any charges for transport after exportation, no deduction was made for customs duty, ocean freight or marine insurance.

The resulting export price, at the FOB level, for the goods exported by Dalian Steelforce has changed since the original investigation.

5.4.3 Conclusion – export price

Export price calculations form **Confidential Appendix 2**.

5.5 Normal value

5.5.1 Particular market situation

During Investigation 177, and the subsequent Reinvestigation 203, it was established that, in line with subsection 269TAC(2)(a)(ii), a situation exists in the domestic Chinese HSS market that renders domestic selling prices in that market unsuitable for the purposes of determining normal values for HSS under section 269TAC(1) of the Act.

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[21] Rep 177, page 50.

The reasons for this finding are contained within ITRB Report 177 (original investigation) and ITRB Report 203 (reinvestigation).

For this review, the Commission has not departed from the approach taken in the original investigation and the normal value has again been calculated under subsection 269TAC(2)(c).

5.5.2 Constructed normal value

Subsection 269TAC(2)(c) of the Act provides that constructed normal values are to be calculated as the cost of production of the exported goods, plus the selling, general and administrative (SG&A) expenses associated with the sale of those goods, and an amount for profit.

5.5.2.1 Cost of production

As required by subsection 269TAC(5A)(a), the cost to manufacture the goods has been established in accordance with section 43 of the *Customs (International Obligations) Regulation 2015* (the Regulations).[22]

During Investigation 177 (and affirmed in the reinvestigation of those findings), it was determined that, in determining the cost of manufacture of HSS in China, the records of Chinese exporters of HSS did not reasonably reflect competitive market costs associated with the production or manufacture of those goods, for the purposes of Regulation 43 of the Regulations (then Regulation 180 of the *Customs Regulations 1926* (the 1926 Regulations)).

Specifically, the then ACBPS found that:

> *…the costs incurred by HSS manufacturers in China for HRC[23] and narrow strip used in the investigation period do not reasonably reflect competitive market costs in terms of Regulation 180(2).*[24]

As a result, during Investigation 177, the then ACBPS sought to replace the costs of HRC for each Chinese exporter, as recorded by these exporters, with a competitive market cost for these inputs, when constructing normal values for these exporters. This replacement was made with reference to a 'benchmark', determined to be the weighted average of domestic HRC costs incurred by verified selected and cooperating HSS exporters from Korea, Malaysia and Taiwan, said to be 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 Steel

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[22] Previously Regulation 180 of the *Customs Regulations 1926.* The *Customs Regulations 1926* were replaced by the *Customs Regulation 2015* and the *Customs (International Obligations) Regulation 2015* which became effective on 1 April 2015.

[23] Hot rolled coil

[24] ITRB Report 177, page 39.

Business Briefing (SBB) China domestic Shanghai HRC price and the China domestic Shanghai pre-galvanised HRC price;

- differences in delivery terms observed in China (ex-works, delivered); and
- the reduced cost of narrow strip in China (for exporters that purchase narrow strip – not applicable to Dalian Steelforce).

Consistent with the original investigation, the Commission considers the costs of HRC provided by Dalian Steelforce relating to the review period do not reasonably reflect competitive market prices.

The Commission also considers that it is appropriate to use a similar benchmarking method to that followed in Investigation 177.

Specifically, Dalian Steelforce's HRC costs have been uplifted by the difference between the price actually paid by Dalian Steelforce for that product and the price of a comparable competitive market benchmark price for that product (taking into account the applicable delivery terms and type of steel purchased).

In doing so, the Commission has indexed that benchmark to reflect any movement in the price of HRC between the original investigation period and the current review period. Consistent with the recent findings of the Commission in REP 267[25], the indexation was based on pricing information from a reputable independent source in reference to domestic hot rolled coil prices in Korea and Taiwan. As set out in REP 267 the reason for this change in approach is the Commission's view of the relatively higher volatility of the East Asian HRC price.

In a submission to the review dated 10 July 2015, ATM claimed that the Commission should use, as a benchmark, the actual domestic HRC prices paid by Kukje Steel Co. Given the methodology in Investigation 177 used a 'basket' of prices from a number of relevant countries to determine the benchmark, the Commission considers it undesirable to resort to prices from one exporter in one country.

Details of this benchmark form **Confidential Appendix 3**.

The benchmark indexation has demonstrated that, overall, HRC prices have experienced a significant decline in price from the period examined in Investigation 177 and the current review period.

Full details of the benchmark methodology applied to Dalian Steelforce's costs can be found in ITRB Report 177 (as this same methodology was followed for the purposes of this review). The Commission also notes the 15 June 2015 submission, made on behalf of Dalian Steelforce, which submitted that uplift rates should be calculated separately for black and pre-galvanised HRC. The Commission has used this methodology, which is also consistent with the approach used during the original investigation.

[25] Review of anti-dumping measures – HSS – exported by Tianjin Youfa Steel Pipe Co Ltd

All other costs of manufacture reported by Dalian Steelforce have been adopted without amendment.

5.5.2.2 Selling, general and administrative costs

As required by subsection 269TAC(5A)(b) of the Act, in calculating a constructed normal value under subsection 269TAC(2)(c), the selling, general and administrative (SG&A) costs are to be established in accordance with section 44 of the Regulations.

As discussed above, Dalian Steelforce provided SG&A costs associated with the Australian sales of the goods subject to this review.

Subsection 44(2) of the Regulations requires SG&A costs to be worked out using information in Dalian Steelforce's records if, amongst other things, the records reflect the SG&A costs associated with the sale of like goods in the country of export. As discussed earlier in this report, Dalian Steelforce's domestic sales of like goods are not in the ordinary course of trade (see section 5.5.2.3 below) and therefore do not reasonably reflect the SG&A costs associated with the sale of like goods in China. Therefore the Commission considers the SG&A costs associated with those sales unsuitable for the purpose of constructing a normal value.

Subsection 44(3) of the Regulations provides three other methods for determining SG&A costs:

- SG&A incurred in the production and sale of the same general category of goods in the domestic market; or
- SG&A incurred by other exporters of like goods in the domestic market; or
- any other reasonable method.

Dalian Steelforce does not have any domestic sales of goods in the same general category as the goods exported to Australia. While the Commission has access to recent information about the domestic SG&A costs of another exporter of HSS to Australia, it does not consider this entity's costs suitable for the purpose of establishing Dalian Steelforce's normal value due to the differences in the structure and operations of that entity compared to Dalian Steelforce.

In light of the above, the Commission has used subsection 44(3)(c) of the Regulations, any other reasonable method, and used the export SG&A costs as reported by Dalian Steelforce in relation to their sales of HSS to Australia for the purpose of constructing a normal value.

5.5.2.3 Profit

As required by subsection 269TAC(5A)(b), when constructing normal values under subsection 269TAC(2)(c), the amount of profit included in the normal value is to be determined having regard to section 45 of the Regulations.

Subsection 45(2) of the Regulations provides that, if reasonably possible, profit is to be determined as the profit made on like goods sold by the exporter domestically in the ordinary course of trade.

In the original investigation, the Commission found that, while profitable sales of like goods were made by Dalian Steelforce on the domestic market, the nature and low volume of these sales meant that they were not considered to be in the ordinary course of trade and hence suitable for determining profit under subsection 45(2) of the Regulations (which was then subregulation 181A of the 1926 Regulations),

In terms of the nature of these sales, Report 177 found that all sales of domestic like goods by Dalian Steelforce during the investigation period were of sub-prime or downgrade product. The exporter visit report of Dalian Steelforce in Investigation 177 outlined the following in relation to downgrade product:

> *downgrade is completed whole pipe that, while still technically HSS, does not meet the requirements of the relevant Australian standards for prime HSS.*
>
> *Dalian Steelforce explained that the most common kind of downgrade consists of lengths of pipe that contain the butt weld between two strips of HRC or where the pipe is not sufficiently straight. Product may also be classed as downgrade after its finish is applied, where the finish is marked or not be of a sufficient standard.*

During Investigation 177, it was understood by the then ACBPS that sales of downgrade pipe generally do not achieve the same rate of profit as sales of 'prime' HSS, as it is essentially a sub-standard product that is sold to recover the costs of its production (and make some profit where possible), as opposed to sales of full-profit prime products. For this reason, ACBPS considered that the nature of those domestic sales should exclude them from being considered in the ordinary course of trade to determine profit for constructed normal values.

In constructing normal values for Dalian Steelforce, Report 177 determined that the appropriate rate of profit should be determined as "the average net profit from domestic sales made in the ordinary course of trade by the other selected cooperating exporters from China".

However, during the reinvestigation (Report 203), the then ACBPS considered that the methodology for determining Dalian Steelforce's profit in Report 177 was not consistent with the requirements of what was then Regulation 181A of the 1926 Regulations.

In summary, Report 203 found that:

- it was open to find that the domestic sales of Dalian Steelforce during the investigation period were not in the ordinary course of trade due to the nature of those sales (but not their volumes);
- after finding that profit cannot be established on these domestic sales, what was then subregulation 181A(3) of the 1926 Regulations sets out the other methods which the Minister can use to work out profit, as follows:

  (a) by identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or

(b) by identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or
(c) subject to what was then subregulation (4), by using any other reasonable method and having regard to all relevant information.

- when calculating the amount for profit using other exporters' sales, the Commission may not exclude sales by other exporters or producers that are not made in the ordinary course of trade, which was performed in Report 177 by only using profit on ordinary course of trade sales;
- profit for Dalian Steelforce should be calculated as the actual profits realised by other exporters.

Report 203 examined the verified domestic sales of relevant cooperating exporters, which showed that the weighted average of actual amounts realised by other exporters was an overall net loss, and hence no amount for profit was included in Dalian Steelforce's constructed normal values.

In the context of this review, the Commission has again examined the nature of Dalian Steelforce's domestic sales of like goods to determine whether sales in the ordinary course of trade can be identified to determine profit under subsection 45(2) of the Regulations.

Dalian Steelforce provided a domestic sales listing of like goods in response to the exporter questionnaire. This included sales of both non-alloy (carbon steel) HSS (the goods) and alloy HSS (not the goods, but like goods). However, as discussed above, the Commission is satisfied that these sales are only of products that are considered sub-prime or downgrade. The Commission again considers that the nature of these goods means that domestic sales made during the review period were not in the ordinary course of trade for the purposes of this review. As the Commission has found that there are no sales of the like goods in the ordinary course of trade, subsection 45(2) of the Regulations cannot apply.

Subsection 45(3) of the Regulations then directs the Minister to consider working out an amount for profit having regard to one of three methodologies. There is no hierarchy in terms of which methodology must be used. In practice, "the Commission normally seeks profit information using the method described for … [Regulation 45(3)(a)] because it relates to the exporter being investigated and therefore is more likely to yield the required data."[26]

Subsection 45(3)(a) of the Regulations provides that the Minister can use the actual amounts of profit realised by the exporter from the sale of the same general category of goods in the exporter's domestic market. Dalian Steelforce does not have any domestic sales of the same general category of goods during the review period that are considered suitable for the purpose of establishing a profit on domestic sales.

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[26] *Dumping and Subsidy Manual*, page 47.

Subsection 45(3)(b) of the Regulations provides that the Minister may use the weighted average of the actual profit realised by other exporters on sales of like goods in the domestic market of the country of export. The Commission has access to the rate of profit achieved on domestic sales of HSS by another Chinese exporter of the goods. This profit related to that company's sales of HSS during the period 1 July 2013 to 30 June 2014. However, the Commission notes that the *Dumping and Subsidy Manual* reflects the findings of the WTO Appellate Body in the *Bed Linen* case regarding Article 2.2.2(ii) of the *Anti-Dumping Agreement* (which Regulation 45(3)(b) incorporates), which held that the Article does not permit calculation of that 'weighted average' using data relating to only one exporter.[27]

The Commission also considered subsection 45(3)(c) of the Regulations, which provides for "any other reasonable method and having regard to all relevant information". The Commission notes a limitation is imposed by subsection 45(4) of the Regulations: any amount of profit determined using any other reasonable method must not exceed the profit normally realised by the other exporters on sales of the same general category of goods in the domestic market. The *Dumping and Subsidy Manual* states that the Commission will not use subsection 45(3)(c) of the Regulations if it is unable to determine that cap[28]. The Commission does not have access to information about the profit normally realised by other exporters of the same general category of goods in the domestic market during the review period.

Based on the above, the Commission does not have access to reasonable information to determine a profit that would be accordance with the legislative requirements. For the purpose of this review the Commission has not added any profit to the constructed cost to manufacture and sell the goods domestically.

5.5.3 Conclusion – normal value

Details of normal value calculations are at **Confidential Appendix 4**.

5.6 Dumping margin

A calculation of dumping margins is not required for the purpose of reviewing variable factors. However, for this review a dumping margin for the review period has been calculated by comparing the weighted average of export price of the goods during the review period, with the weighted average of corresponding normal values in accordance with subsection 269TACB(2)(a) of the Act.

The weighted average dumping margin has been assessed as being negligible.

Calculation of this dumping margin is at **Confidential Appendix 5**.

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[27] *EC – Bed Linen* (DS141)

[28] Dumping and Subsidy Manual, p48

6 VARIABLE FACTORS - COUNTERVAILING DUTY NOTICE

6.1 Finding

The Commission has determined that the amount of countervailable subsidy received by, and therefore the subsidy margin applicable to, Dalian Steelforce in the review period has changed. The Commission proposes to recommend to the Parliamentary Secretary that the variable factor, amount of countervailable subsidy received, be altered.

6.2 Programs reviewed

The then ACBPS found in the original investigation that countervailable subsidies had been received by exporters in respect of HSS exported to Australia from China, under 28 subsidy programs. The Commission requested that Dalian Steelforce provide data and information regarding all subsidies they received during the review period as part of its response to the exporter questionnaire.

The countervailable subsidy programs found applicable to Dalian Steelforce in Investigation 177 were:

- Program 5 - Matching Funds for International Market Development for SMEs; and
- Program 20 - Hot rolled steel provided by government at less than fair market value.

In the exporter questionnaire, Dalian Steelforce was requested to address whether it had received each of these subsidies, and to identify any additional subsidies received. Dalian Steelforce stated that it did not receive any countervailable subsidies fitting the description of programs countervailed in Investigation 177 during the review period.[29]

6.2.1 Program 5 and all other programs

The Commission has identified no evidence to suggest that any matching funds for international market development for small and medium enterprises were paid to Dalian Steelforce, therefore, program 5 will not be considered for the purpose of this review.

In addition, the Commission found no evidence suggesting that Dalian Steelforce received benefits under any other countervailable subsidy program during the review period (except for Program 20 – discussed below).

[29] Dalian Steelforce noted the finding that Program 20 was countervailable, but stated that in its view, no such program exists.

6.2.2 Program 20 – Hot rolled steel provided by government at less than fair market value

Investigation 177 finding

Program 20 was found to be a countervailable subsidy in Investigation 177, being a financial contribution that involves the provision of goods (HRC) by state invested enterprises (SIEs), being public bodies, at less than adequate remuneration.[30]

Appendix B to Report 177 states that:

> *Where the financial contribution involves a direct transaction between the public bodies and the exporters of HSS, Customs and Border Protection considers that this financial contribution confers a direct benefit to the extent that the goods were provided at less than adequate remuneration, as determined by Customs and Border Protection.*
>
> *Where the financial contribution involves the provision of HRC and/or narrow strip by public bodies to private intermediaries that then trade those inputs to the exporters of HSS, Customs and Border Protection considers, in accordance with s.269T(2AC)(a), that an indirect benefit is conferred in relation to the exported goods to the extent that the benefits conferred to the private intermediaries are passed-through to the exporters of HSS by way of HRC and/or narrow strip being provided at less than adequate remuneration.*
>
> *These benefit amounts are equal to the amount of the difference between the purchased price and the adequate remuneration.*
>
> *Where exporters of HSS during the investigation period received a financial contribution of HRC and/or narrow strip under the program at less than adequate remuneration, it would therefore confer a benefit in relation to HSS, and the financial contribution would meet the definition of a subsidy under s.269T.*[31]

Report 177 considered that the same benchmark applied to normal values for Report 177 when determining reasonably competitive market costs, should be used to determine adequate remuneration for HRC under Program 20.

This finding did not change following Reinvestigation 203.

Submission to the current review

In a submission dated 20 July 2015, Dalian Steelforce submitted that the Commission should re-examine findings in respect of public bodies as they relate to the amount of countervailable subsidy received by Dalian Steelforce.

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[30] REP 177, Appendix B, page 219.
[31] Ibid.

The full submission can be accessed through on the public record found at the Commission's website.

Assessment of public bodies

What entities supplied HRC to Dalian Steelforce?

In its response to the exporter questionnaire, Dalian Steelforce provided a spreadsheet containing purchases of painted and pre-galvanised HRC (non-alloy) during the importation period. Dalian Steelforce also provided information as to whether the supplier (or manufacturer of the HRC if the supply was not directly from the manufacturer)) is an SIE. Out of the six suppliers of applicable HRC to Dalian Steelforce during the review period, all were either SIEs or sold HRC produced by an SIE.

Previous consideration

The term 'public body' is not defined in the Act or the Agreement on Subsidies and Countervailing Measures (SCM Agreement). It has been considered by the Commission (or the then ACBPS) in previous investigations and has been the subject of a number of World Trade Organisation (WTO) Dispute Resolution Panel and Appellate Body findings.

To inform the Commission's assessment of this issue in the present review the following documents are considered to be relevant:

- REP 177 – the then ACBPS' finding in relation to the subsidisation of HSS exported from China;
- REP 203 – the then ACBPS' reinvestigation of certain findings in REP 177, one of which was whether SIEs that supplied HRC to manufacturers of HSS were public bodies;
- REP 193 – the then ACBPS' findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively 'coated steel') exported from China. The Commission found that SIEs that supplied HRC to manufacturers of coated steel were public bodies;
- Anti-Dumping Review Panel (ADRP) Report (15 November 2013) in relation to REP 193 – the ADRP disagreed with the Commission's finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP's finding in relation to this issue;
- *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (DS379) – this Appellate Body finding considered the meaning of 'public body' in accordance with Article 1.1(a)(1) of the *SCM Agreement*;
- *United States – Carbon Steel (India)* (DS 436) – this WTO Appellate Body finding further considered the requirements for finding an entity to be a public body; and

- *United States – Countervailing Measures (China)* (DS437) – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

In relation to the latter document, DS437, while this decision is recent, the Commissioner considers it of less relevance to the present investigation. In the US investigations considered by the Panel in DS437, the US determined that the relevant input suppliers were public bodies on the grounds that these suppliers were majority-owned or otherwise controlled by the GOC. The Commissioner agrees with the views of the Panel in this dispute, and the Appellate Body in DS379, that majority ownership of itself does not lead to a conclusion that an entity is a public body. The Commissioner does not advocate such an approach in the present investigation.

In DS379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):[32]

- **Indicia 1** - where a *statute or other legal instrument* expressly vests government authority in the entity concerned;

- **Indicia 2** - where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and

- **Indicia 3** - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Commission, and more recently the ADRP, have used these indicia as the basis for its approach to determining decisions regarding whether entities subject to dumping and countervailing investigations should be considered as having received a financial contribution from a public body that confers a benefit.

Decisions of the then ACBPS

In REP 177 the then ACBPS assessed whether SIE suppliers of HRC steel were public bodies according to each of the three indicia. The then ACBPS concluded that Indicia 1 was not met, however evidence exists to show that both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese HRC and/or narrow strip manufacturers. This conclusion was based on an assessment of a number of factors including policy documents issued by the GOC and statements by SIE steel manufacturers in public reports. The then ACBPS considered that the evidence ‘show(ed) that these entities are still constrained by, and abiding by,

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[32] Appellate Body report DS379 at [318]

multiple GOC policies, plans and measures, and in some circumstances acting as an important means by which these GOC policies and plans are implemented.'

The then ACBPS' finding was appealed to the then TMRO, who directed the then ACBPS to conduct a reinvestigation of the public body finding. The then ACBPS' reinvestigation report, REP 203, affirmed the findings in REP 177. It considered that 'SIEs are exercising government functions and that there is evidence that the government exercises meaningful control over SIEs and their conduct. In performing government functions, SIEs are controlling third parties.'

In REP 193, relating to coated steel, the then ACBPS relied on its findings in REP 203 to find that SIE suppliers of HRC were public bodies. The GOC appealed this finding to the ADRP. In disagreeing with the then ACBPS' finding, the ADRP made the following observations:

- Active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority;

- In concluding that certain companies were actively implementing objectives in the five-year plans the Commission conflated the purpose of acting in accordance with a government policy and carrying out government functions;

- Article 14 of the Interim Measures, which vests the State-Owned Assets Supervision and Administration Commission (SASAC) with certain obligations in respect of the economy, is a reference to SASAC and not to the SIEs. It does not evidence how, or if, there is authority delegated to SIEs to control participants in the iron and steel industry;

- Having an impact on other participants in the industry is not indirectly controlling them and is not evidence of the exercise of governmental authority; and

- There is no material which demonstrates that there has been a delegation (noting this is not necessarily in the strict sense of delegation) of governmental authority to SIEs to impose state-mandated policies on participants in the iron and steel industry.

Commission's consideration

The Commission considers that the then TMRO's decision to direct a reinvestigation of the findings in REP 177 was, to a large extent, premised on the then TMRO's view that there needs to be the essential element of exercising a power of government over third persons. This view was in turn likely influenced by the words of the Appellate Body in DS379, 'that the term "government" is defined as the "continuous exercise of authority over subjects; authoritative direction or regulation and control".'

The Panel considered this issue in DS437, a decision that was handed down after the ADRP's report in relation to coated steel. The Panel stated in its report that '(it) was not persuaded by China's argument that…"[a] public body, like government in the narrow sense, thus must itself possess the authority to 'regulate, control, supervise or restrain'

the conduct of others".' The Appellate Body's view was that this was not supported by the findings in DS379. It stated that:

> *In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond "the effective power to 'regulate', 'control', or 'supervise' individuals, or otherwise 'restrain' their conduct".*

The Commission considers that while it was relevant for the ADRP to consider this element in the context of the coated steel case, the ability to control others is not, of itself, decisive in determining whether an entity possesses, exercises or is vested with government authority.

In DS436, also released after the ADRP's findings, the WTO DSB further considered the issue of whether a government exercises 'meaningful control' over an entity. The Panel stated that 'to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is "meaningful".'

In DS436 the US argued that in addition to the Government of India's (GOI's) majority shareholding in the relevant entity (the National Mineral Development Corporation (NMDC))[33], there was evidence demonstrating that the GOI was involved in the selection of directors of NMDC and that NMDC's website stated that it was under the 'administrative control' of the GOI. The US referred to a previous administrative review of the same commodity wherein it was found that the GOI had appointed two directors and had approval power over an additional seven out of 13 directors.

The DSB stated that, in its view:

- 'government involvement in the appointment of an entity's directors (involving both nomination and direct appointment) is extremely relevant to the issue of whether that entity is meaningfully controlled by the government';

- 'while a government shareholding indicates that there are formal links between the government and the relevant entity, government involvement in the appointment of individuals – including serving government officials – to the governing board of an entity suggests that the links between the government and the entity are more substantive, or "meaningful", in nature'; and

- 'in the context of government ownership and government involvement in the appointment of directors, such evidence provides additional support for a finding that an entity is under the "meaningful" control of the government.'

The DSB rejected India's claim that the US' finding that NMDC is a public body is inconsistent with Article 1.1(a)(1) of the *SCM Agreement*.

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[33] The GOI held 98% of the shares of the NMDC

The *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises* (Interim Regulations) set out the functions and obligations of a state-owned assets supervision and administration authority (SASAC). Relevant provisions are as follows:

- Article 13 states that one of the main responsibilities is to 'appoint or remove the responsible persons of the invested enterprise';
- Article 16 states that a state-owned assets supervision and administration authority 'shall establish and improve the mechanism for selecting and appointing the responsible persons or enterprises';
- Article 17 describes the positions presumably considered to be 'responsible persons', which include the general manager, deputy general manager, chief accountant, chairman, vice-chairman and director of the board;
- Article 17 also states that where the State Council or any level of government 'provide otherwise' in relation to the appointment or removal of responsible persons then those decisions prevail;
- Article 18 states that a state-owned assets supervision and administration authority shall establish a performance evaluation system and conduct annual performance reviews of responsible persons; and
- Article 19 states that a state-owned assets supervision and administration authority shall determine the remuneration of responsible persons of wholly state-owned enterprises.

Based on evidence obtained by the Commission, it can determine that for all but one of the suppliers (or manufacturers) of HRC to Dalian during the review period, SASAC had ownership of the entity either directly or indirectly.

The Commission is not in possession of evidence as to whether SASAC has appointed directors or other key management positions to either the direct suppliers of HRC to Dalian Steelforce, or their parent companies. During the review, the Commission directly wrote to the GOC to advise of the fact that it would be reassessing whether HRC suppliers in China continued to be public bodies for the purposes of this review. This letter invited the GOC to respond to this issue, but it is yet to do so.

The Commission has had regard to other relevant information that it is in possession of, namely the Interim Regulations, and considers that the provisions are evidence of a closer link between the GOC and the SIEs that supplied HRC to Dalian Steelforce during the review period than mere ownership and are evidence of 'meaningful control' over those entities.

The Commission observes that the GOC submitted during investigation 177[34] that the current law, as outlined in Article 7 of the Interim Regulations, prevents SASAC from exercising any government functions of administrative public affairs. Article 7 states:

> *People's governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned assets, persist in the separation of government functions from enterprise management and separation of ownership from management.*
>
> *The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.*

The Commission does not consider this Article to be at odds with a finding that Chinese HRC suppliers are public bodies. The Appellate Body in DS379 stated that an entity may possess certain features suggesting it is a public body and others that suggest that it is a private body. In DS436 the GOI argued that the NMDC enjoyed a significant amount of autonomy from the GOI, which was granted "to make the public sector more efficient and competitive". These are similar sentiments to those expressed by the GOC in the Commission's previous considerations of public bodies. The DSB in DS436 stated that '(s)o long as public sector enterprises are involved, we are not persuaded that the grant of a greater degree of autonomy is necessarily at odds with a determination that such public sector enterprises constitute public bodies.'

Conclusion

The Appellate Body in DS379 observed that in some cases the features of an entity may be mixed and the challenge of determining whether an entity is a public body may be complex. It stated that authorities 'are called upon to engage in a careful evaluation of the entity in question' and 'give due consideration to all relevant characteristics of the entity and…avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant.'

The Commission has not relied solely on the fact that SASAC has ownership in the majority of the HRC suppliers in its assessment but looked to guidance materials that set out the functions of SASAC in its role as shareholder. The Commission considers that these functions, such as the power to appoint persons to key management positions, evidence a greater role in the management of enterprises than mere shareholder. In the absence of further evidence the Commission considers this sufficient information to determine that the GOC exercises meaningful control over all but one of the SIEs that supplied Dalian Steelforce HRC during the review period, and this serves as evidence that the relevant entities possesses governmental authority and are therefore public bodies.

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[34] HSS exported from China

6.2.3 Amount of subsidy received

As outlined above, in its response to the exporter questionnaire, Dalian Steelforce provided a spreadsheet containing purchases of painted and pre-galvanised HRC (non-alloy) during the importation period. The Commission also requested Dalian Steelforce to provide its production volumes of non-alloy HSS in the review period, this was provided.

The information provided was used to calculate the benefit received by Dalian Steelforce under Program 20 in the review period, by applying the same methodology used in Report 177 and applying the benchmark used in determining reasonably competitive market costs for HRC in this review, discussed at section 5.5.2.1 above.

As discussed at section 6.2.2 above, for one SIE manufacturer of HRC supplied to Dalian, the Commission did not have sufficient evidence to be satisfied that it had SASAC ownership at any level. Due to not being satisfied of that manufacturer's status as a public body, the Commission has not included purchases from this supplier in its calculations for the SEF. The Commission notes, however, that Dalian's purchase price in relation to these transactions was above the benchmark price established and therefore no benefit would have been attributable to such purchases in any case.

Given that Program 20 was the only subsidy received by Dalian during the review period, the Commission has ascertained a final subsidy margin of 3.8%.

6.3 Conclusion – countervailable subsidisation

The Commission has found that Dalian Steelforce was in receipt of one countervailable subsidy, Program 20, during the review period.

The subsidy calculations form **Confidential Appendix 7**.

7 NON-INJURIOUS PRICE

7.1.1 General

Under subsection 8(5BA) and 10(3D) of the *Customs Tariff (Anti-Dumping) Act 1975*, the Parliamentary Secretary must have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury or a recurrence of the injury. Subsections 269TACA(a) and (c) of the Act identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to the relevant level of trade in Australia.

Having calculated the USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia.

7.1.2 Assessment of USP and NIP

During the original investigation, the then ACBPS determined the USP utilising Australian industry's CTMS for the investigation period plus an amount for profit during the period of January to September 2008. The then ACBPS chose January to September 2008 as the period to calculate profit because material injury, if any, to the Australian industry was negligible during that period. A separate USP was calculated by finish and the NIP for each finish was then calculated by deducting amounts for post exportation costs. The methodology was not subject to reinvestigation.

For the purpose of this review, a weighted average USP has been determined based on ATM CTMS data during the review period plus an amount of profit achieved by Australian industry in the period of January to September 2008. The NIP has been calculated to FOB delivery terms by deducting from the USP amounts for:

- importer profit;
- importer expenses;
- Australian customs duty, port charges, delivery commission, storage and handling; and
- overseas freight and insurance.

It is considered that the NIP should be determined by deducting the weighted average actual post-FOB costs, importer expenses and profit incurred by Steelforce Trading during the review period (as submitted by the company in its response to the importer questionnaire) from the determined USP.

Steelforce Trading provided the Commission with copies of ocean freight, marine insurance, and exportation costs documents for selected consignments of the goods subject to this assessment in its response to the importer questionnaire. The weighted averages of these actual incurred costs have been deducted from the USP.

In addition, Steelforce Trading submitted its SG&A costs to the review. These costs have been deducted from the USP.

The Commission notes that, during Investigation 177, a NIP was determined for Chinese exporters of the goods separately for each finish, as anti-dumping measures were also established separately for each finish of the goods. This was not subject to reinvestigation.

However, since finalising Investigation 177, the Federal Court of Australia has ruled that anti-dumping measures cannot be determined at a model (e.g. finish) level[35]. As such, the Commission considers that NIPs for HSS should not be calculated by finish as they were during Investigation 177, but rather only one combined NIP should be determined. This has been performed for this review.

In the context of this review, the sum of the ascertained export price, the dumping margin and the countervailing margin was lower than the NIP and hence the NIP is not the operative measure during this review period.

Details of the USP and NIP calculations are at **Confidential Appendix 6**.

[35] *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870

8 EFFECT OF THE REVIEW

8.1 Summary of findings

The Commissioner has found that, in relation to exports to Australia of HSS from China by Dalian Steelforce during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed;
- the NIP has changed; and
- the amount of the countervailable subsidy received has changed to 3.8%.

The Commissioner has also found that the NIP was greater than the sum of the ascertained export price, the dumping margin and the subsidy margin found for the review period and should therefore not be the operative measure[36] for HSS exported by Dalian Steelforce.

8.2 Recommended measures

The Commissioner proposes to recommend to the Parliamentary Secretary that the form of anti-dumping measures applicable to exports of HSS by Dalian Steelforce be a combination of fixed and variable duty pursuant to subregulation 5(2) *of the Customs Tariff (Anti-Dumping) Regulation 2013*. This is consistent with the method used in the original dumping duty notice.

The assessment of combined dumping and countervailing duty, however, is not simply a matter of adding the dumping and subsidy margins found. This is because the normal value ascertained includes an uplift for raw material costs on the basis that the costs in Dalian Steelforce's records do not reflect a competitive market cost. This same circumstance has been accounted for in finding a subsidy margin of 3.8%, based on the provision of raw material to Dalian Steelforce at less than adequate remuneration. In order to remove any double count between the dumping and subsidy margin, the dumping margin has been reduced to zero. Therefore, the dumping duty payable comprises a fixed component that is now zero, and a variable component that will be payable if the actual export price is below the ascertained export price which is a specified (confidential) amount per tonne.

The Commissioner further proposes to recommend to the Parliamentary Secretary that the subsidy margin be ascertained at the full rate of 3.8%.

A summary of the effect of changed variable factors on the anti-dumping measures is at **Confidential Attachment 1**.

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[36] The operative measure is the lesser of the normal value or non-injurious price.

9 LIST OF APPENDICES

Confidential Appendix 1	Group structure diagram
Confidential Appendix 2	Export price calculation
Confidential Appendix 3	Benchmark calculation
Confidential Appendix 4	Normal value calculation
Confidential Appendix 5	Dumping margin calculation
Confidential Appendix 6	NIP calculation
Confidential Appendix 7	Subsidy calculation
Confidential Attachment 1	Anti-dumping measures