



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

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.**

19 March 2018

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ABBREVIATIONS

ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Assistant Minister	Assistant Minister for Science, Jobs and Innovation
ATM	Austube Mills Pty Ltd
Bazhou Dongfang	Bazhou Dongfang Steel Factory
China	the People's Republic of China
CHS	Circular hollow sections
CIF	cost, insurance and freight
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 419	Consideration Report No. 419
CTMS	cost to make and sell
Dalian Steelforce	Dalian Steelforce Hi-Tech Co Ltd
the Direction	<i>Customs (Extension of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FEMCO	Far East Machinery Co Ltd
FOB	free on board
GAAP	generally accepted accounting principles
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
GOC	Government of China
HRC	Hot-rolled coil
HSS	Hollow structural sections
Huludao	Huludao City Steel Pipe Industrial Co Ltd
ICD	interim countervailing duty
IDD	interim dumping duty
Kingland	Zhejiang Kingland Pipeline and Technologies Co Ltd
The Manual	Dumping and Subsidies Manual
NDRC	National Development and Reform Commission
NIP	non-injurious price
Orrcon	Orrcon Steel Limited
REQ	Response to exporter questionnaire
review period	1 July 2016 to 30 June 2017
RHS	Rectangular or square hollow sections

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SEF	Statement of Essential Facts
SG&A	Selling, general and administrative
Shanghai MinMetals	Shanghai MinMetals Materials & Products Corp
Shin Yang	Shin Yang Steel Co Ltd
SIE	State owned or state invested enterprise
Steelforce Australia	Steelforce Australia Pty Ltd
Ta Fong	Ta Fong Steel Company Ltd
Tianjin Youfa	Tianjin Youfa International Trade Co Ltd
USP	Unsuppressed selling price
Ursine	Ursine Steel
VAT	Value Added Tax
WTO	World Trade Organization

1 SUMMARY

1.1 Introduction

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 Assistant Minister for Science, Jobs and Innovation (the Assistant Minister)¹ in relation to a review of the anti-dumping measures (in the form of a dumping duty notice and countervailing duty notice)² applying to certain hollow structural sections (HSS or the goods) exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia and Taiwan.

This review was initiated on 14 July 2017 after the Commissioner considered an application lodged by the Australian manufacturer, Austube Mills Pty Ltd (ATM).

ATM considered it appropriate to review the anti-dumping measures because it believed one or more of the variable factors relevant to the taking of the anti-dumping measures have changed. The variable factors that ATM alleged have changed are export price, normal value and amount of countervailable subsidy.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act) sets out,³ among other things, the procedures to be followed by the Commissioner when undertaking a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the anti-dumping measures covered by the application.⁴

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Assistant Minister allows, place on the public record a statement of essential facts (this SEF) on which the Commissioner proposes to base his recommendation to the Assistant Minister in relation to the review of anti-dumping measures.⁵

¹ On 20 December 2017, the Prime Minister appointed the Assistant Minister for Science, Jobs and Innovation. For the purposes of this decision the Minister is the Assistant Minister for Science, Jobs and Innovation.

² Countervailing measures only apply to certain Chinese exporters.

³ All references to legislation in this report are to the Customs Act 1901, unless otherwise specified.

⁴ Subsection 269ZC(4).

⁵ Subsection 269ZD(1).

1.3 Proposed recommendation

The Commissioner proposes to recommend to the Assistant Minister that the dumping duty notice and the countervailing duty notice have effect as if different variable factors had been ascertained.

1.4 Final report

The Commissioner's final report and recommendations must be provided to the Assistant Minister within 155 days after the publication of a notice under subsection 269ZC(4), (5) or (6), or such longer period as the Minister allows.⁶

On 16 January 2018, the Commissioner approved a second extension of time to the final report, in conjunction with the extension of time to the publishing of the SEF (Anti Dumping Notice (AND) 2018/06 refers). The final report and recommendations must now be provided to the Assistant Minister on or before **3 May 2018** or within such longer period as may be allowed.

⁶ Subsection 269ZDA(1). It is noted that, on 14 January 2017, the Assistant Minister delegated the powers and functions of the Minister under section 269ZHI to the Commissioner. Refer to Anti-Dumping Notice (ADN) No. 2017/10 for further information.

2 BACKGROUND

2.1 Initiation

On 14 July 2017, following consideration of an application for review lodged by ATM, the Commissioner initiated a review of the anti-dumping measures applying to the goods exported to Australia from China, Korea, Malaysia and Taiwan. The application was supported by another Australian HSS manufacturer, Orrcon Steel Limited (Orrcon).

Notification of the initiation of the review was made in ADN No. 2017/95, which was published on the Anti-Dumping Commission (the Commission) website⁷ on 14 July 2017.

Consideration Report No. 419 (CON 419) was also published on the Commission's website, detailing the Commissioner's reasons for not rejecting the application.

The review examined exports to Australia in the period 1 July 2016 to 30 June 2017 (the review period).

2.2 Existing anti-dumping measures

2.2.1 Original Investigation

The anti-dumping measures the subject of the review application were initially imposed by public notice on 3 July 2012 by the then Minister for Home Affairs following consideration of *International Trade Remedies Branch Report No. 177*. The measures currently apply as follows:

- the dumping duty notice applies to all exporters of HSS from China, Korea, Malaysia and Taiwan; and
- the countervailing duty notice applies to all exporters of HSS from China except Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce), Huludao City Steel Pipe Industrial Co Ltd (Huludao) and Qingdao Xianxing Steel Pipe Co Ltd.

Since measures were initially imposed in July 2012, the Commission has conducted numerous inquiries relating to HSS. Full details can be found on the Commission's electronic public record at www.adcommission.gov.au. A summary of the inquiries in relation to the goods is set out in Table 1 below.

⁷ www.adcommission.gov.au

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Case type and no.	ADN No.	Date	Country of export	Findings
Investigation REP 177	2012/31	3 July 2012	China, Korea, Malaysia and Taiwan	Dumping and countervailing duties imposed
Reinvestigation REP 203	2013/35	13 May 2013	China, Korea, Malaysia and Taiwan	REP 177 affirmed with variation to dumping duty applicable to Dalian Steelforce (China)
Exemption EX 0017	2014/51	17 June 2014	China, Korea, Malaysia and Taiwan	Exemption granted ⁸
Federal Court decision	2016/09	17 February 2016	China	Revised dumping duty applicable to Dalian Steelforce Countervailing duty notice not applicable to Dalian Steelforce
Anti-circumvention REP 291	2016/24	18 March 2016	China, Korea and Malaysia	Original notices amended to expand the description of the goods covered by the notices
Exemption EX0043	2016/52	16 May 2016	China, Korea, Malaysia and Taiwan	Exemption not granted
Continuation REP 379	2017/70	21 June 2017	China, Korea, Malaysia and Taiwan	Measures continued and revised variable factors
Review REP 381	2017/71	22 June 2017	Malaysia	Changed variable factors for Alpine Manufacturing

2.3 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to seek a review those anti-dumping measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,⁹ or the Assistant Minister may request that the Commissioner conduct,¹⁰ a review of those anti-dumping measures if one or more of the variable factors has changed.

The Assistant Minister may initiate a review at any time. However, a review application from an affected party must not be lodged earlier than 12 months after publication of the

⁸ Exemption EX 0017 was replaced, effective 16 January 2016, by Ministerial Exemption Instrument No1 of 2016.

⁹ Subsection 269ZA(1).

¹⁰ Subsection 269ZA(3).

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notice imposing the original anti-dumping measures or the notice(s) declaring the outcome of the last review.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 Assistant Minister may allow, to conduct a review and report to the Assistant Minister on the review of the anti-dumping measures.¹²

During the course of a review, the Commissioner will examine whether the variable factors have changed.

Variable factors in this particular review are a reference to:¹³

- the ascertained export price;
- the ascertained normal value;
- the non-injurious price (NIP); and
- the amount of countervailable subsidy received in respect of the goods (in relation to China only).

Within 110 days of the initiation of a review, or such longer time as allowed,¹⁴ the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Assistant Minister concerning the review of the anti-dumping measures.¹⁵

For this review, in making recommendations in his final report to the Assistant Minister, the Commissioner must have regard to:¹⁶

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

The Commissioner may also have regard to any other matter considered to be relevant to the review.¹⁷

¹¹ Subsection 269ZA(2)(a).

¹² Subsection 269ZDA(1).

¹³ Subsection 269T(4E).

¹⁴ On 14 January 2017, the Assistant Minister delegated the powers and functions of the Minister under section 269ZHI to the Commissioner. Refer to ADN No. 2017/10 for further information.

¹⁵ Subsection 269ZD(1).

¹⁶ Paragraph 269ZDA(3)(a).

¹⁷ Paragraph 269ZDA(3)(b).

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At the conclusion of the review, the Commissioner must provide a final report to the Assistant Minister. In his final report, the Commissioner must make a recommendation to the Assistant Minister that the dumping duty notice and the countervailing duty notice:¹⁸

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

The Assistant Minister must make a declaration within 30 days of receiving the report or, if the Assistant Minister considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Assistant Minister considers appropriate.¹⁹

2.3.1 Australian industry

The Commissioner is satisfied that ATM and Orrcon each represent a portion of the Australian industry producing like goods to the goods covered by the measures.

The Commission conducted verification visits to ATM and Orrcon's premises in September 2017. The reports of those visits are available on the public record.

2.3.2 Importers

The Commission identified several importers in the ABF import database that imported HSS during the review period from the countries subject to the measures. The Commission forwarded questionnaires to the major importers and received five completed importer questionnaires. The Commission conducted verification visits to the five cooperating importers and reports of these visits are available on the public record.

2.3.3 Exporters

The Commission identified a large number of exporters of the goods from China and Taiwan. Subsection 269TACAA(1) states that where the number of exporters from a particular country of export in relation to an investigation, review or inquiry is so large that it is not practicable to examine the exports of all of those exporters, then the investigation, review or inquiry may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters who:

- constitute a statistically valid sample of those exporters; or
- are responsible for the largest volume of exports to Australia that can reasonably be examined.

In considering whether this review should be carried out on the basis of information obtained from an examination of a selected number of exporters, the Commissioner took into account:

- the large number of exporters from China and Taiwan;
- the large number of exporters likely to submit completed questionnaires; and

¹⁸ Paragraph 269ZDA(1)(a).

¹⁹ Subsection 269ZDB(1A).

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- the current and foreseeable investigative workload of the Commission in other investigations and the resources available to examine exporters of HSS.

In these circumstances, the Commissioner considered it appropriate to limit the number of exporters to be examined to a sample of the largest exporters in China and Taiwan by volume to ensure the review is representative, manageable and completed within a reasonable timeframe.

ADN 2017/95 identified the selected exporters, the three categories of exporter that will be used for the purpose of this review, and how the dumping and subsidy margins will be calculated for each category.

The selected exporters from China are:

- Dalian Steelforce;
- Huludao - supplied directly and through Shanghai MinMetals Materials & Products Corp. (Shanghai Minmetals); and
- Tianjin Youfa International Trade Co Ltd (Tianjin Youfa).

The selected exporters from Taiwan are:

- Far East Machinery Co. Ltd (FEMCO);
- Shin Yang Steel Co. Ltd (Shin Yang);
- Ursine Steel Co. Ltd (Ursine Steel).

Data obtained from the ABF import database indicates that these exporters (the 'selected exporters') represent more than 95 per cent of the volume of the goods exported to Australia from China and Taiwan during the review period.

The Commission contacted the selected exporters directly and invited them to participate in the review by completing a response to the exporter questionnaire (REQ).

In addition to the above selections, Ta Fong Steel Company Ltd ((Ta Fong), a Taiwanese exporter, wrote to the Commission on 24 July 2017 requesting that it be included in the selection.

Exporters of the goods from China and Taiwan, other than the selected exporters named above, were requested to make themselves known to the Commission and provide a basic level of information, via an information request and associated spreadsheets. The information request and associated spreadsheets were made available on the Commission's website at www.adcommission.gov.au. Exporters from China and Taiwan that completed an information request are considered to be residual exporters.

The Commission also wrote to all known exporters of HSS to Australia from Korea and Malaysia, inviting them to participate in the review by completing a REQ.

The following table provides a summary of the exporters and their status in respect of the review:

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Country	Exporter	Sampling	Questionnaire	Status
China	Dalian Steelforce	Selected	REQ received	Cooperative
	Huludao	Selected	REQ received	Cooperative
	Tianjin Youfa	Selected	REQ received	Cooperative
	Zhejiang Kingland Pipeline and Technologies Co., Ltd (Kingland)	Not selected	Completed information request received	Residual
	Bazhou Dongfang Steel Factory (Bazhou Dongfang) - supplied through Changsha Honest Imports and Exports Co., Ltd	Not selected	Completed information request received	Residual
	Tianjin Jianwei Tube Company Ltd	Not selected	REQ received but was significantly deficient	Uncooperative
	All other exporters	Not selected	No response received	Uncooperative
Korea	Kukje	No sampling	REQ received	Cooperative
	Daejoo Heavy Industries Co Ltd (supplied through Swanson and Lee Corp Ltd)	No sampling	REQ received but was significantly deficient	Uncooperative
	All other exporters	No sampling	No response received	Uncooperative
Malaysia	Melewar Steel Sdn Bhd	No sampling	REQ received but was significantly deficient	Uncooperative
	Southern Pipe Industry Malaysia Sdn Bhd	No sampling	REQ received but was significantly deficient	Uncooperative
	All other exporters	No sampling	No response received	Uncooperative
Taiwan	FEMCO	Selected	REQ received	Cooperative
	Shin Yang	Selected	REQ received	Cooperative
	Ursine Steel	Selected	REQ received	Cooperative
	Ta Fong	Not selected	REQ received	Cooperative
	Tension Steel Industries Co., Ltd	Not selected	Completed information request received	Residual
	All other exporters	Not selected	No response received	Uncooperative

Table 2: Summary of exporter status

See chapter 4 for the verification activities relating to the exporters the subject of the review.

2.4 Submissions received in relation to the initiation of the review

Following the initiation of the review, the Commission received a submission from ATM dated 24 July 2017 (case public record at item 4). In its submission, ATM claimed that

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there was evidence that some exporters had embarked on a strategy of exporting to Australia, during the inquiry period for Anti-Dumping Commission Continuation Inquiry Report 379 (Continuation 379), at a price above the exporter's normal value. It claimed that, after receiving measures with no fixed interim dumping duty (IDD) component, the exporters had resumed dumping into the Australian market.

ATM submitted that, in the light of the alleged behavior by some exporters, the Commissioner should recommend that any alteration to the notices arising out of the review should take effect from the date the Commission published the notice on its website indicating that it proposed to review the measures.

ATM stated that such an action was expressly permitted under the terms of the legislation²⁰ and would send a clear signal to exporters that the Commissioner will act to discourage and prevent the manipulation of Australian laws designed to ensure fair trade. It said that exporters that have not recommenced dumping would not be impacted and that all exporters have the opportunity to apply for a final duty assessment if the exporter considered that their exports to Australia were not at dumped prices.

2.4.1 The Commission's Assessment

The Commission agrees that the legislation allows the Minister to backdate the outcome of a review to a date not earlier than that date of the notice advising the initiation of the review. The Commission's established practice, however, is to recommend that the outcome of a review has effect from the date the Minister publishes a notice advising the results of the review. This approach is based on the principle that, in general, market participants should be able to make commercial decisions with certainty about the duty liability any imports will incur. The Commission does not consider that there are grounds to depart from its normal practice concerning the date of effect of any changes arising from this review.

2.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Assistant Minister.

The SEF represents an important stage in the review as 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 final report will recommend whether or not the dumping duty notice and/or countervailing duty notice should be varied, and the extent of any interim duties that are, or should be, payable.

²⁰ Subsection 269ZDB(6)(a).

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Interested parties are invited to make submissions to the Commissioner in response to the SEF within 20 days of the SEF being placed on the public record. The due date to lodge written submissions in response to this SEF therefore is 9 April 2018.

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 Assistant Minister.²¹

The Commissioner must report to the Assistant Minister by 3 May 2018.

Submissions should preferably be emailed to investigations4@adcommission.gov.au. Alternatively, they may be sent to fax number +61 2 6102 9939, or posted to:

Director Investigations 4
Anti-Dumping Commission
GPO 2013
Canberra ACT 2601
AUSTRALIA

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 at the Commission's website at www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's verification reports and other publicly available documents on the Commission's website.

Documents on the public record should be read in conjunction with the SEF.

²¹ Subsection 269ZDA(4).

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods the subject of the anti-dumping measures (the goods), and therefore this review are:

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

Sizes of the goods are, for circular products, those –exceeding 21 mm up to and including 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3 mm. Categories of HSS excluded from the goods are conveyor tube; precision RHS with a nominal thickness of less than 1.6 mm; and air heater tubes to Australian Standard (AS) 2556.

3.2 Tariff classification

The goods are currently classified to the following tariff subheadings and statistical codes 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);
- 7306.61.00 (statistical code 90);²²
- 7306.69.00 (statistical code 10); and
- 7306.50.00 (statistical code 45).²³

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

3.3 Like goods

Subsection 269T(1) defines like goods as:

²² These tariff subheadings only apply to: Dalian Steelforce (China); Tianjin Friend Steel Pipe Co. Ltd. (China); Tianjin Ruitong Iron and Steel Co. Ltd. (China); Roswell S A R Limited (China); and Alpine Pipe Manufacturing SDN BHD (Malaysia).

²³ Ibid.

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“...goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”.

The definition of like goods is relevant in the context of this review in determining the normal value of goods exported to Australia, the NIP and the goods subject to the dumping duty notice and countervailing duty notice. The Commission’s framework for assessing like goods is outlined in Chapter 2 of the Commission’s *Dumping and Subsidies Manual* (the Manual).²⁴

²⁴ Available on the Commission’s website at www.adcommission.gov.au

4 VARIABLE FACTORS – DUMPING DUTY NOTICE

4.1 Finding

The Commissioner finds that the variable factors relevant to the determination of dumping duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) have changed.

The Commissioner proposes to recommend to the Assistant Minister that the dumping duty notice have effect as if different variable factors had been ascertained. The revised variable factors have resulted in different dumping margins relevant to the taking of IDD other than for Malaysia where the absence of exporter cooperation has meant that the dumping margin last established has been maintained.

4.2 Calculation of dumping margins

For all dumping margins calculated for cooperating exporters the subject of this review, the Commission compared the weighted average export prices over the whole of the review period with the weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a).

4.2.1 Uncooperative exporters

Pursuant to subsection 269T(1) of the Act, an exporter is an “uncooperative exporter”, where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation, within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) states that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within the legislated period. After having regard to the Direction, the Commissioner determined that all exporters which did not provide a REQ or a response to the information request, or which did not request a longer period to provide a response within the legislated period (being 37 days, concluding on 21 August 2017), are uncooperative exporters for the purposes of this review.

In addition to those exporters that did not provide a REQ, a number of entities submitted deficient responses. Where these responses remained deficient after the Commission provided an opportunity for the exporter to remedy the deficiencies, the Commissioner became satisfied that these exporters significantly impeded the review and considered them to be uncooperative exporters.

As provided for in subsection 269TACAB(1), for uncooperative exporters, export price and normal value were worked out in accordance with subsection 269TAB(3) and subsection 269TAC(6) respectively by having regard to all relevant information.

4.3 Ascertainment of variable factors – China

4.3.1 Particular Market Situation

During Investigation 177, Reinvestigation 203, Reviews 265, 266 and 285 and Continuation 379, it was established that, in accordance 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 the goods under section 269TAC(1) of the Act.

In line with its legislative requirements, the Commission's market situation assessments are undertaken at the level of the goods being investigated. In undertaking this assessment the Commission has also given consideration to conditions within the Chinese Hot Rolled Coil (HRC) market, as HRC typically accounts for over 90 per cent of the cost to make HSS and thus is a key determinate of the domestic price of HSS in China. The Commission has not undertaken an assessment of conditions within the Chinese iron ore, coking coal and coke markets, as it considers that any distortions within these markets would contribute to and be reflected in conditions within the Chinese HRC market.

For this review, the Commission has determined that a situation exists in the domestic Chinese HSS market such that domestic selling prices in that market are unsuitable for the purposes of determining normal values for the goods under section 269TAC(1) of the Act.

The Commission conducted an analysis of the market for HSS in China and based on that analysis, the Commission has concluded that the Government of China (GOC) materially influenced conditions within the HSS markets 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 state owned enterprises and state invested enterprises (SIEs).

The Commission also concludes that because of the significance of this influence over the Chinese HSS market, the domestic price for Chinese HSS was substantially different to what it would have been in the absence of these interventions. Based on this analysis, the Commission has determined that during the review period the domestic price for Chinese HSS was influenced by the GOC to a degree which makes domestic sales of HSS unsuitable for use in determining normal values under subsection 269TAC(1) of the Act.

See **Appendix A** for a full discussion on the determination of a particular market situation in this review.

4.3.2 Constructed normal value

The Commission has constructed normal values for all cooperating Chinese exporters under subsection 269TAC(2)(c) of the Act, which provides that normal values be calculated as the cost of production of the exported goods plus, on the assumption that the goods, instead of being exported, had been sold on the domestic market, the selling, general and administrative (SG&A) expenses associated with the sale of those goods, and an amount for profit.

4.3.3 Approach to replacing HRC costs

During Investigation 177 (and affirmed in the reinvestigation of those findings), it was found that, in determining the cost of manufacture of the goods in China, the records of Chinese exporters of the goods did not reasonably reflect competitive market costs associated with the production or manufacture of those goods, for the purposes of section 43 of the *Customs (International Obligations) Regulation 2015* (the Regulation) (formerly regulation 180 of the *Customs Regulations 1926*).

Specifically, the then Australian Customs and Border Protection Service (ACBPS) found that:

...the costs incurred by HSS manufacturers in China for HRC and narrow strip used in the investigation period do not reasonably reflect competitive market costs in terms of Regulation 180(2).²⁵

As a result, during Investigation 177, the then ACBPS sought to replace the costs of HRC and narrow strip for each Chinese exporter, as recorded by these exporters, with a competitive market cost for these inputs, when constructing normal values. 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 exporters from Korea, Malaysia and Taiwan.

In *Analysis of Steel and Aluminium Markets – Report to the Commissioner of the Anti-Dumping Commission* (Steel Report) published in September 2016 the Commission found that:

"... analysis of subsidies and tax arrangements for the Chinese steel and aluminium industries, and the operation of state-owned enterprises, indicates that many ... market interventions have been economically inefficient and have resulted in distortions to market outcomes."²⁶

Accordingly, and consistent with the original investigation, Reviews 265, 266 and 285, and Continuation 379, the Commission considers the costs of HRC incurred by Chinese exporters relating to the review period do not reasonably reflect competitive market prices.

After analysing the cost to make and sell (CTMS) data of the Chinese exporters, the Commission has again found that HRC represents the majority of the cost to make HSS. Therefore, the Commission considers that it is appropriate to use a similar benchmarking method to that followed in Investigation 177, Reviews 265, 266 and 285 and Continuation 379.

The Commission has used the verified HRC purchase costs from the review period available for exporters in Korea and Taiwan. The Commission collated all HRC purchases from these exporters during the review period and calculated a quarterly weighted

²⁵ EPR 177 – 416 Report 177, page 39.

²⁶ The Anti-Dumping Commission, '*Analysis of Steel and Aluminium Markets - Report to the Commissioner of the Anti-Dumping Commission*', (August 2016) available at <http://www.adcommission.gov.au> p 57.

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average HRC purchase cost in Chinese Yuan (RMB) for black and pre-galvanised finishes. Chinese exporters HRC purchase costs have been uplifted by the difference between the price actually paid by them for that product and the price of the comparable competitive market benchmark that has been calculated from verified data of the selected exporters in Korea and Taiwan.

The Commission considered whether there should be any adjustment to the competitive market benchmark to ensure that it reflects the cost of production of the goods in the country of export in accordance with subsection 269TAC(2)(c).

Tianjin Youfa's producers use a variation of HRC known as narrow strip to produce some of its HSS. Narrow strip is typically a marginally lower cost raw material than HRC and 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 used to replace the raw material cost for Tianjin Youfa's exports of product made from narrow strip. The adjustment was based on the difference in Tianjin Youfa's purchase price of HRC compared to narrow strip over the review period.

The Commission also considered whether it would be appropriate to adjust the benchmark to reflect any net comparative advantage that might be present in the Chinese market. The Commission concluded that such an adjustment would not be possible considers, however, that it would not be possible, 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 ACBPS 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.

In the recent *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC20*, the Full Federal Court also found that the legislation did not include a mandatory requirement to adjust foreign pricing information for comparative advantages and disadvantages, as long as the matter is given due consideration.

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 during the review.

The ACBPS 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.²⁷ 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

²⁷ See REP 177 at pages 166 to 167.

would not be possible to isolate and quantify to effect of GOC involvement in the relevant markets and to determine a net comparative advantage.

4.3.4 Dalian Steelforce

Verification of information

The Commission conducted onsite verification of the data submitted by Dalian Steelforce in its REQ.

Export price

Having regard to:

- (i) previous volumes of exports of those goods to Australia by Dalian Steelforce;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter

the Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to the absence or low volume of exports to Australia.

HSS exported to Australia by Dalian Steelforce in the review period was sold to Steelforce Trading Pty Ltd (Steelforce Trading), which sold the goods to Steelforce Australia Pty Ltd (Steelforce Australia).

The Commission considers that Steelforce Australia is the beneficial owner of the goods at the time of importation and is therefore the importer. Steelforce Australia was, in substance, the owner of the goods at the time of importation because it:

- paid for all of the costs relating to the importation;
- insured the goods while on the water; and
- took possession of the goods upon arrival in Australia by transporting the goods to its warehouse.

In respect of Australian sales of the goods made by Dalian Steelforce to a related Australian customer during the review period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.²⁸

However, the verification team did find evidence that:

- the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller.

²⁸ Section 269TAA refers.

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The Act does not provide any guidance or criteria that describes the type or form of evidence that would substantiate that a price has been influenced by a commercial relationship. The Dumping and Subsidy manual states that whether transactions are at arms length is as a matter of fact to be determined having regard to all the circumstances of the sales in question.²⁹ The Commission's policy position provides an ability to assess arms length transactions on a case by case basis. This policy is particularly relevant in this matter because Dalian Steelforce made export sales only to related parties during the review period.

As a result, the Commission was unable to undertake a price comparison between related and non-related parties to obtain factual evidence of the price being influenced by the commercial relationship. Therefore, the Commission requested Dalian Steelforce to provide evidence of negotiation and real bargaining between them and the related customer that led to the final price paid being paid.

Dalian Steelforce provided the Commission with the following evidence for the months of May 2016, October 2016 and May 2017;

- an exchange of emails between Dalian Steelforce and the related customer containing information relevant to the price setting mechanism; and
- an exchange of emails between a related customer and Dalian Steelforce discussing pricing. Dalian Steelforce agrees that this evidence does not relate to the current review but the negotiation process evidenced by these emails is indicative of the negotiation that occurs between the related customer in Australia and Dalian Steelforce.

Dalian Steelforce's evidence demonstrates that price information is shared by the related parties at a particular time each month. The evidence reflects an exchange of information between the related parties but does not demonstrate that any negotiation or real bargaining regarding price has taken place between Dalian Steelforce and the related customer. Once this information is shared, Dalian Steelforce set a price for HSS taking into account its relevant costs and prevailing market conditions in Australia.

Part of the evidence provided by Dalian Steelforce shows that it provided its related customer with key information used in its price setting mechanism. The Commission recognises that Dalian Steelforce and the related customer are part of the same group however, the Commission considers that such key information would be considered confidential information and would not be shared with an unrelated customer as it would diminish its commercial ability to negotiate and bargain on price.

Having considered the evidence the Commission is satisfied that the price paid by the related customer appears to be influenced by the commercial relationship as the price has not been achieved through any negotiation or any real bargaining.

²⁹ Dumping and Subsidy Manual, Anti-Dumping Commission, (1 April 2017) p 25 pp 5.2.

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The Commission therefore considers that all Australian export sales made by Dalian Steelforce to the related customer during the review period were not arms length transactions.

The Commission is satisfied that Dalian Steelforce is the exporter of the goods. However, the Commission considers that for the goods imported by Steelforce Australia from Dalian Steelforce:

- the purchase of the goods by the importer were not arms length transactions and therefore the export price cannot be calculated under subsection 269TAB(1)(a) of the Act; and
- the goods were not purchased by the importer (Steelforce Australia) from the exporter (Dalian Steelforce) and therefore the export price cannot be calculated under subsection 269TAB(1)(b)³⁰.

Consequently the Commission is satisfied that the export price should be calculated in accordance with subsection 269TAB(1)(c), having regard to all the circumstances of the exportation. The Commission is also satisfied that the export price should be calculated using a deductive export price methodology, taking into account all of the costs of importation incurred by both Steelforce Trading (the intermediary) and Steelforce Australia (the importer).

Normal value

The Commission is satisfied that due to a situation in the domestic market in China, domestic selling prices are not suitable for determining normal value under subsection 269TAC(1). The Commission has therefore constructed normal value under subsection 269TAC(2)(c) and, as required by subsections 269TAC(5A) and 269TAC(5B), in accordance with sections 43, 44 and 45 of the Regulation.

Subsection 43(2) of the Regulation requires that, if an exporter keeps records relating to the like goods which are in accordance with generally accepted accounting principles, and those records reasonably reflect competitive market costs associated with the production or manufacture of like goods, then the cost of production must be worked out using the exporter's records.

As discussed in section 4.3.1, the Commission has determined that the costs relating to purchases of HRC during the review period contained in Dalian Steelforce records do not reflect competitive market costs. The Commission has uplifted those costs by reference to the benchmark discussed in section 4.3.3 and in accordance with the Regulation as described above.

The Commission has worked out an amount for SG&A costs under subsection 44(2) of the Regulation. The Commission calculated a weighted average SG&A cost using the information set out in Dalian Steelforce's SG&A records relating to sales of like goods during the review period.

³⁰ Steelforce Trading Pty Ltd is an intermediary trader in the export transactions between Dalian Steelforce and Steelforce Australia.

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The Commission has calculated an amount for profit under subsection 45(2) of the Regulation. The Commission calculated an amount of profit using data relating to the production and sale of like goods by the exporter in the ordinary course of trade.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(9) of the Act, and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Inland transport	Add export inland transport.
Export VAT	Add non-refundable export VAT.
Export credit	Add the cost of export credit.

Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Dalian Steelforce for the review period. The margin is **11.0 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.3.5 Huludao

Verification of information

The Commission conducted a desktop verification of the data submitted by Huludao in its REQ.

Export price

Having regard to:

- (i) previous volumes of exports of those goods to Australia by Huludao;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter

the Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to the absence or low volume of exports to Australia.

The Commission is satisfied that, for Huludao's direct exports to Australian customers, Huludao is the exporter and the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

For these exports, the export price was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

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For Huludao's exports to Australia through the Chinese trading company, Shanghai Minmetals, as the goods have not been purchased by the importer from the exporter, the Commission has established export prices for these shipments under subsection 269TAB(1)(c), using the prices from Shanghai Minmetals to its Australian customers, less transport and other costs arising after exportation.

Normal value

The Commission is satisfied that due to a situation in the domestic market in China, domestic selling prices are not suitable for determining normal value under subsection 269TAC(1). The Commission has therefore constructed normal value under subsection 269TAC(2)(c) and, as required by subsections 269TAC(5A) and 269TAC(5B), in accordance with sections 43, 44 and 45 of the Regulation.

Subsection 43(2) of the Regulation requires that, if an exporter keeps records relating to the like goods which are in accordance with generally accepted accounting principles, and those records reasonably reflect competitive market costs associated with the production or manufacture of like goods, then the cost of production must be worked out using the exporter's records.

As discussed in section 4.3.1, the Commission has determined that the costs relating to purchases of HRC during the review period contained in Huludao's records do not reflect competitive market costs. The Commission has uplifted those costs by reference to the benchmark discussed in section 4.3.3 and in accordance with the Regulation as described above.

The Commission has worked out an amount for SG&A costs under subsection 44(2) of the Regulation. The Commission calculated a weighted average SG&A cost using the information set out in Huludao's SG&A records relating to sales of like goods during the review period.

The Commission has calculated an amount for profit under subsection 45(2) of the Regulation. The Commission calculated an amount of profit data relating to the production and sale of like goods by the exporter in the ordinary course of trade.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(9) of the Act, and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

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Adjustment Type	Deduction/addition
Inventory carrying cost	Deduct domestic inventory carrying cost
Theoretical weight	Deduct domestic theoretical weight adjustment
Export VAT	Add non-refundable export VAT
Trader margin	Add trader margin (for sales through Shanghai Minmetals)

Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Huludao for the review period. The margin is **22.6 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.3.6 Tianjin Youfa

Verification of information

The Commission conducted a desktop verification of the data submitted by Tianjin Youfa in its REQ.

On 12 March 2018, Tianjin Youfa lodged a submission concerning certain aspects of the exporter's preliminary dumping margin calculations. The Commissioner is of the opinion that to consider the submission would prevent the timely placement of this SEF on the public record and, therefore, has not had regard to the submission in making this SEF. The Commission will consider the submission in the context of responses to the SEF. A copy of the submission is available on the public record.

Export price

Having regard to:

- (i) previous volumes of exports of those goods to Australia by Tianjin Youfa;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter

the Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to the absence or low volume of exports to Australia.

The Commission is satisfied that the goods were exported to Australia otherwise than by the importer and were purchased in arms' length transactions by the importer from the exporter.

The export price for Tianjin Youfa was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

Normal value

The Commission is satisfied that due to a situation in the domestic market in China, domestic selling prices are not suitable for determining normal values under subsection

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269TAC(1). The Commission has therefore constructed normal value under subsection 269TAC(2)(c).

Normal values were constructed under subsection 269TAC(2)(c) and, as required by subsections 269TAC(5A) and 269TAC(5B), in accordance with sections 43, 44 and 45 of the Regulation.

Subsection 43(2) of the Regulation requires that, if an exporter or producer keeps records relating to like goods which are in accordance with generally accepted accounting principles, and those records reasonably reflect competitive market costs associated with the production or manufacture of like goods, then the cost of production must be worked out using the exporter's records.

As discussed in section 4.3.1, the Commission has determined that the costs relating to purchases of HRC during the review period contained in the producer's records do not reflect competitive market costs. The Commission has uplifted those costs by reference to the benchmark discussed in section 4.3.3 and in accordance with the Regulation as described above.

The Commission has calculated the SG&A costs for Tianjin Youfa under subsection 44(2) of the Regulation using the producers of like goods' records.

The Commission has calculated the profit under subsection 45(2) of the Regulation using data relating to the production and sale of like goods by the producers of the goods in the ordinary course of trade.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(9) of the Act, and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Packing	Add export packing.
Inland transport	Add export inland transport.
Handling & other charges	Add export handling and other charges.
Trader margin	Add trader margin.
Export VAT	Add non-refundable export VAT.

Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Tianjin Youfa for the review period. The margin is **10.2 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.3.7 Residual exporters

In relation to exports from China, the residual exporters are:

- Bazhou Dongfang (exports supplied through Changsha Honest Imports and Exports Co., Ltd); and
- Kingland.

Export price

Export prices for the residual exporters were established using the weighted average export price determined for cooperating exporters.

Normal value

The normal value for residual exporters has been established using the weighted average normal value for the like goods of cooperating exporters.

Dumping margin

The Commission determined the dumping margin for the residual exporters from China to be **12.2 per cent**.³¹

The Commission's calculations are included at **Confidential Attachment 1**.

4.3.8 Uncooperative and all other exporters

Export price

The Commission considers that, for uncooperative and all other exporters from China, sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under subsections 269TAB(1) or 269TAB(2B).

The export price for uncooperative and all other exporters has been calculated under subsection 269TAB(3) using the lowest weighted average export price calculated for cooperating exporters.

Normal value

The Commission consider that, for uncooperative and all other exporters from China, sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the subsections preceding subsection 269TAC(6), and therefore the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

The normal value for uncooperative and all other exporters has been calculated under subsection 269TAC(6) using the highest weighted average normal value calculated for cooperating exporters.

³¹ Subsections 269TACAB(2)(c) and (d) of the Act

Dumping margin

The Commission determined the dumping margin for uncooperative and all other exporters of the goods from China. The margin is **77.3 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.4 Ascertainment of variable factors – Korea

4.4.1 Kukje

Verification of information

The Commission conducted an onsite verification of the data submitted by Kukje in its REQ.

Model matching

The Commission has matched exports and like goods sold on the domestic market based on the following criteria:

- Finish (black, painted, pre-galvanised)
- Grade (C250, C350)
- Shape (circular or rectangular)
- Size (CHS Diameter: ≤ 48.3 ; > 48.3 ; RHS Width: $< 65\text{mm}$; $\geq 65\text{mm}$)
- Thickness ($\leq 2\text{mm}$; $> 2\text{mm}$).

Export price

Having regard to:

- (i) previous volumes of exports of those goods to Australia by Kukje;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter

the Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to the absence or low volume of exports to Australia.

The Commission is satisfied that Kukje is the exporter and the goods were exported to Australia otherwise than by the importer and were purchased in arms' length transactions by the importer from the exporter.

The export price for Kukje was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

Normal value

The Commission found that, for some models of HSS exported to Australia in the review period, there were arms length sales on the domestic market at prices that were in the ordinary course of trade. The Commission is satisfied that the prices paid in respect of

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those models of domestic sales of HSS are suitable for assessing normal value under subsection 269TAC(1).

The other models exported to Australia either did not have sufficient volumes of comparable domestic models or were not sold in the domestic market. The Commission therefore constructed normal values under subsection 269TAC(2)(c), using the cost of production for Australian export sales. The Commission worked out an amount of SG&A under subsection 44(2) of the Regulation using the amount of SG&A incurred by Kukje in selling like goods on the domestic market. The Commission worked out an amount of profit under subsection 45(2) of the Regulation using data relating to the production and sale of like goods by Kukje in the ordinary course of trade.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the adjustments below, in accordance with subsection 269TAC(8) and (9) of the Act, including a timing adjustment where there were no domestic sales of a particular model in a particular quarter. The Commission considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Domestic credit	Deduct the cost of domestic credit.
Domestic freight	Deduct the cost of domestic freight.
Domestic packaging	Deduct the cost of domestic packaging.
Export inland freight	Add the cost of export inland freight.
Export handling	Add the cost of export handling.
Export bank charges	Add the cost of export bank charges.
Export packaging	Add the cost of export packaging.
Export credit	Add the cost of export credit.
Specification	Add or deduct the differences in specification

Dumping margin

The Commission has calculated a dumping margin in respect of HSS exported to Australia by Kukje for the review period. The margin is **negative 3.6 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.4.2 Uncooperative and all other exporters

Export price

The Commission considers that, for uncooperative and all other exporters from Korea, sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under subsections 269TAB(1) or 269TAB(2B).

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The export price for uncooperative and all other exporters has been calculated under subsection 269TAB(3) using the lowest export price calculated for cooperating exporters.

Normal value

The Commission consider that, for uncooperative and all other exporters from Korea, sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the subsections preceding subsection 269TAC(6), and therefore the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

The normal value for uncooperative and all other exporters has been calculated under subsection 269TAC(6) using the highest normal value calculated for cooperating exporters.

Dumping margin

As there is only one cooperating exporter from Korea, the Commission determined the dumping margin for uncooperative and all other exporters of the goods from Korea to be the same as that applying to Kukje, excluding favourable adjustments to the normal value. The margin is **negative 1.0 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.5 Ascertainment of variable factors – Malaysia

4.5.1 Uncooperative and all other exporters

No exporters from Malaysia cooperated with the review.

Submission by ATM

In a submission dated 22 December 2017, ATM submitted that the Commission should consider whether Malaysian exporters had not exported or exported low volumes of HSS to Australia in the review period and that if this was the case, requested that the Commission use the new provisions under subsection 269TAB(2B) to establish export prices.

ATM also proposed that the normal value for uncooperative exporters be based on the best information available being, in its view, the findings of Continuation 379. It submitted that the normal value from the Continuation 379 be indexed by reported HRC prices or information obtained from exporters from other countries subject to the review.

The Commission's Assessment

Section 269TACAB of the Act requires that export prices for uncooperative exporters is to be worked out under subsection 269TAB(3) of the Act. Therefore, the subsection 269TAB(2B) is not applicable to such exporters.

As discussed below, the Commission considers that verified information from Continuation 379 is relevant information to which the Commission should have regard in establishing normal values for Malaysian exporters for the purposes of the review.

Export price

The Commission considers that, for exporters from Malaysia, sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under subsections 269TAB(1) or 269TAB(2B). Having regard to all relevant information, the Commission has established export prices for those goods under subsection 269TAB(3) using information from Australian Border Force's import database.

Normal value

The normal value for uncooperative and all other exporters has been established under subsection 269TAC(6), by calculating an amount which is higher than the export price by the dumping margin percentage found for all exporters from Malaysia in the Continuation 379.

Dumping margin

The Commission determined the dumping margin for uncooperative and all other exporters of the goods from Malaysia. The margin is **53.1 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.6 Ascertainment of variable factors – Taiwan

4.6.1 FEMCO

Verification of information

The Commission conducted an onsite verification of the data submitted by FEMCO in its REQ.

Model matching

During the review period, FEMCO exported HSS to the AS/NZS 1163 standard to Australia and sold HSS made to Japanese standards on the domestic market. The Commission was not able to model match the grade that was exported to Australia with any of the grades sold on the domestic market.

As the Commission did not have information that would allow it to make specification adjustments to the selling prices of models sold on the domestic market, it constructed normal values in accordance with 269TAC(2)(c).

Export Price

Having regard to:

- (i) previous volumes of exports of those goods to Australia by FEMCO;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter

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the Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to the absence or low volume of exports to Australia.

The Commission is satisfied that FEMCO is the exporter and the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

The export price for FEMCO was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

Normal Value

The Commission has constructed normal values for FEMCO under subsection 269TAC(2)(c) and, as required by subsections 269TAC(5A) and 269TAC(5B), in accordance with sections 43, 44 and 45 of the Regulation.

The Commission has used information set out in FEMCO's records to establish the cost of production of the goods exported to Australia during the review period, in accordance with subsection 43(2) of the Regulation.

The Commission has worked out an amount for SG&A costs under subsection 44(2) of the Regulation. The Commission calculated a weighted average SG&A cost using the information set out in FEMCO's SG&A records relating to sales of like goods during the review period.

The Commission has calculated an amount for profit under subsection 45(2) of the Regulation. The Commission calculated an amount of profit using data relating to the production and sale of like goods by FEMCO from the sale of like goods in the ordinary course of trade.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the adjustments below, in accordance with subsection 269TAC(9) of the Act, and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

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Adjustment Type	Deduction/addition
Domestic inland transport	Deduct the cost of inland transport.
Domestic bank charges	Deduct the cost of bank charges.
Export inland freight	Add the cost of inland freight.
Export harbour construction fee	Add the cost of harbour construction fee.
Export trade promotion fee	Add the cost of trade promotion fee.
Export wharfage fee	Add the cost of export wharfage fee.
Export customs duties	Add the cost of customs duties.
Export port charges	Add the cost of port charges.
Export commissions	Add the cost of commissions.
Export packing	Add the cost of packing.
Export bank charges	Add the cost of bank charges.

Dumping Margin

The Commission has calculated a dumping margin for FEMCO of **26.7 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.6.2 Shin Yang

Verification of information

The Commission conducted a desktop verification of the data submitted by Shin Yang.

Model matching

The Commission used the following criteria to match normal values to export prices to Australia:

- product Code – Shin Yang's 3-letter internal product code used for costing and sales;
- quality – prime product; or downgrade;
- standard – Australian standards (AS 1074; AS 1163; AS 1450) and domestic equivalents;
- HRC grade – SPHT1; SPHT2; SPHT3; SPHT4;
- size – CHS diameter ≤ 48.3 mm or > 48.3 mm; RHS width < 65 mm or ≥ 65 mm;
- thickness – wall thickness ≤ 2 mm; > 2 mm.

Export Price

Having regard to:

- (i) previous volumes of exports of those goods to Australia by Shin Yang;
- (ii) patterns of trade for like goods;

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- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter

the Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to the absence or low volume of exports to Australia.

The Commission is satisfied that Shin Yang is the exporter and the goods were exported to Australia otherwise than by the importer and were purchased in arms' length transactions by the importer from the exporter.

The export price for Shin Yang was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

Normal Value

The Commission has established normal values for Shin Yang under subsection 269TAC(1) based on the price paid or payable for like goods sold in the ordinary course of trade for home consumption in Taiwan that are arms' length transactions.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the adjustments below, in accordance with subsection 269TAC(8) of the Act, including a timing adjustment where there were no domestic sales of a particular model in a particular quarter. The Commission considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Packing	Deduct/add packing costs
Inland transport	Deduct/add inland transport
Warranty expenses	Deduct/add warranty expenses
Handling & other charges	Add export handling and other charges
Commissions	Add export commissions
Bank charges	Add export bank charges
Warehousing	Add export warehousing charges
Timing	Deduct/add timing adjustment

Dumping Margin

The dumping margin in respect of HSS exported to Australia by Shin Yang for the investigation period is **negative 3.0 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.6.3 Ta Fong

Verification of information

The Commission conducted a desktop verification of the data submitted by Ta Fong.

Model matching

The Commission used the following criteria to match normal values to export prices to Australia:

- grade (Commercial to Commercial)
- finish (pre-galvanized)
- shape (circular)
- size (RHS Width: <65mm; ≥65mm)
- thickness (≤2mm; >2mm)

Export Price

Having regard to:

- (i) previous volumes of exports of those goods to Australia by Ta Fong;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter

the Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to the absence or low volume of exports to Australia.

The Commission is satisfied that Ta Fong is the exporter and the goods were exported to Australia otherwise than by the importer and were purchased in arms' length transactions by the importer from the exporter.

The export price for Ta Fong was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

Normal Value

The Commission has established normal values for Ta Fong under subsection 269TAC(1) based on the price paid or payable for like goods sold in the ordinary course of trade for home consumption in Taiwan that are arms' length transactions.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8) of the Act, and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Inland transport	Deduct/add inland freight.
Handling & other charges	Add export handling and other charges.
Commissions	Add export commissions.

Dumping Margin

The Commission has calculated a dumping margin for Ta Fong of **9.8 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.6.4 Ursine

Verification of information

The Commission conducted a desktop verification of the data submitted by Ursine.

Model matching

The Commission used the following criteria to match normal values to export prices to Australia:

- grade;
- finish;
- type (CHS or RHS or Oval);
- width group; and
- thickness group.

Export price

Having regard to:

- (i) previous volumes of exports of those goods to Australia by Ursine;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter

the Commission does not consider that there is insufficient or unreliable information to ascertain the export price due to the absence or low volume of exports to Australia.

The Commission is satisfied that Ursine Steel is the exporter and the goods were exported to Australia otherwise than by the importer and were purchased in arms' length transactions by the importer from the exporter.

The export price for Ursine Steel was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

Normal value

The Commission has established normal values for Ursine under subsection 269TAC(1) based on the price paid or payable for like goods sold in the ordinary course of trade for home consumption in Taiwan that are arms' length transactions.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the adjustments below, in accordance with subsection 269TAC(8) of the Act, and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

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Adjustment Type	Deduction/addition
Packing	Deduct/add packing costs.
Inland transport	Deduct/add inland transport.
Domestic other charges	Deduct domestic other charges.
Handling & other charges	Add export handling and other charges.
Bank charges	Add export bank charges
Specification adjustment	Add adjustment for specification differences

Dumping margin

The Commission has calculated a dumping margin for Ursine Steel of **8.5 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

4.6.5 Residual exporters

In relation to exports from Taiwan, Tension Steel is the only residual exporter.

Export price

Export prices for Tension Steel was established in accordance with subsection 269TACAB(2)(c) using the weighted average export price determined for cooperating exporters.

Normal value

The normal value for Tension Steel has been determined under subsection 269TACAB(2)(d) being the weighted average normal value for the like goods of cooperating exporters.

Dumping margin

The Commission determined the dumping margin for the residual exporter, Tension Steel, to be **16.2 per cent**.³²

The Commission's calculations are included at **Confidential Attachment 1**.

4.6.6 Uncooperative and all other exporters

Export price

The Commission considers that, for uncooperative and all other exporters from Taiwan, sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under subsections 269TAB(1) or 269TAB(2B).

³² Subsections 269TACAB(2)(c) and (d) of the Act

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The export price for uncooperative and all other exporters have been calculated under subsection 269TAB(3) using the lowest weighted average export price calculated for cooperating exporters.

Normal value

The Commission consider that, for uncooperative and all other exporters from Taiwan, sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the subsections preceding subsection 269TAC(6), and therefore the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

The normal value for uncooperative and all other exporters have been calculated under subsection 269TAC(6) using the highest weighted average normal value calculated for cooperating exporters.

Dumping margin

The Commission determined the dumping margin for uncooperative and all other exporters of the goods from Taiwan. The margin is **42.6 per cent**.

The Commission's calculations are included at **Confidential Attachment 1**.

5 VARIABLE FACTORS – COUNTERVAILING NOTICE

5.1 Finding

The Commissioner finds that the variable factors relevant to the determination of interim countervailing duty (ICD) under the Dumping Duty Act have changed.

The Commissioner proposes to recommend to the Assistant Minister that the countervailing duty notice have effect as if different variable factors (the export price and amount of countervailable subsidy received) had been ascertained. The revised variable factors have resulted in different subsidy margins relevant to the taking of ICD.

5.2 Programs reviewed

The Commission examined 45 subsidy programs as part of this review. This includes the 28 programs deemed to be countervailable subsidies received by exporters in respect of HSS during the original investigation,³³ as well as 17 additional subsidy programs that the Commission examined during Continuation 379.

Of the three selected Chinese exporters, only Tianjin Youfa is subject to the countervailing duty notice. The Commission used information provided by Tianjin Youfa in its REQ to assess the 45 subsidy programs.

The Commission did not receive a response to the government questionnaire from the GOC for this review.

5.3 Findings by subsidy program

Subsidisation occurs when a financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to goods exported to Australia.³⁴ A subsidy is countervailable if it is specific.³⁵ The amount of a countervailable subsidy is determined in accordance with section 269TACD.

After assessing all relevant information available, the Commission has found that HSS producers received financial contributions that conferred a benefit in respect of the goods via countervailable subsidy programs.

The Commission has found that all 45 programs identified in the following table are countervailable in respect of HSS:

No.	Name	Type
1	Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and Economic and Technological Development Zones	Tax
2	One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’	Grant

³³ REP 177, Chapter 7.

³⁴ Definition of subsidy in subsection 269T(1).

³⁵ Section 269TAAC.

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No.	Name	Type
5	Matching Funds for International Market Development for Small and Medium Enterprises	Grant
6	Superstar Enterprise Grant	Grant
7	Research & Development (R&D) Assistance Grant	Grant
8	Patent Award of Guangdong Province	Grant
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	Tax
11	Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (excluding Shanghai Pudong area)	Tax
12	Preferential Tax Policies for Enterprises with Foreign Investment Established in Pudong area of Shanghai	Tax
13	Preferential Tax Policies in the Western Regions	Tax
14	Tariff and VAT Exemptions on Imported Materials and Equipment	Tax
15	Innovative Experimental Enterprise Grant	Grant
16	Special Support Fund for Non State-Owned Enterprises	Grant
17	Venture Investment Fund of Hi-Tech Industry	Grant
18	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant
19	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant
20	Hot rolled steel provided by government at less than fair market value	LTAR
21	Water Conservancy Fund Deduction	Grant
22	Wuxing District Freight Assistance	Grant
23	Huzhou City Public Listing Grant	Grant
27	Huzhou City Quality Award	Grant
28	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant
29	Land Use Tax Deduction	Tax
30	Wuxing District Public Listing Grant	Grant
31	Anti-dumping Respondent Assistance	Grant
32	Technology Project Assistance	Grant
34	Balidian Town Public Listing Award	Grant
35	Preferential Tax Policies for High and New Technology Enterprises	Tax
36*	Local Tax Bureau Refund	Tax
37*	Return of Farmland Use Tax	Tax
38*	Return of Land Transfer Fee	Tax
39*	Return of Land Transfer Fee From Shiyou	Tax
40*	Dining lampblack governance subsidy of Jinghai County Environmental Protection Bureau	Grant
41*	Discount interest fund for technological innovation	Grant
42*	Energy conservation and emission reduction special fund project in 2015	Grant

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No.	Name	Type
43*	Enterprise famous brand reward of Fengnan Finance Bureau	Grant
44*	Government subsidy for construction	Grant
45*	Infrastructure Construction Costs Of Road In Front Of No.5 Factory	Grant
46*	New Type Entrepreneur Cultivation Engineering Training Fee Of Jinghai County Science And Technology Commission	Grant
47*	Subsidy for Coal-Fired Boiler of Fengnan Subtreasury	Grant
48*	Subsidy for Coal-Fired Boiler Rectification	Grant
49*	Subsidy for District Level Technological Project	Grant
50*	Subsidy For Pollution Control Of Fengnan Environmental Protection Bureau	Grant
51*	Subsidy from Science and Technology Bureau of Jinghai County	Grant
52*	Subsidy of Environment Bureau transferred from Shiyou	Grant

Table 4 – Countervailable subsidy programs

A detailed analysis in relation to the programs shown in the table above is provided at **Appendix B**.

The Commission's assessment of whether state invested enterprises are public bodies is at **Appendix C**.

The Commission's analysis of whether Chinese exporters benefit from the provision of HRC provided by public bodies at less than adequate remuneration is at **Appendix D**.

5.4 Submission by ATM on public bodies

In a submission dated 17 October 2017, ATM requested public disclosure of the Chinese exporter, Tianjin Youfa's, raw material supplier list. ATM claimed that the disclosure would allow an open and transparent assessment of the status of the suppliers in terms of their government ownership. A non-confidential version of the submission is available on the public record.

ATM provided the following reasons for seeking the disclosure:

- the potential ambiguity over what is and is not an SIE;
- the need to consider all levels of government ownership including at central and provincial levels as well as the State-owned Assets Supervision and Administration Commission of the State Council;
- the possibility that companies with a mixture of private and government ownership might not be correctly classified as an SIE.

5.4.1 The Commission's Assessment

In providing the Commission with information on its purchases of raw materials, Tianjin Youfa claimed that the information was confidential or was information the publication of which would adversely affect the company's business or commercial interests. The Commission considers that the information provided falls well within the scope of

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information that can reasonably be claimed to be confidential and the Commission does not consider it appropriate to include this information on the public record for the review.

The REQ completed by Tianjin Youfa clearly defines a state owned or state- invested enterprise as follows:

State owned or state-invested enterprise (SIE)

For the purposes of this questionnaire, a state owned enterprise or SOE refers to any company or enterprise that is wholly or partially owned by the GOC as defined above (either through direct ownership or through association).

In previous investigations and correspondence, the GOC has advised that the use of the term 'SOE' is declining in China, and that these enterprises are now referred to with terms such as:

- 'enterprises with state investment'
- 'state-owned assets'
- 'state-invested enterprises' or SIE
- 'enterprises under the supervision of SASAC'

of which there are several types.

The Commission considers that its definition of a SIE is clear. Through its verification processes, including an onsite verification to Tianjin Youfa in April 2017 in the context of the Continuation 379, the Commission is satisfied that it has taken reasonable steps to confirm that Tianjin Youfa has accurately identified its suppliers that meet the definition of an SIE as set out above.

5.5 Calculation of subsidy margins

5.5.1 Selected exporters

Of the three selected exporters, only Tianjin Youfa is subject to the countervailing duty notice. There were no other cooperating Chinese exporters that are subject to the notice.

The Commission has found that the goods exported to Australia by Tianjin Youfa benefited from Programs 2, 6, 7, 8, 23, 29, 32, 36, 37, 38 and 39, and the resulting subsidy margin applicable to those exports is **1.3 per cent**.

The subsidy calculations for Tianjin Youfa are provided at **Confidential Attachment 2**.

5.5.2 Residual exporters

The Commission has determined the subsidy margin for residual exporters to be the same as for the only cooperating exporter subject to the countervailing duty notice, Tianjin Youfa, i.e. **1.3 per cent**.

5.5.3 Uncooperative exporters

In the absence of information from the selected uncooperative exporters, the Commission has acted on the basis of all the facts available and made such assumptions as considered reasonable in determining whether a countervailable subsidy has been received in respect of particular goods and in determining the amount of countervailable subsidy for uncooperative exporters.³⁶

The Commission finds that the goods exported to Australia by uncooperative exporters benefited from all 45 programs found to be countervailable in respect of HSS, and the subsidy margin for each program is the higher of the margin applicable to that program under the current countervailing duty notice and the margin calculated for Tianjin Youfa as part of this review. The resulting total subsidy margin applicable to exports by uncooperative exporters is **46.7 per cent**.

The subsidy calculations for uncooperative exporters are provided at **Confidential Attachment 2**.

³⁶ Subsection 269TAACA(1)

6 NON-INJURIOUS PRICE

6.1 Non-Injurious Price (NIP)

The NIP is defined in section 269TACA of the Act as “the minimum price necessary to prevent the injury, or a recurrence of the injury” caused by the dumped or subsidised goods the subject of a dumping duty notice or a countervailing duty notice. The NIP is ordinarily determined by having regard to the Australian industry’s selling prices from a period where the industry was not affected by dumping.

6.2 Lesser Duty Rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the Dumping Duty Act.³⁷

The level of dumping duty imposed by the Assistant Minister cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Assistant Minister must also have regard to the desirability of fixing a lesser amount of duty.

However, pursuant to subsection 8(5BAA)(a) of the Dumping Duty Act, the Assistant Minister is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. One such circumstance is where the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii).

As outlined in section four, the normal value of the goods for all Chinese exporters was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii). As such, the Commission notes that the Assistant Minister is not required to have regard to the desirability of fixing a lesser amount of dumping duty.

The Commission notes subsection 8(5BAA)(a) of the Dumping Duty Act does not limit the Assistant Minister from having regard to fixing a lesser level of duty if considered reasonable in the circumstances.

The level of countervailing duty imposed by the Assistant Minister cannot exceed the amount of countervailable subsidy received, but, where a countervailing duty notice and a dumping duty notice apply to the same goods, and the NIP of the goods is less than the sum of the export price of the goods, the amount of ICD and the amount of IDD, the Assistant Minister must also have regard to the desirability of fixing a lesser amount of duty.

6.3 The Commission’s preferred approach to establishing unsuppressed selling prices

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).

The Commission’s preferred approach to establishing the USP is set out in chapter 23 of the *Dumping and Subsidy Manual* and observes the following hierarchy:

³⁷ Subsection 8(5B) of the Dumping Duty Act.

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- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the unsuppressed selling price, 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. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

6.3.1 Submission by ATM

In a submission dated 1 December 2017, ATM proposed that an industry cost to make and sell HSS plus an amount for profit be used to establish a USP for the purposes of the review. A non-confidential version of ATM's submission is available on the public record.

ATM claimed that the appropriate level of profit to use was the rate achieved by ATM in a period (one quarter of 2016) it claimed was less affected by dumping. ATM submitted that the use of this rate was supported by research by McKinsey and Company which found the minimum average earnings before interest, taxes, depreciation and amortisation rate for long-term sustainability in the steel industry to be 17 per cent.

6.3.2 The Commission's Assessment

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. Reviews 265, 266 and 285, 381 and Continuation 379 followed the same methodology for establishing the NIP.

For the purpose of this review, a weighted average USP has been determined based on a weighted average of all Australian industry CTMS data during the review period plus an amount of profit achieved by Australian industry in the period of January to September 2008. This approach is consistent with the original investigation and Reviews 265, 266, 285 and Continuation 379, which established a profit in a period unaffected by dumping. The Commission acknowledges that the profit figure is now nine years old. However, despite the Australian industry's improved profitability occurring during the review period, the Commission has confirmed that dumping is still occurring that is effecting the market.

The Commission considers that the period ATM proposes be used to establish profitability for the purposes of the USP is brief and not necessarily representative of a long-term profitability the Australian industry would achieve in a market unaffected by dumping and/or subsidisation.

The NIP has been calculated to FOB delivery terms by deducting from the USP amounts for:

- importer profit;

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

In the context of this review, the sum of the ascertained export price and the dumping margin for each of the exporters currently subject to the notice was lower than the NIP and hence the NIP is not the operative measure for any exporters.

Details of the USP and NIP calculations are at **Confidential Appendix 3**

7 FINDINGS AND PROPOSED RECOMMENDATION

7.1 Findings

The Commissioner finds that, in relation to exports of HSS to Australia from China, Korea, Malaysia and Taiwan for all exporters generally during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed;
- the NIP has changed; and
- the amount of countervailable subsidy has changed (relevant for China only).

7.2 Proposed recommendations

The Commissioner proposes to recommend to the Assistant Minister that the dumping duty notice applying to exports from China, Korea, Malaysia and Taiwan and the countervailing duty notice in respect of exports from China have effect as if different variable factors had been ascertained.

Consistent with the current form of anti-dumping measures, the Commissioner recommends that duties be calculated:

- in respect of any ICD that may become payable, as a proportion of the export price of the goods;³⁸ and
- in respect of any IDD that may become payable, using the floor price method for exporters with a negative dumping margin in the review period and combination of fixed and variable duty method for other exporters.³⁹

For exporters from China subject to the countervailing duty notice, the combined fixed rate of ICD and IDD will be the sum of:

- the subsidy rate calculated for all countervailable programs; and
- the dumping rate calculated, less an amount for the subsidy rate applying to Program 20 (where this has been received by the exporter or group of exporters).

This approach avoids any overlap or double-counting that may arise from the circumstances of this case where there are domestic subsidies and a constructed normal value that both relate to a major cost component based on competitive market cost data (in this instance, hot rolled coil).

The table below lists the amounts of ICD and IDD that will apply.

Exporter	Fixed rate of combined IDD and ICD (if applicable)	Variable component of IDD
CHINA		Applicable only where the actual export price is below the ascertained export price
Dalian Steelforce	11.0%	

³⁸ In accordance with subsection 10(3B)(a) of the Dumping Duty Act.

³⁹ Pursuant to subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

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Huludao	22.6%	
Tianjin Youfa	10.2%	
Residual exporters	12.2%	
Uncooperative and all other	77.3%	
MALAYSIA		
Uncooperative and all other	53.1	
KOREA		
Kukje	0%	
Uncooperative and all other	0%	
TAIWAN		
FEMCO	26.7%	
Shin Yang	0%	
Ta Fong	9.8%	
Ursine	8.5%	
Residual exporters	16.2%	
Uncooperative and all other	42.6%	

8 APPENDICES AND ATTACHMENTS

Non-Confidential Appendix A	Market situation assessment
Non-Confidential Appendix B	Countervailable subsidies assessment
Non-Confidential Appendix C	Public bodies assessment
Non-Confidential Appendix D	Benefit from HRC at less than adequate remuneration
Confidential Attachment 1	Dumping margin calculations
Confidential Attachment 2	Subsidy calculations
Confidential Attachment 3	NIP and USP calculations

NON-CONFIDENTIAL APPENDIX A - MARKET SITUATION

A1 Introduction, applicants' claims and Commission's preliminary finding

A1.1 Introduction

This appendix sets out the Commission's assessment of whether there was a particular market situation (market situation) in the Chinese HSS market during the review period such that sales in this market were not suitable for determining normal values under subsection 269TAC(1) of the Act.

A1.2 Applicants' claims

The public version of ATM's application for this review did not directly address the issue of whether there was a market situation within the Chinese HSS market during the review period. However, given the Commission's finding of a market situation within this Chinese HSS market in ADC 379, the Commission has again assessed the suitability of sales in this market for determining normal values under subsection 269TAC(1).

A1.3 Commission's preliminary finding

The Commission has found that because of the market situation within the Chinese HSS market during the review period, sales from this market are not suitable for use in determining normal values under subsection 269TAC(1).

A2 Assessment framework and information relied upon

A2.1 Commission's framework for assessing market situation claims

Subsection 269TAC(2) provides for circumstances where the normal value of goods cannot be ascertained under subsection 269TAC(1) "because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1)".⁴⁰ If there is a market situation then normal values may instead be constructed under subsection 269TAC(2)(c) or determined by reference to prices from a third country under subsection 269TAC(2)(d).

The Act does not prescribe what is required to reach a finding of market situation however it is clear that a market situation will arise when there is some factor or factors impacting the relevant market in the country of export generally with the effect that sales in that market are not suitable for use in determining normal value.

In considering whether sales are not suitable for use in determining a normal value under subsection 269TAC(1) because of the situation in the market of the country of export the Commission may have regard to factors such as:

- whether the prices are artificially low; or

⁴⁰ Section 269TAC(2)(a)(ii) is Australia's implementation of Article 2.2 of the WTO *Anti-Dumping Agreement*.

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- whether there are other conditions in the market that render sales in that market not suitable for use in determining prices under subsection 269TAC (1).

Government influence on prices or input costs could be one cause of artificially low pricing. Such government influence could come from any level of government.

In assessing whether a market situation exists due to government influence, the Commission will assess whether government involvement in the domestic market has materially distorted market conditions. If market conditions have been materially distorted then domestic prices may be artificially low or not substantially the same as they would be in a competitive market.

Prices may also be artificially low or lower than they would otherwise be due to government influence on the costs of inputs. The Commission looks at the effect of any such influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. Government influence on costs will disqualify the associated sales if those costs are shown to affect domestic prices.

The Manual provides further guidance on the circumstances in which the Commission will find that a market situation exists.⁴¹

A2.2 Evidentiary threshold

When relevant and reasonably reliable prima facie evidence supporting the proposition that there is a market situation is set out in the application, and an investigation is initiated, the Commission will:

- notify relevant governments and exporters of the claims and of the evidence provided and further information will be sought from such governments and exporters; and
- if the relevant government or exporters fail to respond, or do not provide probative evidence in response, all available evidence is weighed up, including prima facie evidence contained in the application.

A2.3 Information relied upon to undertake the Commission's assessment

In undertaking this assessment, the Commission considered the following.

- ATM's application for a review of the dumping duty notice and countervailing duty notice.
- Previous market situation assessments of the Chinese HSS and HRC related markets undertaken by the Commission.
- Responses to the exporter questionnaire by selected exporters.
- Desktop research, including information obtained from departmental resources and third party information providers.

⁴¹ See for example chapter 7 of the Manual.

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The Commission did not receive a response to the government questionnaire from the Government of China (GOC) for this review. This impeded the Commission's ability to undertake this assessment.

In line with its legislative requirements, the Commission's market situation assessments are undertaken at the level of the goods being investigated. In undertaking this assessment the Commission has also considered conditions within the Chinese Hot Rolled Coil (HRC) market as HRC is estimated to account for above 90 per cent of the cost to make HSS and thus is a key determinate of the domestic price of HSS in China.⁴² The Commission has not undertaken an assessment of conditions within the Chinese iron ore, coking coal and coke markets as it considers that any distortions within these markets would contribute to and be reflected in conditions within the Chinese HRC market.

When undertaking its assessment, the Commission has also given consideration to conditions within the broader Chinese steel industry. This approach was adopted because of the lack of available information concerning certain aspects of the Chinese HSS and HRC markets, which was 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 sufficient as HRC accounts for a significant share of total steel production and is a key input into the production of a number of different steel products.

In this assessment, GOC refers to all levels of the Chinese Government unless specified otherwise. Similarly, the Commission has referred to Chinese State Owned Enterprises and State Invested Enterprise collectively as SOEs. The Commission has adopted this approach as it considers the GOC has the ability to directly influence decision making within these two types of entities in a similar fashion.

A3 Conditions in the Chinese HRC market

Between 2010 and 2016, Chinese HRC production, increased by around 30% to 130 million tonnes.⁴³ Between 2016 and 2017 HRC production increased by a further 7%.⁴⁴ Over the period Chinese HRC prices displayed considerable volatility falling from around USD 560 a tonne in early 2010 to USD 290 a tonne in late 2015.⁴⁵

Similarly, while during the review period Chinese HRC prices fluctuated, they remained below comparable benchmarks within the Asian region. For example, between July 2016 and June 2017, Chinese HRC prices averaged around USD 380 per tonne compared to between USD 465 to 490 per tonne in Korea and Taiwan.⁴⁶

The Commission considers that the significant volatility in prices between 2010 and 2017 and the relative price differentials between prices within China and other significant Asian

⁴² Estimate based on verified information for Dalian Steelforce Hi-tech Co., Ltd and Huludao City Steel Pipe Industrial Co. Ltd.

⁴³ Includes hot rolled coil, sheet and strip production.

⁴⁴ Antaike Information Development

⁴⁵ Estimates based on pricing data obtained from Platts.

⁴⁶ Korean and Taiwanese pricing ranges are based on information obtained during the Commission's verification processes for this inquiry.

steel producing nations during the review period reflects the structural nature of imbalances between capacity, production and consumption within the Chinese market. The extent of these imbalances is also reflected in the unresponsiveness of HRC production to pricing trends since 2010 and the broader steel industry's low level of capacity utilisation and profitability during the review period.

Regarding the sustained growth in HRC production despite volatile pricing between 2010 and 2016, the Commission considers that while it is not unreasonable for capital intensive industries to display a degree of production rigidity in the face of price and profit volatility over the short term, this should not persist over the medium to long term. As noted by the OECD, excess capacity that persists for an extended period, which would otherwise be addressed through market mechanisms, is an indicator of government intervention.⁴⁷

A4 Factors contributing to imbalances in Chinese steel markets

The Commission considers the GOC's involvement within and influence over the steel industry to be a primary cause of the prevailing structural imbalances both within the broader steel industry and the HRC and HSS markets. This involvement includes the issuing of planning guidelines and directives along with provision of direct and indirect financial support.^{48 49} The ongoing nature of the GOC's involvement within and distortion of HRC and HSS markets is also reflected by the Commission's numerous market situation findings, concerning products using HRC as their primary input, as listed below.

- Investigation (No. 116) (2006) Hollow Structural Sections.
- Investigation (No. 144) (2010) Hollow Structural Sections.
- Investigation (No. 177) (2012) Hollow Structural Sections.
- Investigation (No. 203) (2013) Hollow Structural Sections.
- Continuation Review (No. 379) (2017) Hollow Structural Sections.
- Investigation (No. 190) (2013) Galvanised and Aluminium Zinc Coated Steel.
- Investigation (No. 193) (2015) Galvanised and Aluminium Zinc Coated Steel.

In drawing these conclusions regarding the GOC's involvement in the distortion of Chinese steel markets, the Commission also recognises the GOC's recent attempts to restructure and reorganise the industry to manage excess capacity, oversupply and environmental concerns. While noting these efforts are targeted at correcting current imbalances and resulting distortions, the Commission considers them to be further evidence of the extent of distortions and GOC's involvement within and influence over the broader steel industry during the review period. Examples of these capacity management measures announced during the review period include tighten bank lending to smaller mills; industry consolidation through mergers and acquisitions; and use of stricter environmental requirements to forcibly shut down capacity.

⁴⁷ OECD, Excess capacity in the global steel industry: The current situation and ways forward, 2015, p 6.

⁴⁸ Support measures include stimulus programs, land and energy subsidies and soft lending policies.

⁴⁹ Duke, 2016, p 24 & 34.

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Specific initiatives announced in recent years to address these imbalances include the Central Government's 'supply-side reform' initiative, 'Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry'; and 'The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry'. The 'Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry', proposes that SOE capacity be reduced by 100 to 150 million tonnes by 2020, via the banning of new steel projects and elimination of 'zombie mills'.⁵⁰ In 2016 the central government also pledged a RMB 100 billion fund for employee compensation, social security payments, and plant closure incentives in the coal and steel sectors.⁵¹ The 'Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry' strictly forbids the registration of new production capacity in any form and demands that any production that does not meet environmental, energy consumption, quality, safety or technical standards be taken offline.⁵²

In citing the GOC's ongoing interventions within the domestic steel industry, it is the Commission's view that to date these attempts to address existing structural imbalances have had limited success. Constraints on the effectiveness of these initiatives not only relates to the extent of the imbalances but also the 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 social services within their respective regions.⁵³ Specific examples of these issues include the reliance of their tax systems on business revenue (including production based VAT) and GDP oriented performance measures which encourage over investment in capacity.⁵⁴

The effectiveness of the GOC's attempts to address overcapacity have also been constrained by its desire to promote the replacement of older mills with new larger and more efficient mills. It is the Commission's view that while this initiative is likely to improve the industry's structure over the longer term, its current impact, including throughout the review period, has been to increase production and exacerbate the existing structural imbalances. The difficulties faced by the GOC in achieving these objectives are also reflected in the reality that many smaller mills need to be shut down to offset the commissioning of new larger mills and the difficulties in ensuring that once mills are closed, they are not brought back on line as market conditions improve.⁵⁵ An example of these issues can be seen in the context of Baosteel (now China BAOWU Steel Group) which while indicating in 2016 that it would mothball 2.5 million tonnes of capacity as part

⁵⁰ Liu. H & Song. L, 2016, pp338-339. AME Group, 2016. Steel 2016: June Quarter, Strategic Market Study. 2016, Q2. p9.

⁵¹ Duke, 2016, p29.

⁵² KPMG, 2016. The 13th 5 Year Plan: China's Transformation and Integration with the World Economy, p29. Sourced from 'State Council Guiding Opinions on Reducing Overcapacity in the Iron and Steel Industry', State Council, 4 February 2016.

⁵³ Platts, 2016. Global Market Outlook, Steel Business Briefing. April 2016 p16.

⁵⁴ Duke, 2016, p38.

⁵⁵ Liu. H & Song. L, 2016, p357.

of its plan to address overcapacity, also commissioned 9 million tonnes of new capacity at its Zhanjiang facility.⁵⁶ The GOC's attempts to remove unprofitable capacity from the industry have also been constrained by the significant presence of 'zombie mills' which under normal competitive market conditions would be shut down due to either poor profitability or insolvency. The challenges posed by these issues is also evident in commentary by the CISA which expects the 'shake out' of the industry to take at least a decade and that Chinese mills were in no hurry to consolidate despite the government's attempts to encourage mergers and acquisitions.⁵⁷

A5 GOC influence in the Chinese steel markets

Key mechanisms through which the Commission considers that the GOC has distorted conditions within the Chinese steel industry, along with the HRC and HSS markets during the review period are listed below.

- Role and operation of SOEs.
- Industry planning guidelines and directives.
- Provision of direct and indirect financial support.
- Taxation and tariff policies.

A5.1 Role and operation of SOEs

The Commission estimates that Chinese SOEs accounted for around 40% of total Chinese steel production. It is the Commission's view that these entities continue to receive significant direct and indirect financial support from central, provincial and local levels of government as a means to increase tax revenues, expand employment and maintain social stability.

While the Commission does not consider the presence of these entities alone causes markets to be distorted, it does consider that their presence increases the likelihood that the GOC's plans and directives will be 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 on supply and pricing conditions within the domestic Chinese market. 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.⁵⁸⁵⁹ ⁶⁰

The Commission considers these mechanisms have supported the rapid expansion of steel production capacity in the SOE segment, in spite of repeated orders by the central

⁵⁶ Platts, 2016. Global Market Outlook, Steel Business Briefing. June 2016 p11.

⁵⁷ Platts, 2016. Global Market Outlook, Steel Business Briefing. March 2016 p15.

⁵⁸ Liu. H & Song. L, 2016, p348.

⁵⁹ Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016*, p. 47.

⁶⁰ World Bank, *China 2030: Building a Modern, Harmonious, and Creative Society*, Report No. 96299 (March 2013), p. 25.

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 recent '*Guidance on the promotion of central enterprises restructuring and reorganisation*'. In introducing this guidance, the State Council notes the important role of 'central enterprises' 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.

A5.2 Industry planning guidelines and directives

The Commission considers that the GOC's involvement within the Chinese steel industry, through its planning guidelines and directives also materially contributed to its overcapacity, oversupply and distorted structure during the review period. The extent of this involvement is reflected through the numerous planning guidelines and directives regarding the industry's structure and composition, listed below.⁶¹ 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 and hence it's central role in contributing to the structural imbalances and distorted prices during the review period.

- National Steel Industry Development Policy (2005).
- Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009).
- 2011-2015 Development Plan for the Steel Industry (2011).
- Steel Industry Adjustment Policy (2015 Revision).
- Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry (2016).
- The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry of Gain Profit and Development (2016).
- The Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)

⁶¹ The World Steel Association estimates that more than 320 steel-related policies and measures were implemented by the GOC between 1990 to 2016, of which about half were aimed at capacity control. DBS Asian Insights, China's steel sector supply reform, April 2017 p4.

In addition to the planning guidelines and directives listed above, the GOC's involvement within the steel industry is also demonstrated through broader industrial restructuring and reorganising directives listed below.⁶²

- 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).
- Directory Catalogue on Readjustment of Industrial Structure (2013 Amendment).
- Guidance on the promotion of central enterprises restructuring and reorganisation (2016).

A5.2.1 Relevance and enforceability of planning guidelines and directives

In assessing the relevance of these planning guidelines and directives, the Commission notes the importance of the GOC's national five 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 view that they are for guidance and are not enforceable.

Mechanisms through which the Commission considers the GOC is able to enforce these guidelines and directives include the presence and role of SOE's within the broader steel industry, the role of the National Development and Reform Commission (NDRC) and explicit enforcement mechanisms. In regards to SOEs, their significant share of total Chinese steel production and propensity to follow government guidance and directives ensures 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: revoking of pollutant discharge permits; restrictions on the provision of new credit support; restrictions on the approval of new investment projects; restrictions on the issuing of new and cancelling of existing production licenses.

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 the detailed conditions serve as 'the basic conditions for production and operation Chinese steel industry, setting out the operation requirements of steelmakers including product quality and production requirements. Firms are incentivised to comply with the standard conditions, as doing so provides the basis for policy support. In contrast, firms that do not

⁶² These directive are targeted at multiple industries including the Chinese steel industry.

conform are required to reform, and if they still fail to conform, must gradually exit the market.⁶³

A5.2.2 Summary of themes, objectives and implementation

Key themes and objectives of major GOC planning guidance and directives used to influence the structure of the Chinese steel industry are listed below.

2011-2015 Development Plan for the Steel Industry (2011)

- Increased mergers and acquisitions to create larger, more efficient steel companies.
- Chinese Government restrictions of steel capacity expansions.
- Upgrading steel industry technology.
- Greater emphasis on high-end steel products.
- Relocation of iron and steel companies to coastal areas.
- Minimum capacity requirements to reduce the number of small steel producers.
- Increased controls on the expansion of steel production capacity.
- Accelerating the development of higher value steel products.

Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013)⁶⁴

- Top ten companies accounting for 60% of production.
- Three to five major steel corporations with core competency and international impact.
- Six to seven steel corporations with regional influence.
- Encouraging steel corporations to participate in foreign steel companies' M&A.

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.

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.

⁶³ Announcement on the standard conditions for the Iron and Steel Industry (Revised 2015)

⁶⁴ <http://rhg.com/notes/beijings-2015-industry-consolidation-targets-problem-or-solution>

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- Intensify the implementation of industrial policies related to the iron and steel sector to strengthen the examination thereof and to improve them in practice.

State Council Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation

- 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, nonferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.

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

- 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.

A5.3 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.⁶⁵

Similar programs previous identified by the Commission's countervailing investigations concerning the Chinese steel industry are listed below.⁶⁶ While these investigations do not correspond with the current review period, it is the Commission's view that these programs have directly contributed to conditions within the Chinese steel industry and HRC and HSS markets during this period by providing direct financial support to recipient steel producers. This type of financial support not only inflates the profitability of recipient firms encouraging an expansion of supply but also support otherwise unprofitable producers, delaying their timely exit from the industry.

- Anti-dumping Respondent Assistance.
- Environmental Prize.

⁶⁵ Duke, 2016, p26.

⁶⁶ Relevant investigations include ITR 177 (2012) and REP 193 (2015).

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- Environmental Protection Grant.
- Export Brand Development Fund.
- High and New Technology Enterprise Grant.
- Independent Innovation and High-Tech Industrialisation Program.
- Innovative Experimental Enterprise Grant.
- Matching Funds for International Market Development for Small and Medium Enterprises.
- One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’.
- Preferential Tax Policies for High and New Technology Enterprises.
- Preferential Tax Policies for Western Development “Go West” strategy.
- Research & Development (R&D) Assistance Grant.
- Special Support Fund for Non-State-Owned Enterprises (NSOE).
- Superstar Enterprise Grant.
- Technology Project Assistance.
- Training Program for Rural Surplus Labour Force Transfer Employment.
- VAT and tariff exemptions on imported equipment.
- VAT Refund on Domestic Sales by Local Tax Authority.
- Venture Investment Fund of Hi-Tech Industry.
- Water Conservancy Fund Deduction.

A5.4 Taxation arrangements

The GOC has traditionally operated, amongst other taxation arrangements, a VAT and a VAT rebate system for certain exports. Under the Chinese VAT system, a 17% tax 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. Because it is difficult for exporters to pass these taxes on, some steel exporters have traditionally been compensated for VAT paid during the production process through 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 and of 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.

Previous investigations by the Commission found 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.⁶⁷ 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

⁶⁷ Anti-Dumping Commission, 2013, Report Number 198: Dumping of Hot Rolled Plate Steel Exported from the People's Republic of China, Republic of Indonesia, Japan, The Republic of Korea and Taiwan and Subsidisation of Hot Rolled Plate Steel Exported from The People's Republic of China, pp. 41-43.

prices to a level below what would have prevailed under normal competitive market conditions.

During the review period, the applicable VAT rebate rate for both HRC and HSS was 9%, resulting in an 8% applied VAT rate. While this differential would have created an incentive to export of both HRC and HSS, it is the Commission's understanding that the GOC also had an export tax applied to these product categories during the review period. The Commission sought clarification on these tax arrangements from the GOC, however the GOC declined to respond to the Commission's government questionnaire. As a result, the Commission is unable to conclude the extent to which these arrangements had contributed to the imbalances and resulting distortions within the Chinese HSS market during the review period.

A6 Assessment of particular market situation

Based on the proceeding analysis, the Commission has concluded that the GOC materially influenced conditions within the Chinese HRC and HSS markets 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 SOEs.

The Commission also concludes that because of the significance of this influence over the Chinese HRC and HSS markets, the domestic price for Chinese HSS was substantially different to what it would have been in the absence of these interventions. Based on this analysis, the Commission has determined that during the review period the domestic price for Chinese HSS was influenced by the GOC to a degree which makes domestic sales of HSS unsuitable for use in determining normal values under subsection 269TAC(1).

NON-CONFIDENTIAL APPENDIX B – SUBSIDY PROGRAMS

B1 Finding

After assessing all relevant information available, the Commission has found that financial benefits⁶⁸ were conferred to HSS producers in respect of the goods via countervailable subsidy programs.

B2 Relevant legislation

Subsection 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

⁶⁸ Subsections 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 Assistant Minister determines whether a financial contribution or income or price support confers a benefit, and is therefore a countervailable subsidy. Section 269TACD provides how the amount of this benefit is determined.

B3 Information considered by the Commission

In assessing the alleged subsidy programs, the Commission has considered information provided in the REQs and verification activities. This includes information provided by the producers of HSS exported to Australia by Tianjin Youfa regarding whether those producers were in receipt of any previously investigated or new countervailable subsidies and, if so, the value of any benefits received. The Commission did not receive a response to the government questionnaire from the GOC for this review.

B4 Subsidy programs considered

The Commission examined 45 subsidy programs as part of this review, comprising:

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- the 28 programs deemed to be countervailable subsidies received by exporters in respect of HSS during the original investigation⁶⁹ and covered by the countervailing duty notice (existing programs); and
- 17 additional subsidy programs that the Commission examined as part of Continuation 379.

B4.1 Programs

The Commission provided the GOC with a government questionnaire to gather evidence for the purposes of determining whether the 45 identified 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 subsection 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 acted on the basis of all the facts available to the Commission and made such assumptions as considered reasonable. The Commission's consideration of the facts available in relation to the existing programs is outlined in the table below.

⁶⁹ REP 177, Chapter 7

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

**Anti-Dumping
Commission**

No.	Program name	Evidence that program is still countervailable	Still 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 inquiry period by the GOC to the WTO in WTO document G/SCM/N/220/CHN (Program 8). ⁷⁰	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). ⁷¹	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 inquiry 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

⁷⁰ See WTO document number G/SCM/N/220/CHN dated 30 October 2015 at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=230956,230275,227578,135564,135369,130064,126962,122934,122280,120167&CurrentCatalogueIdIndex=3&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

⁷¹ *Anti-Dumping Commission Report No. 316 (REP 316)*.

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No.	Program name	Evidence that program is still countervailable	Still countervailable?
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 inquiry 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 inquiry 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 inquiry 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 inquiry period by the GOC to the WTO in G/SCM/N/220/CHN (Program 11).	Yes
14	Tariff and VAT Exemptions on Imported Materials and Equipment	Notified during the inquiry 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

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No.	Program name	Evidence that program is still countervailable	Still countervailable?
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 inquiry period (Appendix A refers). The Commission also found that hot rolled steel provided by Chinese state invested enterprises (SIEs) was less than the competitive market benchmark and therefore conferred a benefit on HSS produced in China.</p> <p>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 subsection 269(T) of the Act.⁷²</p> <p>See Appendix B for the Commission’s assessment of whether SIEs are public bodies.</p> <p>See Appendix C for the Commission’s assessment of whether Chinese exporters benefit from the provision of HRC at less than adequate remuneration.</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
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

⁷² *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	Still countervailable?
29	Land Use Tax Deduction	Cooperating exporter declared receipt of a benefit under this program during the inquiry 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 inquiry 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	Still 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 Daqiuzhuang Town Financial Bureau.</p>	Yes

PUBLIC RECORD

No.	Program name	Evidence that program is still countervailable	Still countervailable?
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
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

PUBLIC RECORD

No.	Program name	Evidence that program is still countervailable	Still countervailable?
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 Daqiuzhuang Town Science and Technology Bureau.</p>	Yes
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



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

NON-CONFIDENTIAL APPENDIX C – PUBLIC BODIES

C1 All facts available and reasonable assumptions

For purposes of this review, the Commissioner has proceeded on the basis of all the facts available and made such assumptions as the Commissioner considered reasonable.

The Commission considers that the GOC is the entity that would be best placed to provide relevant information concerning Chinese subsidy programs and public bodies. The Commission sent a questionnaire to the GOC requesting, among other things, details of subsidy programs that might be available to Chinese HSS exporters. The GOC did not provide a response to the questionnaire.

Section 269TAACA provides in a continuation inquiry (s269TAACA(1)(a)(iii)) that if the Commissioner is satisfied that the government of the country of export has not given the Commissioner information that the Commissioner considers relevant within a reasonable time (s269TAACA(1)(b)(i)) then the Commissioner may act on the basis of all the facts available to the Commissioner and may make such assumptions as the Commissioner considers reasonable (s269TAACA(1)(c) and (d)).

The Commissioner is satisfied that the GOC, by not providing a response to the questionnaire, has not given the Commissioner information that the Commissioner considers would be relevant to the continuation inquiry. Accordingly, for purposes of this reinvestigation, the Commissioner has proceeded on the basis of all the facts available and made such assumptions as the Commissioner considered reasonable.

C2 Findings of the EC relevant to the reinvestigation

The EC Report was prepared for the purposes of Article 2(6a)(c) of *Regulation (EU) 2016/1036*. Article 2(6a)(c) provides that where the EC has well-founded indications of the possible existence of significant distortions in a certain country or a certain sector in that country the EC must publish a report describing the market circumstances in that country or sector.⁷³

C2.1 SIEs and private companies execute GOC policy

The EC Report observed that, in practice, both SIEs and large private companies share many similarities in the areas commonly thought to distinguish SIEs from privately owned companies including in proximity to state power and execution of the GOC's policy

⁷³ EC Report at page 2.

objectives.⁷⁴ Even private entrepreneurs are helping implement Chinese Communist Party goals.⁷⁵ This indicates that the dividing line for which entities execute GOC policy and which entities do not falls somewhere within the ranks of private companies rather than SIEs.

That would support a view that all SIEs (as well as some private companies and entrepreneurs)⁷⁶ possess, exercise or are vested with governmental authority and are therefore public bodies.

C2.2 GOC plans to strengthen SIE control and influence to serve China's strategic goals

The EC Report found that the GOC no longer directs SIEs to “adapt to the new market-oriented [...] background” and “promote market-oriented allocation of public resources”.⁷⁷ Rather the GOC's current primary goal with respect to SIEs is to make the sector larger and stronger; this includes strengthening the sector's control and influence “in order to better serve the strategic goals of the country”.⁷⁸ The GOC has decided to maintain SIEs as a means for pursuing policy objectives and not primarily commercial considerations⁷⁹ and to selectively create large SIEs to serve the GOC's strategic industrial policies rather than focussing on their own economic performance.⁸⁰ The GOC has continued controlling SIEs⁸¹ and planned reforms focus on better controlling state-owned assets.⁸²

The GOC is retreating from the market reforms for SIEs that it previously promoted, even as recently as 2013.⁸³ On that basis, the Commission considers that previous findings that SIEs are public bodies (such as the findings in Investigation 177) are pertinent to this inquiry and are likely to understate the GOC's involvement with SIEs.

C3 SIEs supplying Tianjin Youfa are public bodies

The Commission considers that, in the absence of relevant information held but not provided by the GOC and in light of all available information (including previous findings by the Commission and findings contained in the EC Report) it is reasonable to assume that SIEs possess, exercise and are vested with governmental authority. On that basis the Commission considers that SIEs are public bodies and finds that SIEs supplying Tianjin Youfa are public bodies.

⁷⁴ EC Report at page 15.

⁷⁵ EC Report at page 15.

⁷⁶ The Commission has not previously found that a private body has provided a subsidy however the Act provides for such in circumstances where there is a financial contribution by a private body entrusted or directed by a government or a public body to carry out a governmental function (s269T, definition of “subsidy”).

⁷⁷ EC Report at page 106 citing the GOC's 13th Five Year Plan.

⁷⁸ EC Report at page 106 citing the GOC's 13th Five Year Plan.

⁷⁹ EC Report at page 107-8; the EC Report at page 362 stated that some forms of GOC support in the steel sector were “permanent” and “structural”.

⁸⁰ EC Report at page 108-9.

⁸¹ EC Report at page 108.

⁸² EC Report at page 106 citing the GOC's 13th Five Year Plan.

⁸³ EC Report at page 106 citing the GOC's 2013 3rd Plenum Decision.

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).⁸⁴

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

⁸⁴ 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.

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).⁸⁵

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

⁸⁵ 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;⁸⁶ 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.

⁸⁶ REP 177 at pages 166 to 167.